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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 47 of 1914.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

63329

(APPELLATE JURISDICTION).

BETWEEN

HIS MAJESTY'S ATTORNEY-GENERAL, OF AND FOR THE STATE OF NEW SOUTH WALES ON THE RELATION OF ARTHUR ALFRED CLEMENT COCKS, OF 59 YORK-STREET, SYDNEY, IN THE STATE OF NEW SOUTH WALES, MERCHANT AND LORD MAYOR-ELECT; SIR WILLIAM McMILLAN, K.C.M.G., MERCHANT, OF 79 YORK-STREET AFORESAID; AND THOMAS HENLEY, OF DRUMMOYNE, A MEMBER OF THE LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES

(Informant) Appellant,

AND

JAMES LESLIE WILLIAMS *(Defendant) Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 47 of 1914.

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA.

(APPELLATE JURISDICTION).

BETWEEN

HIS MAJESTY'S ATTORNEY-GENERAL, OF AND FOR
THE STATE OF NEW SOUTH WALES ON THE RELATION
OF ARTHUR ALFRED CLEMENT COCKS, OF 59
YORK-STREET, SYDNEY, IN THE STATE OF NEW SOUTH
WALES, MERCHANT AND LORD MAYOR-ELECT; SIR
WILLIAM McMILLAN, K.C.M.G., MERCHANT, OF
79 YORK-STREET AFORESAID; AND THOMAS
HENLEY, OF DRUMMOYNE, A MEMBER OF THE
LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES

(Informant) Appellant,

AND

JAMES LESLIE WILLIAMS *(Defendant) Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Information.

No. 1.
Information
dated and
filed, 9th
January, 1913

1. In or about the year 1812 it was publicly proclaimed by His Excellency Governor Macquarie, the then Governor of New South Wales, that certain lands in New South Wales extending from the present Circular Quay to Woolloomooloo Bay had been enclosed and were reserved as a Government domain.

2. In or about the year 1817 a portion of the said enclosed and reserved lands was utilised for the purpose of building stables for the use of the Governor, the said stables being the present Government House stables.

RECORD.

No. 1.
Information
dated and
filed, 9th
January,
1913
—continued.

3. In or about the year 1829 the then Governor of New South Wales, His Excellency Governor Darling, caused to be duly published in the "Government Gazette," a list of the lands set apart for public purposes, which list included the said enclosed and reserved lands.

4. In or about the year 1832 an official report was made by the Surveyor-General of the Colony that it was expedient to erect a new residence for the Sovereign's representative in New South Wales, that certain portions of the said enclosed and reserved lands should be sold and the proceeds expended in the building of the said proposed residence.

5. In or about the year 1836 a Committee of the Legislative Council of 10 New South Wales was duly appointed to consider the question of a site for the said proposed residence, and the said Committee by its report recommended as such site an area of land including what are now known as Government House Grounds which forms a portion of the said enclosed and reserved lands.

6. Acting upon the said reports, portions of the said reserved and enclosed lands in Phillip-street, near Circular Quay, were sold, and the proceeds of such sales together with a sum of money voted for the purpose by the said Legislative Council and certain money supplied by the Authorities in England, were devoted to building the said proposed residence upon 20 the said site for the Sovereign's representative aforesaid, which is the present Government House.

7. The said House and grounds became ready for occupation in or about the year 1845, and have ever since that time until the 1st December, 1912, been occupied as a residence for the Sovereign's representative in New South Wales.

8. The informant submits that the said House and grounds were by virtue of the matters hereinbefore set out, permanently dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales, and that it is not within the powers of the Government of New 30 South Wales or the Governor-in-Council to interfere with or alter the said public purpose or to use or cause or allow to be used the said House and grounds for any purpose other than the public purpose aforesaid.

9. By an arrangement made between the Government of the Commonwealth of Australia and the Government of New South Wales, the said House and grounds were from the year 1900 to the 1st December, 1912, occupied as his residence in New South Wales by the Governor-General of the said Commonwealth as the representative of the Sovereign, the said arrangement has recently come to an end, and the members of the Government of New South Wales, after having met in Cabinet, have determined and announced 40 publicly that the said House and grounds shall no longer be used as a residence for the Sovereign's representative in New South Wales but shall be devoted to some other purpose, and by reason of such determination the said House and grounds are now no longer used as a residence for the Sovereign's representative in New South Wales. The said grounds have recently been officially thrown open by the said Government and are now being used by members of the public.

10. The informant fears that unless restrained by the order and injunction of this Court the Government of New South Wales will carry this determination into effect so as to permanently exclude the Sovereign's representative in New South Wales therefrom contrary to the public purpose to which the said house and grounds were dedicated.

RECORD.
No. 1.
Information
dated and
filed, 9th
January, 1913
—continued.

The informant therefore prays:—

1. That it may be declared that the said House and grounds are vested in His Majesty the King, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales.

10 2. That it may be declared that neither the Government of New South Wales nor the Governor in Council has power to interfere with or alter the said purpose to which the said House and grounds are dedicated.

3. That the Defendant, as nominal Defendant for and on behalf of the Government of New South Wales, the Ministers, Officers, and Servants of the Crown, may be restrained, by the Order and injunction of this Court, from using or causing or allowing to be used the said House and grounds for any purpose other than the public purpose of a residence for the Sovereign's representative in New South Wales.

20 4. That the Defendant may be ordered to pay the costs of this suit.

5. That the Informant may have such further or other relief, as the nature of the case may require.

(Sgd.) FRANCIS J. BETHUNE.

I certify that this information is proper for the allowance of His Majesty's Attorney-General of and for the State of New South Wales, and that without such allowance complete relief cannot be obtained by the Relators.

(Sgd.) FRANCIS J. BETHUNE,
Counsel for the Informant.

W. A. Holman,
30 Attorney-General for the State of New South Wales,
24th December, 1912.

NOTE.—This information is filed by Messrs. Cope & Co., of 14, Castle-reagh-street, Sydney, in the State of New South Wales, Solicitors for the above-named Arthur Alfred Clement Cocks, Sir William McMillan, and Thomas Henley, all of Sydney aforesaid, the above-named Relators.

Georgius R.

To the within-named James Leslie Williams—

Greeting:—

We command you that within eight days after the service hereof on you,
40 exclusive of the day of such service, you cause an appearance to be entered

RECORD.

No. 1.
Information
dated and
filed, 9th
January,
1913
—continued.

for you in the Equity Office of our Supreme Court, Chancery Square, Sydney, in the State of New South Wales, to the within Statement of Claim, and that you do at the same time of entering your appearance file in the said Equity Office a memorandum stating in effect that you dispute in whole or in part the Plaintiff's claim (specifying which part) or that you submit to such decree or order as the Court thinks fit to make, or that you disclaim all right, title, and interest in the subject-matter of the within Statement of Claim.

(Sgd.) W. A. BALCOME,
Chief Clerk in Equity.

NOTE:—If you neglect to enter your appearance or to file a Memo-10 randum as above mentioned you will be subject to such order as the Court thinks fit to make in your absence.

No. 2.

Appearance.

No. 2.
Appearance
on behalf of
the
Defendant,
Dated 10th
January,
1913.

John Varnell Tillett, Crown Solicitor, Solicitor for the above-named Defendant, whose address is at 237 Macquarie-street, Sydney, appears for him herein, and the said James Leslie Williams disputes the whole of the Informants' claim.

The address for service on the said Defendant is at the Office of the Crown Solicitor No. 237 Macquarie-street, Sydney.

20

Dated the 10th January, 1913.

JOHN VARNELL TILLETT,
Crown Solicitor,
Solicitor for the above-named Defendant,
No. 237 Macquarie-street, Sydney.

No. 3.

Notice of Motion.

Take Notice that this Honorable Court will be moved on Friday the 7th February, 1913, at two of the clock in the afternoon, or so soon thereafter as Counsel can be heard in that behalf by Counsel for the abovenamed Plaintiff, that the Defendant as Nominal Defendant for and on behalf of the Government of New South Wales the Ministers, Officers, and Servants of the Crown may be restrained by the Order and Injunction of this Court from using, or causing, or allowing to be used, Government House and grounds
10 for any purpose other than the public purpose of a residence for the Sovereign's representative in New South Wales, until the hearing of the suit or until further order upon the grounds appearing in and by the affidavits of William McMillan, Thomas Henley, and Henry Archdall Langley, all sworn on the 3rd February, 1913, and filed herein.

Dated this 3rd February, 1913.

(Signed) WILLIAM COPE,
Relators' Solicitor,
14 Castlereagh Street,
Sydney.

20 NOTE.—It is intended to serve this Notice of Motion on the abovenamed Defendant, James Leslie Williams,

No. 4.

Affidavit of Sir William McMillan.

On this 3rd day of February, one thousand nine hundred and thirteen, William McMillan of 79 York Street, Sydney, in the State of New South Wales, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, being duly sworn makes oath and says as follows:—

1. I am one of the abovenamed Informants (Relators).
2. I am informed by William Cope and verily believe that His Excellency Governor Macquarie the then Governor of New South Wales pro-
30 claimed in the year 1812, that certain lands in New South Wales extending from the present Circular Quay to Woolloomooloo Bay had been enclosed and were reserved as a Government Domain.
3. I am informed and verily believe that in or about the year 1817, a portion of the said enclosed and reserved lands was utilized for the purpose of building stables for the use of the Governor, the said stables being the present Government House stables.

RECORD.

No. 3.
Notice of
Motion,
dated 3rd
February,
1913.

No. 4.
Affidavit of
Sir William
McMillan,
dated 3rd
February,
1913.

RECORD.

No. 4.
Affidavit of
Sir William
McMillan,
dated 3rd
February,
1913
—continued.

4. On or about the 2nd November, 1832, Sir Richard Bourke, then Governor of New South Wales, by despatch sent by him to Lord Goderich—copy of which is attached hereto marked “A”—recommended the building of a new Government House on the site chosen by Sir Thomas Mitchell, the Surveyor-General of the Colony, who reported and suggested that certain portions of the lands reserved and enclosed for that purpose should be sold and the proceeds expended in the contemplated improvements. A copy of Sir Thomas Mitchell’s report is hereto annexed marked “B.”

5. In or about the year 1836 as appears by an official report—copy whereof is hereunto annexed marked “C”—a Committee of the Legislative Council of New South Wales was duly appointed to consider the question of a site for the said proposed residence, and the said Committee by its report recommended as such site an area of land including what are now known as Government House Grounds which forms a portion of the said enclosed and reserved lands.

6. I am further informed, and verily believe that it appears from official records that acting upon the said report, portions of the said reserved and enclosed lands near Circular Quay were sold, and the proceeds of such sales, together with a sum of money voted for the purpose by the said Legislative Council were devoted to building the said proposed residence upon the said site for the Sovereign’s representative, as aforesaid, which is the present Government House.

7. It appears from a despatch of the then Governor Sir George Gipps, that the said House and grounds were ready for occupation in or about the year 1845, and that he was then about to move in, and ever since that time until the 1st December last have been occupied as a residence for the Sovereign’s representative. A copy of the said despatch is hereto annexed, marked “D.”

8. The Informant submits that the said House and grounds were by virtue of the matters hereinbefore set out, permanently dedicated to the public purpose of a residence for the Sovereign’s representative in New South Wales.

9. By an arrangement made between the Government of the Commonwealth of Australia and the Government of New South Wales, the said House and grounds were from the year 1900 to the 1st December last, occupied as his residence in New South Wales by the Governor-General of the said Commonwealth as the representative of the Sovereign. The said arrangement has recently come to an end, and the Government of New South Wales have determined, as I verily believe, that the said House and grounds shall no longer be used as a residence for the Sovereign’s representative in New South Wales, but shall be devoted to some other purpose, and, by reason of such determination, the said House and grounds are now no longer used as a residence for the Sovereign’s representative in New South Wales.

10. Some time previous to the 14th December last past it was announced through the Press that the Government of New South Wales would open the said grounds to the public, and upon the 14th December last the Honour

able the Premier attended and declared the said grounds were opened to the public, a considerable number of the public objecting and crying shame.

11. The said Government, since the 14th December last past, have commenced alterations in the said grounds by removing boundary and other fences, making paths, cutting down trees, setting up notice-boards, and generally diverting the said grounds from the purposes for which the same were dedicated.

12. I have been informed by the said William Cope, and verily believe that, in reply to his request as Solicitor for the said Relators, no alteration should be made to Government House or to the Stables in connection therewith, in order to obviate the necessity of myself and co-Relators applying to this Honourable Court for an interim injunction, the Crown Solicitor, on the 13th January now instant, wrote that the Acting Attorney-General had directed him to say that the Government was unable to give the assurance asked for. The said Crown Solicitor further stated in the said letter that I, this deponent and my co-Relators, should be made aware that it was in contemplation to make material alterations to the Stables, but that the work would not be commenced before the end of the long vacation. It is publicly stated in the Press that plans are in progress, and steps being taken for the conversion of buildings. (An extract from the "Daily Telegraph" and "Sydney Morning Herald" is hereunto annexed, marked "E" and "F" respectively).

13. It is feared that unless restrained by the order and injunction of this Court, the said Government will continue to so divert the said lands as to permanently exclude the Sovereign's representative in New South Wales, contrary to the public purpose to which the said House and grounds were dedicated.

Sworn by the Deponent on the day and }
 year first above mentioned at } W. McMILLAN.
 30 Sydney, before me,
 E. NEWTON DALY,
 A Commissioner for Affidavits.

"A."

This is the copy despatch referred to in the annexed Affidavit of William McMillan, sworn the 3rd February, 1913, before me,

E. NEWTON DALY,
 A Commissioner for Affidavits.

Copy of Despatch from Sir Richard Bourke to Lord Viscount Goderich,
 (No. 113.) Government House, Sydney,

2nd November, 1832.

40 My Lord,

Many circumstances, public and private, which I will not take up your Lordship's time in enumerating, have prevented until now the fulfilment of your Lordship's desire to transmit a Report upon the state of the Government

RECORD

No. 4.
 Affidavit of
 Sir William
 McMillan,
 dated 3rd
 February,
 1913

—continued.

RECORD.

No. 4.
Affidavit of
Sir William
McMillan,
dated 3rd
February,
1913

--continued.

House in Sydney. I now proceed to obey those commands by reporting on the condition of the building as it now stands, upon the expediency of erecting a new house on a different site, and of giving up to the public, for the purposes of quays, and wharfs, and storehouses, a portion of the ground on the eastern side of Sydney Cove, now enclosed within the Government Gardens.

In the first place I have to observe that the present Government House in Sydney is a collection of rooms built at different times by successive Governors, and is, in consequence, not only extremely inconvenient and unsightly, but in such a bad state of repair as to demand the immediate expenditure of a large sum of money to render it habitable and decent. The 10
roof and flooring are in many parts decayed, and the bad smells which prevail in the principal sitting room are not only unpleasant but unwholesome. So bad, indeed, was the condition of this house considered to be upon the close of Sir Thomas Brisbane's Government, that Lord Bathurst authorized General Darling to commence building a new one immediately on his arrival here in 1826. This permission, as your Lordship is aware, was not acted upon, and since that period nothing has been done for the improvement, and but little towards the repair, of the old house, and it has now reached that state of deterioration in which it would be a waste of money to expend any large sum for its preservation.

Having then ascertained the inexpediency of attempting to make the present Government House a suitable habitation for a Governor, who is to have but one official residence, I considered in what way a new house might be built with least expense to the public. I directed the Surveyor-General, on returning from his expedition to the north-west, to consider and report upon the subject; and, after several conferences, and frequent examinations of the ground, he has prepared the accompanying report, in the main points of which I entirely concur. I approve of the site he has chosen for the new house, and of the surrender of the ground required for the new quay and buildings. 20

Perhaps that part of his plan, which contemplates the improvement of the town by the sacrifice of such good houses as those of the Chief Justice and Colonial Secretary, may be for the present abandoned. 30

The sum which the Surveyor-General calculates the sale of the waterside allotments in the Government Gardens would produce is not taken too high at £15,400, if the allotments be sold at such intervals of time as the apparent demand for such situations shall seem to require. For this sum it is presumed the construction of a moderate house, and the enclosure by a brick wall of the garden and grounds (and indispensable protection to a residence almost in the heart of such a town as Sydney) may be accomplished. Rooms 40
in the present stables (which your Lordship may be aware, were built by Governor Macquarie on a handsome scale) will accommodate several servants, and the principal building, though it must necessarily contain some large rooms for company, need not have many sleeping apartments. I could have wished to have transmitted a plan and estimate of such a building as appeared to me suitable; but I am obliged to confess that there is no person here in whose professional experience as an architect I can place any reliance with reference to a work of the kind. I have, therefore, stated

the number of rooms of which I think the house should consist, and transmit a drawing of the stables near which it is proposed to place the new house, in order that the professional person in London, from whom I would propose to obtain a plan and elevation, may judge of the style of building which will harmonise with that of the stables, and with the scenery of the site upon which the house is to be situated.

If your Lordship shall approve of a new house being built in the manner now proposed, I have to request that you will instruct the Agent to procure without delay, from some eminent architect in London, plans and elevations
 10 of the principal building and entrance lodges with specifications, working plans, and drawings, and an estimate of the expense of each building at London prices. The probable cost of the building at Sydney may afterwards be worked out by means of a schedule of Sydney prices which I transmit herewith; I forward also an estimate of the expense of the enclosing wall. Your Lordship may thus form an opinion of the whole expense of the Governor's residence upon the proposed plan. The Council are fully aware of the propriety of providing a suitable one, and will, I have no doubt, readily vote such a sum as shall appear necessary for its completion on a moderate scale. Notwithstanding the extravagant estimate of the enclosing
 20 wall, I should hope the whole might be completed for the sum at which the water-side allotments are valued, namely, about £15,400.

Your Lordship should be informed that, exclusive of a small kitchen garden, the land, about 47 acres, to be enclosed as the Government Grounds, contains nothing that can be turned to any profitable use, being almost wholly rock and scrubby underwood; it scarcely affords the maintenance of three cows. It will, therefore, be indispensable, to allot Grose Farm, containing two hundred acres for the use of the Governor. This farm is just without Sydney; the soil of but moderate fertility and badly watered; the whole farm will do little more than keep the number of cows required
 30 for the house, and provide hay for horses. The expense of labour and implements for the management of this farm should be born by the Governor; that of supporting the new farm buildings now upon it should be charged to the public.

I have made this proposal under the supposition that your Lordship may not choose to depart from an intention lately expressed, of depriving the Governor of the country house at Parramatta. Were your Lordship fully acquainted with the endless labour and detail, and the personal impo-
 40 tunity attending the administration of this Government, and with the expense consequent upon a constant residence in Sydney, I am convinced you would not hesitate to allow the Governor the partial rest from fatigue and needful economy of money, which an occasional retirement to the country affords him. I believe I am correct in stating that neither the Council nor the public seem to call for the surrender of the Parramatta House.

I have, &c.,

(Signed) RICHD. BOURKE.

The Right Honorable Lord Goderich, &c., &c., &c.

RECORD.

No. 4.
 Affidavit of
 Sir William
 McMillan,
 dated 3rd,
 February,
 1913

—continued.

RECORD.

" B. "

No. 4.
Affidavit of
Sir William
McMillan,
dated 3rd
February,
1913
—continued.

This is the copy Report marked " B " referred to in the annexed affidavit of William McMillan, sworn the 3rd February, 1913.

E. NEWTON DALY,
A Commissioner for Affidavits.

Report on the accompanying plan of the site proposed for a new Government House at Sydney, showing also a division of part of the eastern shore of the Cove into allotments for sale.

1. The site proposed is a spot immediately adjacent to the stables which, consisting of a mass of modern Gothic buildings, may be so grouped with a Government House in the same style of architecture as to contribute much to the general appearance of the whole. In the accompanying view of the stables this site is shown on the right of that building.

2. It is proposed to cut off from the Government Domain the site of the present house, and to lay off the lower ground on the shore of the harbour into waterside allotments for wharves and warehouses, for which the sites required by the merchants are very scarce in Sydney, and the water being deeper close in shore there than at any other part, the value of this to the merchants is obvious; and, whereas, the harbour would be thus, unquestionably, much improved for the purposes of trade and commerce, the proceeds of the sale would be more than sufficient for the accomplishment of the other contemplated improvements of this part of Sydney.

3. The several streets immediately adjoining the present Government House are opposed to each other at acute angles, in a most inconvenient and unsightly manner: it will be seen by the accompanying plan that, by the removal of the present house and the several buildings occupied by the Chief Justice and Colonial Secretary, Nos. 1, 2, and 3, and opening a semi-circular space, there would be no obstruction between each of these streets and the new Government House, but that, on the contrary, these streets would then form radii diverging from the new gate towards the different parts of the town.

4. The prolongation of the line of buildings in Macquarie-place gives the line of an extensive quay precisely in the direction of the shelving rock, on which the quay may be made from Pitt-street, which affords the least inclined approach to the water from the interior streets. This it is proposed to accomplish by a slight modification of Tank-street, and the western side thereof being Crown land it will probably be possible to compensate Mr. Phillips, whose property on the opposite side would be interfered with, by an adequate portion of ground. It will be seen by the map that thus Pitt-street would at once be connected with Tank-street and O'Connell-street, and would become, in fact, an equally important and much better communication with the eastern side of the Cove than George-street now forms with the western, the access to the water being left open and public along the whole length of the quay.

5. The division of the lumber yard into building allotments affords the means of opening Bridge-street into an elegant and commodious line of communication between these two important streets, by the introduction of an uniform plan of building with a colonnade, and as Mr. Manning is disposed to adopt a similar plan in building on the opposite side of that street, even by the sacrifice of part of what he has done, I consider it practicable (as it would also much improve the access to Government House from George-street) to raise the lower part of Bridge-street to a level sufficiently high to admit the formation of a colonnade uninterrupted by breaks, which, from
 10 the lowness of the present surface of the bridge, would be otherwise unavoidable.

6. The communication from Macquarie-street by the semicircular sweep, past the gate of Government House, round uninterruptedly towards the quay and Bridge-street, would complete these alterations, which are proposed in connection with the other arrangement chiefly with the view to rectify, in some measure, a very ill-laid out part of the town.

(Signed) T. C. MITCHELL,
 Surveyor-General.

Surveyor-General's Office, 11th September, 1832.

RECORD.
 No. 4.
 Affidavit of
 Sir William
 McMillan,
 dated 3rd
 February,
 1913
 —continued.

20

"C."

This is the copy report, marked "C," referred to in the annexed affidavit of William McMillan, sworn this 3rd February, 1913, before me,

E. NEWTON DALY,
 A Commissioner for Affidavits.

Report from the Committee on the proposed New Government House, with the Minutes of Evidence.

(Ordered by the Council to be printed 12th August, 1836.)

Committee appointed to examine and report upon the plan and estimate for a new Government House :—

30

The Chief Justice,
 The Colonial Secretary, Mr. Berry,
 The Auditor-General, Mr. McArthur.

The Committee of the Legislative Council of New South Wales appointed to examine and report upon the plan and estimate for a new Government House at Sydney, having assembled and sat for several days successively, from the 28th July, 1836, and having had before them an extract from the Secretary of State's Despatch to His Excellency the Governor of date the

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Affidavit of
Sir William
McMillan,
dated 3rd
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—continued.

25th March, 1835, No. 33, together with the plan and specification transmitted from England, and having examined Captain Barney, commanding the Royal Engineers, and Mr. Lewis, the Colonial Architect (whose evidence will be found in the appendix to this report), touching and concerning the same, and having considered the most suitable site for erecting the proposed new Government House, have the honour to report for the information of His Excellency the Governor, and the Honourable the Legislative Council:—

First:—That the plan and elevation of the proposed new house transmitted from England is suitable for an official residence for the Governor, with the addition of a dining-room for private accommodation, 10 and of suitable out-offices, for which last no provision has been made in the plan and specification submitted to their consideration.

Secondly:—That the estimate made out in England of the expense of erecting a Government House, agreeably to the said plan, is wholly inadequate, and that such a house, together with an additional dining-room and suitable out-offices, cannot be erected in this colony for less than £25,000 sterling.

Thirdly:—That taking all circumstances into consideration, and after a personal inspection of the spot, and taking the opinion of the scientific witnesses examined, they have further to report that the most 20 suitable site in their judgment, for the said house, is an elevated spot of land near Bennelong's Point, equi-distant between the present Government stables and Fort Macquarie.

Before your Committee resolved upon recommending this site they had under consideration the expediency of selecting a spot for this purpose, either to the southward or to the northward of the Government stables in the immediate vicinity thereof, but finding that such a selection would be attended with many disadvantages, without any compensating advantages, they deemed it expedient to direct their attention to the site now proposed.

The other sites at first contemplated possess few of the advantages, 30 which they take leave to point out as recommendatory of that now suggested.

The site now proposed possesses the advantages of an extensive view of the harbour of Port Jackson and the adjacent scenery; it will present an imposing aspect from the harbour and highest parts of the town of Sydney; it is healthy in every respect, and will be sheltered from the effects of obnoxious winds in the seasons of summer and winter; it is well adapted for adequate drainage, and an abundant supply of fresh water; it will have the advantage of about 50 acres of surrounding pleasure grounds, the natural shrubberies now growing thereon recommending it for retirement, without interfering with a just proximity to the town for the purpose of public con- 40 venience, as an official residence of the Governor. The existing stables will be at a convenient distance, and taken together with Macquarie Fort, will harmonise admirably with the character of the proposed House, and the latter, together with the contemplated improvements in Sydney Cove and parts adjacent, will present an attractive appearance to strangers visiting the Port.

The plan of the House transmitted from England will, in the opinion of your Committee, require recasting, or some modifications not, however,

inconsistent with the general arrangement. Amongst these alterations your Committee would recommend accommodations for the Governor's Staff and Suite, together with suitable out-offices in connection with the House.

Although the estimate of £25,000 far exceeds the expense contemplated by the Right Honorable the Secretary of State, yet in recommending so large an outlay of public money for such a purpose, your Committee beg leave to state that they have had in view the probable proceeds of the sale of Government land, which will be thrown into the town of Sydney, by selecting the proposed site of the new Government House. By this arrangement about
 10 20 acres of land may be separated from the present Inner Domain (without inconveniently abridging the comfort of the Government House), and may be dedicated to the improvement of that part of the town which will abut upon the proposed new wharves in Sydney Cove. By this arrangement Macquarie-street, Phillip-street, Elizabeth-street, Castlereagh-street and Pitt-street, respectively, may be prolonged in a northerly line, so as to open on the said wharfs, leaving abundant space for the erection of public offices, a commercial exchange, and a public library, on eligible sites. At the lowest estimate, the street frontages, thus thrown into the market, will yield funds more than sufficient to cover the expense of erecting the new Government
 20 House, the Government offices herein proposed, and the Circular Quay. In this estimate, your Committee do not include the value of the allotments on the proposed new quay, nor of the present public offices and the ground they respectively stand upon, which will doubtless yield a large return when sold.

The proposed site for the new Government House will not abridge nor interfere with the allotments on the proposed new quay, whilst at the same time the proximity of the quay will not interfere with the retirement of the proposed house, a point which the Committee deemed it necessary to keep in view, as it is intended, they understand, to restrict the Governor to one
 30 official residence as soon as the new Government House shall be erected.

In recommending the proposed site, your Committee beg leave to state to the Council, that the communication with the Outer Domain for foot passengers, as heretofore open, is to be still reserved for public recreation, by way of Fort Macquarie, but in a direction nearer to the water's edge, which will add to its length, salubrity, and beauty.

In the immediate vicinity of Fort Macquarie there is a large quantity of stone, well adapted for building, which it is desirable should be removed. This may be used in erecting the new house, and when removed the spot may be converted into a promenade for gala days or other public occasions,
 40 to which there will be an easy access by the line of Macquarie Street.

The Committee do not at present recommend as necessary, but they would suggest that hereafter, the edge of the shore, leading from Fort Macquarie to the Outer Domain may be converted into a carriage drive for public recreation.

In recommending this site your Committee have had in view, not merely the suitability of the spot for an official residence, combining style, health, convenience, and eligible locality, but have also contemplated public convenience, both for business and pleasure, and have had an anxious regard to an

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 Affidavit of
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 McMillan,
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 —continued.

economical expenditure of the Colonial funds, whilst at the same time they have not been unmindful of the growing prosperity and importance of the town of Sydney as the seat of government.

For further information on this matter, your Committee beg leave to refer to the Appendix to this Report, in which will be found a sketch of the site which they propose to your Excellency and Honourable Council for adoption.

(Signed) JAMES DOWLING,
 Chairman.

12th August, 1836.

“ D.”

10

This is the copy of despatch, marked “ D ” referred to in the annexed affidavit of William McMillan, sworn the 3rd February, 1913.

E. NEWTON DALY,
 A Commissioner for Affidavits.

Copy of Despatch from Sir George Gipps to Lord Stanley.

Government House, Sydney,

My Lord,

15th June, 1845.

Having in my Despatch of this day's date No. 103, expressed my opinion on the proposed reduction in the Governor's salary, in as far as the measure may be regarded a public or political one, I feel that it may be right for me to add a few observations on the same subject, in reference to the Governor's personal interests or convenience.

Having held the Government of New South Wales upwards of seven years, with a salary of £5,000 per annum, I have nothing to complain of for myself; but it seems to me only right that it should be borne in mind that no office under the Crown is of more uncertain tenure than that of a Colonial Governor; that he may hold his Government only a few months, and that in the generality of cases he is exposed to very considerable expense before he enters upon his salary. In my own case, I expended £2,500 in the necessary expenses of my outfit for, and passage to, New South Wales before I received a shilling from the Colony.

I have further to submit to your Lordship, that I am now on the point of moving into the new Government House, which was commenced in the time of my predecessor; and that the occupation of this House must of necessity increase greatly the expenses of the Governor.

I further think this a proper occasion to bring under your Lordship's consideration the manner in which future Governors will be affected by the loss of the country house and Domain of Parramatta.

By a despatch from Lord Goderich, dated so long ago as the 29th September, 1831, it was amongst other things ordered that the house at Parramatta should be given up whenever the Governor might be provided with a sufficient residence in Sydney; and the same order was repeated in a

Despatch from Lord Aberdeen of the 25th March, 1835. In obedience to these decisions I shall make arrangements for relinquishing the house and grounds at Parramatta on the 1st January next; but I propose, in the first instance, to let them (by public competition), for one year only, by which not only will the value of them be better ascertained, but the question as to the ultimate disposal of them be kept open.

In Lord Aberdeen's Despatch already mentioned, permission was given to the Governor to retain for his own use the land called Grose Farm; but this, I think, must now be considered out of the question, for not only is
 10 Grose Farm (consisting of 194 acres) from its contiguity to Sydney more valuable than Parramatta, but streets are already about to be laid out through part of it, and the whole will, in the course of a few years, be comprehended within the town of Sydney; it is now divided into grazing paddocks, and let in eight lots to the butchers of Sydney; the rent derived from it being carried to the public account.

Parramatta was of considerable value to the Governor so long as sums were annually voted by the Legislative Council for the support of it; but in my Despatch No. 138, of the 9th July, 1844, I stated that the present Council has voted no money towards keeping it up; and I consider that it has there-
 20 fore, since the 1st January, 1844, ceased in a pecuniary point of view to be of any great advantage to the Governor, though it still supplies him with farm produce and fuel.

Whilst kept up at the expense of the Government I considered Parramatta to be worth to the Governor from £500 to £700 a year. I mean that I considered it equal to what an addition to his salary of that amount would have been. Since the 1st January, 1844, it has been of comparatively little value; and the expense of keeping it up would necessarily every year increase. If retained by the Governor it would, however, afford to him, as it hitherto has done, the means of obtaining occasional retirement with change of air and
 30 scene, which I have no hesitation in saying is absolutely necessary for his health and comfort, and not less so for the transaction of public business requiring careful thought and deliberation. The occasional residence of the Governor at Parramatta, I will also add, without fear of contradiction, has during the last seven years not been unattended with public benefit of another nature; for it has enabled him to give the advantage of his frequent inspection to the public establishments situated in that place, and particularly to the Female Factory and the Orphan Schools.

Though, therefore, I do not feel that I can (and especially under existing circumstances) retain Parramatta for my own use beyond the 1st January
 40 next, I consider it due to the person who may be my successor, to urge upon your Lordship the reconsideration of the question, whether the Governor of New South Wales should not have the means afforded him of occasionally escaping from the turmoil of a residence in Sydney.

In concluding this Despatch I beg leave to quote the following passage from one on the same subject, written by Sir Richard Bourke, between twelve and thirteen years ago:—

“I have made this proposal” (relating to Grose Farm) “under the
 “supposition that your Lordship may not choose to depart from an intention

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 Affidavit of
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Affidavit of
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McMillan,
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—continued.

“lately expressed, of depriving the Governor of a country house at Parramatta. Were your Lordship fully acquainted with the endless labour and detail, and the personal importunity attending the administration of this Government, and with the expense consequent upon a constant residence in Sydney, I am convinced you would not hesitate to allow the Governor the partial rest from fatigue and needful economy of money, which an occasional retirement to the country affords me.”

I have, &c.,

(Signed) GEORGE GIPPS.

The Right Hon. Lord Stanley, &c., &c., &c.

10

“ E.”

This is the extract from the “Sydney Morning Herald” referred to in the annexed affidavit of William McMillan, sworn the 3rd February, 1913, before me,

E. NEWTON DALY,
A Commissioner for Affidavits.

Conservatorium of Music.

The Advisory Committee appointed by the Minister for Education in connection with the Conservatorium of Music met yesterday afternoon at the Department of Public Instruction, and affirmed the suitability of the sketch plans prepared for the conversion of the buildings at the entrance to Government House Grounds. The departmental architect will now proceed with the preparation of plans in detail. Mr. Carmichael remarked that he could not understand the opposition shown in a few quarters to the proposal to establish the Conservatorium on such an ideal site, for it was that part of Government House Grounds which everybody agreed should be thrown open to the public, whatever opinion might be held concerning Government House itself.

“ F.”

This is the extract from the “Daily Telegraph” referred to in the annexed affidavit of William McMillan, sworn the 3rd February, 1913, before me, 30

E. NEWTON DALY,
A Commissioner for Affidavits.

Conservatorium of Music.

The Minister for Education yesterday called together the Advisory Committee of the Conservatorium of Music. The Committee sat for some hours, most of the time being devoted to an exhaustive study of the sketch plans submitted by the departmental architect for the conversion of the buildings near Government House gates into a Conservatorium.

Affidavit of Thomas Henley.

RECORD.

No. 5.
Affidavit of
Thomas
Henley,
sworn 3rd
February,
1913.

On this 3rd February, 1913, Thomas Henley, of Drummoyne, in the State of New South Wales, Member of the Legislative Assembly of New South Wales, being duly sworn, makes oath and says as follows:—

1. I am one of the abovenamed Informants (Relators).
2. The annexure hereto marked "A" is a true copy of a letter addressed to Messrs. Cope & Co., in response to a request that nothing should be done in the way of alteration of Government House and grounds or in con-
10 nection therewith pending the hearing of this suit.
3. The annexure hereto marked "B" was taken from the files of the "Sydney Morning Herald" and the "Daily Telegraph" of date the eleventh day of January last—The annexure hereto marked "C" was taken from the said files of date the seventeenth day of January now instant, and the annexure marked "D" was taken from the said files of date the twenty-third day of January now instant, and my inquiries justify my belief that they come from official sources and some of the matters therein referred to have been carried into effect.
4. The grounds of Government House have already been disturbed,
20 fences and shrubs removed, and notice boards set up, and from these facts and from inquiries I have made I have been informed and verily believe that it is the intention of the Government to make material alterations to some of the buildings, and to take steps which will have the effect of making the said Government House and grounds untenable for the purpose for which they were intended, and to divert them from the use for which they were intended and have been hitherto held.
5. At the time of swearing this, my Affidavit, I have had produced and shown, and signed by me, and marked with the letter "E," copies and extracts of despatches from Lord Viscount Goderich to Major-General
30 Sir Richard Bourke, of date the 29th September, 1831; from the said Major-General Sir Richard Bourke to the said Lord Viscount Goderich, of date the 2nd November, 1832; from the Earl of Aberdeen to the said Major-General Sir Richard Bourke, of date the 25th March, 1835; from the said Sir Richard Bourke to Lord Glenelg, of date the 3rd November, 1836; from the said Lord Glenelg to the said Sir Richard Bourke, of date the 3rd October, 1837; from Sir George Gipps to Lord Stanley, of date the 9th July, 1844; from the said Sir George Gipps to the said Lord Stanley, of date the 15th June, 1845; from the said Lord Stanley to the said Sir George Gipps, of date the 9th November, 1845; from the said Sir George Gipps
40 to the said Lord Stanley, of date the 21st January, 1846; and from the Right Hon. W. E. Gladstone to Sir Charles A. Fitzroy, of date the 14th June, 1846.
6. At the time of swearing this, my Affidavit, I have had produced and shown to me, and signed by me, and marked "F," a printed copy of the papers relating to "The Residence of the Governor-General in New South Wales," ordered by the Legislative Assembly to be printed on the 1st day

RECORD.
No. 5.
Affidavit of
Thomas
Henley,
sworn 3rd
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1913
—continued.

of August, 1905; also the correspondence and papers relating to the same subject-matter, ordered by the Legislative Council of New South Wales to be printed on the 18th September, 1912. The said last-mentioned papers and correspondence are signed by me and marked "G."

Sworn by the Deponent on the day }
first above mentioned at Sydney } THOMAS HENLEY.
before me,

E. NEWTON DALY,
A Commissioner for Affidavits.

"A."

10

This is the copy letter referred to in the annexed Affidavit of Thomas Henley, sworn the 3rd February, 1913, before me,

E. NEWTON DALY,
A Commissioner for Affidavits.

No. 191/C.L.; Received, No. 42.

Crown Solicitor's Office,
Sydney, 13th January, 1913.

Dear Sirs,

Re Williams (Nominal Defendant) ats the Attorney-General
(on relation). 20

The request of the Relators that the Government should give an assurance that no irreparable alteration will be made to Government House or to the stables in connection therewith, in order to obviate the necessity of your clients applying to the Court for an injunction, has been submitted to the Acting Attorney-General, who directs me to inform you that the Government finds that it is unable to give the assurance asked for.

The Minister desires that your clients should be made aware that it is in contemplation to make material alterations to the stables, but that the work will not be commenced before the end of the present long vacation.

Yours truly, 30
(Sgd.) JNO. V. TILLET,
Crown Solicitor.

Messrs. Cope & Co., Castlereagh-street, Sydney.

" B."

This is the Annexure marked " B " referred to in the annexed Affidavit of Thomas Henley, sworn this 3rd February, 1913, before me,

E. NEWTON DALY,
A Commissioner for Affidavits.

RECORD.

No. 5.
Affidavit of
Thomas
Henley,
sworn 3rd
February,
1913
—continued.

" Sydney Morning Herald," 11/1/13.

" Conservatorium of Music.—Mr. Carmichael announced yesterday that the Government had definitely decided to use the buildings near the entrance to Government House Grounds as a Conservatorium of Music. He proposed to call the Advisory Committee together next week to consider the sketch plans already prepared by the departmental architect; and, as a sum of £4,000 had been provided on the Estimates, the work of altering the buildings would follow immediately."

" Daily Telegraph," 11/1/13.

" Conservatorium of Music.—The Government has definitely decided to convert the buildings near the entrance of the Government House Grounds into a Conservatorium of Music, whatever may be the fate of Government House itself. Mr. Carmichael will call the Advisory Committee together next week to consider the sketch-plans prepared by the departmental architect, and already published in the ' Daily Telegraph.' " The Minister stated yesterday that £4,000 was available on the Estimates for the Conservatorium of Music, and that after the Advisory Committee had finally dealt with the proposed plans a start would be made with the necessary alterations and additions as soon as possible.

" C."

This is the Annexure marked " C " referred to in the annexed Affidavit of Thomas Henley, sworn this 3rd February, 1913, before me,

E. NEWTON DALY,
A Commissioner for Affidavits.

30

" Sydney Morning Herald "—17/1/13.

" Conservatorium of Music.—The Advisory Committee appointed by the Minister for Education in connection with the Conservatorium of Music met yesterday afternoon at the Department of Public Instruction, and affirmed the suitability of the sketch plans prepared for the conversion of the buildings at the entrance to Government House Grounds. The departmental architect will now proceed with the preparation of plans in

RECORD.
 No. 5.
 Affidavit of
 Thomas
 Henley,
 sworn 3rd
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 1913
 --continued.

“detail. Mr. Carmichael remarked that he could not understand the
 “opposition shown in a few quarters to the proposal to establish the Con-
 “servatorium on such an ideal site, for it was that part of Government
 “House Grounds which everybody agreed should be thrown open to the
 “public, whatever opinion might be held concerning Government House
 “itself.”

“Daily Telegraph”—17/1/13.

“Conservatorium of Music.—The Minister for Education yesterday
 “called together the Advisory Committee of the Conservatorium of Music.
 “The Committee sat for some hours, most of the time being devoted to an 10
 “exhaustive study of the sketch plans submitted by the departmental
 “architect for the conversion of the buildings near Government House
 “gates into a conservatorium. Finally, the Committee cordially affirmed
 “the suitability of the plans, and the architect will now proceed to the work
 “of drawing up plans in detail. One of the chief difficulties is that of
 “erecting a platform that would serve both as concert platform and operatic
 “stage. This, it was thought, would be overcome. The position of the
 “proposed organ was located, and the qualifications of the Director of the
 “Conservatorium discussed. Mr. Carmichael subsequently remarked that
 “he could not understand any opposition to his proposal, since the buildings 20
 “were on that part of Government House Grounds which everybody was
 “agreed should be thrown open to the public, whatever might be done with
 “Government House itself.”

“D”

This is the Annexure marked “D” referred to in the annexed Affidavit of
 Thomas Henley, sworn this 3rd February, 1913, before me,

E. NEWTON DALY,
 A Commissioner for Affidavits.

“Sydney Morning Herald.”—23rd January, 1913.

Government House to be Thrown Open. 30

“It was announced in the ‘Herald’ some weeks ago that the next
 “step in regard to Federal Government House would be to throw it open
 “temporarily to the public under proper safeguards.

“The Cabinet yesterday decided to open the ground-floor of the building
 “only to visitors on Wednesdays and Saturdays, from 2 till 5 p.m., com-
 “mencing next Saturday afternoon. Up to the present the system of
 “granting permits has been practised.

“Instructions have been given that nothing is to be disturbed in the
 “Vice-Regal residence.

"The present arrangement will hold good until it is definitely decided what to do with the building. The question of whether the new State Governor is to go into residence there has yet to be settled. There is a division of opinion in the Cabinet over the question, but the chances are in favour of the historic building being again occupied by the King's representative in the State.

"The Citizens' Committee intends to bring on the application to the Court for an injunction at the earliest possible date."

RECORD.

No. 5.
Affidavit of
Thomas
Henley,
sworn 3rd
February,
1913

—continued.

Government House to be Opened.

10

"Daily Telegraph."—23rd January, 1913.

Up to the present the State Government's heroic acquisition of Government House and grounds has landed them in much the same state of embarrassment as that of Mark Twain's pauper, who became possessed of a million-pound bank-note. How to negotiate it is an abiding difficulty. The grounds have proved popular enough. Thousands of people have availed themselves of the beautiful water-washed slopes of Government House grounds, and enjoyed the magnificent sea-scapes which they reveal, and have been wondering, no doubt, what is to be done with the old, historic, noble residence, which sits in silent gloom, flagless and untenanted, in the centre of the Inner Domain. The Government has at last realised that some show of active policy is called for, and the Cabinet yesterday decided to open the portals of the Vice-Regal residence for the inspection of the democracy. Only the ground floor is to be made available for sightseers, who will be admitted on Wednesdays and Saturdays between the hours of 2 and 6 p.m., and then only in limited parties under the direction of trustworthy guides. The ground-floor, it may be mentioned, is heavily furnished, and the bric-a-brac, which the Government values so highly, and which might tempt the covetousness of light-fingered plebeians, is to be removed to the upper solitudes. This is the first step in the Government's policy regarding ancient Government House. It is officially stated that consideration of a more comprehensive scheme for the utilisation of the buildings has been indefinitely postponed.

RECORD.

No. 6.

No. 6.
Affidavit of
Henry
Archdall
Langley,
sworn 3rd
Feb., 1913.

Affidavit of Henry Archdall Langley.

On this 3rd February, 1913, Henry Archdall Langley, of Sydney, in the State of New South Wales, solicitor, being duly sworn, makes oath and says as follows:—

1. I have perused the affidavit of Thomas Henley, sworn and filed herein on the 3rd February, instant.

2. On the 16th January last Messrs. Cope & Co., Solicitors for the Relators, wrote to the Crown Solicitor, Sydney, in reply to letter marked "A," referred to in the said affidavit of Thomas Henley, a letter in the 10 words and figures following:—

The Attorney-General, Cocks and Others, Relators, v. Williams.

16th January, 1913.

" Sir,

" We have the honour to acknowledge the receipt of your letter of the 13th January, and to add that our instructions are to move for an injunction, with a view to preventing alterations pending the hearing of the suit.

" We are,

" Yours truly,

" (Sgd.) COPE & Co., per C. A." 20

" To the Crown Solicitor, Sydney."

Sworn by the Deponent on the }
day first above-mentioned, }
at Sydney, before me, }

H. A. LANGLEY.

Ernest A. Smith,
A Commissioner for Affidavits.

Affidavit of Sir William McMillan.

No. 7.
Affidavit of
Sir William
McMillan,
sworn 4th
Feb., 1913.

On this 4th February, 1913, William McMillan, of 79 York-street, Sydney, in the State of New South Wales, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, being duly sworn, makes oath, and says as follows:—

1. I am one of the above-named Informants (Relators).
2. The facts set out in paragraphs two to seven of my Affidavit, sworn on the 3rd February instant, and filed herein, were deposed to me as a result of investigations made by my Solicitor, Mr. William Cope, communicated to me, and verily believed by me to be true.
3. I fear that unless restrained by the Order and Injunction of this Court the Government of this State will cause structural or other alterations to be made in the Government House, Sydney, its stables and grounds, the subject of this suit.

Sworn by the Deponent on the
day first above-mentioned,
at Sydney, before me,
H. A. Langley, J.P.

W. McMILLAN.

Affidavit of Charles Trimby Burfitt.

No. 8.
Affidavit of
Chas.
Trimby
Burfitt,
sworn
4th Feb.,
1913.

On this 4th February, 1913, Charles Trimby Burfitt, of No. 58 Hunter Street, Sydney, in the State of New South Wales, Secretary of the Australian Historical Society, being duly sworn, makes oath, and says as follows:—

1. I have this day visited the grounds of Government House, Sydney, aforesaid, and then found that trees and ornamental shrubs have and are still being cut down and placed in heaps, apparently for burning. I saw men employed there doing such work.
2. I also noticed that the sentry-box formerly at the main gate has been removed and barriers at the several gates have been recently erected.

Sworn by the Deponent on the
day first above-mentioned,
at Sydney, before me,
Wm. John Halloran,

C. T. BURFITT.

A Commissioner for Affidavits.

Affidavit of James Leslie Williams.

On this 5th February, 1913, James Leslie Williams, Under-Secretary for the Department of the Attorney-General and of Justice, being duly sworn, makes oath, and says as follows :—

1. I am the Under-Secretary for the Department of the Attorney-General and of Justice, and the Nominal Defendant herein.

2. I have read the affidavits of Sir William McMillan and Thomas Henley, sworn, and filed herein.

3. On the 12th October, 1786, Captain Arthur Phillip received from His Most Gracious Majesty King George the Third his Commission as Captain-General and Governor-in-Chief of New South Wales, which was replaced by a further Commission dated the 2nd April, 1787.

4. On the 25th April, 1787, Instructions to accompany the said Commission were issued by His said Majesty to the said Captain Arthur Phillip, and on the 20th August, 1789, further or additional Instructions were issued to the said Captain Arthur Phillip.

5. The said Additional Instructions contained inter alia the following directions to the said Captain Arthur Phillip :—

“ You are also to reserve to us proper quantities of land in each township
“ for the following purposes, viz., and for erecting fortifications and barracks
“ or for other military or naval purposes and more particularly for the
“ building of a town hall and such other public edifices as you shall deem
“ necessary.”

6. The said Captain Arthur Phillip arrived in New South Wales in January, 1788, and between that year and the year 1792 caused to be prepared two official plans of the settlement entitled “ A Survey of the Settlement of New South Wales (New Holland).” The said plans are contained on one mounting—one on each side thereof drawn to different scales—and are now framed and deposited in the Mitchell Library, and one of the said plans bears the following endorsement :—

“ The boundary-line of Sydney Common, within which (as all the
“ ground is retained for the use of the Crown, and as common land for the
“ inhabitants of Sydney) no land can be granted.”

The said plan shows this line from the head of what is now known as Darling Harbour to the head of Woolloomooloo Bay, then called Garden Cove, and the said plan contains the further endorsement as follows :—

“ This line, which is the boundary line, is intended to run from the
“ head of the cove, which is to the westward of Sydney Cove to the head
“ of Garden Cove—Garden Cove is the second cove to the eastward of Sydney
“ Cove—Farm Cove being between the two—of this the Lieutenant-Governor
“ was informed before I left the country, and the boundary line was traced
“ by the surveyor when the map was made.” This last-mentioned endorse-
ment bears immediately under it the signature, “ A. Phillip, Sydney,
2nd December, 1792,” in the handwriting of the said Arthur Phillip.

7. Governor Hunter succeeded Governor Phillip in 1795, and the Instructions which accompanied his Commission from the King contained similar directions with regard to the reservation of lands for public purposes to those given to Governor Phillip, and hereinbefore referred to.

8. On the 23rd July, 1807, His Excellency Governor Bligh, then Governor of New South Wales, issued and published in the "Sydney Government Gazette" a proclamation or Government and General Order in the words and figures following:—

"Whereas His Excellency Governor Phillip did by instructions from
10 "His Majesty's Ministers draw two lines of demarcation in the vicinity
"of Sydney, within which no leases or grants of land for building were
"to be given, the said land being the property of the Crown: and whereas
"a number of houses adjacent to Government House, to its great annoyance,
"now occupied by David Dickinson Mann, Abraham Ramsden, John Apsey,
"William Kimber, John Shea, Ferdinand Meurant, and others, within
"the said limits, have been built on land particularly marked out as making
"part of the Domain of the Governor's residence, the Governor is pleased
"to extend the notice already given to the 1st November next, at which
"time they, the present occupiers, are required and directed to quit posses-
20 "sion of the said houses, taking away or disposing of their materials, the
"said grounds being wanted for Government purposes."

A copy of the said proclamation is hereunto annexed, marked "A."

9. In a despatch dated the 31st October, 1807, from Governor Bligh to the Right Honourable W. Windham, the following paragraph relating to the subject land appears:—

"When Governor Phillip quitted this Colony he left a memorandum,
"as may be seen in the plan of the town sent herewith, that no part of
"Sydney should be leased away, but the whole to be considered the property
"of Government. In June, 1801, Governor King issued a General Order
30 "that leases might be granted for five years. After his departure—and I
"had begun to make my remarks as circumstances arose—I found several
"leases given and renewed in January, 1806, for fourteen years, which
"were eligible and wanted for Government purposes."

10. On the 6th July, 1816, His Excellency Governor Macquarie, then Governor of New South Wales, issued and published in the "Sydney Government Gazette" a proclamation or Government Public Notice in the words and figures following:—

"Notwithstanding the repeated and positive Orders which the Governor
"has deemed it expedient to issue and publish, with a view to caution and
40 "prohibit persons from trespassing on the Government Domain, which has
"been much injured, not only by persons breaking down the wall that encloses
"it, but by their cutting down or burning the shrubbery, destroying the
"young plantation of trees, quarrying of stones, removing of loam, and
"stealing the paling within said Domain: and notwithstanding the punish-
"ments that have been necessarily inflicted on some idle and profligate
"persons who had been detected in committing open and direct breaches of
"those Orders in several of the instances above-mentioned, His Excellency
"has observed with regret that trespasses of this description are still con-

RECORD.

No. 9.
Affidavit of
James Leslie
Williams,
sworn
5th Feb.,
1913
—continued.

RECORD.

No. 9.
Affidavit of
James Leslie
Williams,
sworn 5th
Feb., 1913
—continued.

“tinued; and as it has been found necessary, from these circumstances,
“to have the said wall recently repaired and considerably raised; all Persons
“are hereby again publicly warned, on no Cause or Pretence whatever to
“attempt to pull down or deface the same, or otherwise to Trespass in or
“upon the said Government Domain, on pain of being forthwith Imprisoned,
“and punished in a most summary and exemplary manner. These Orders,
“however, are not meant to extend to the prohibiting the respectable class
“of Inhabitants from resorting to the Government Domain as heretofore for
“innocent recreation during the daytime; the road some time since con-
“structed round Bennelong’s Point furnishing easy access in that quarter, 10
“and the gate and style at the east end of Bent Street offering free admission
“in that direction.” A copy of the said proclamation is hereunto annexed,
marked “B.”

11. On the 8th June, 1829, His Excellency Governor Lieutenant-General
Ralph Darling, then Governor of New South Wales, issued and published in
the “Sydney Gazette” a proclamation or Government Order, which in
paragraph 43 relates to the subject lands in the words and figures following:—

“Sydney Gazette and New South Wales Advertiser.”
Tuesday, June 9, 1829, vol. xxvii, No. 1668.

“Government Order.

20

“(No. 30.)

“Colonial Secretary’s Office,
“Sydney, June 8th, 1829.

“His Excellency the Governor is pleased to direct that the following
“List of certain Parcels of Land in the town of Sydney, which have been
“heretofore reserved for Public Purposes, shall be published for general
“information, of which all Parties concerned are hereby required to take
“Notice accordingly; viz.” [Paragraphs 1 to 42 inclusive are not repeated
herein as they do not refer to the subject lands]:—

“43. Commencing at the corner of Elizabeth-street and Liverpool-street :
“bounded on the south by Liverpool-street to the western boundary of 30
“the Woolloomooloo Estate; on the east by that boundary to Woolloo-
“mooloo Bay, and the waters of that bay to its western headland in the
“harbour of Port Jackson on the north by the waters of Port Jackson, Farm
“Cove, and the east side of Sydney Cove to the north-west corner of Mrs.
“Reiby’s allotment; on the south by the northern boundary of that allot-
“ment to Macquarie-place; on the west by Macquarie-place, Bent-street,
“and Macquarie-street, to East King-street; on the north by East King-
“street to Elizabeth-street; and on the west by Elizabeth-street to the com-
“mencing corner, but excluding the two allotments between the walls of
“the Civil Hospital and the School of Industry.” 40

A copy of the said proclamation is hereunto annexed, marked “C.”

12. On the 9th September, 1831, His Excellency Governor Bourke, then
Governor of New South Wales, issued and published in the “Sydney Gazette”
a proclamation or Government Notice in the words and figures following:—

"His Excellency the Governor has directed that it be notified that the grounds in the Government Domain, near Anson's Point, have been laid out in walks for the recreation of the public; and that the Domain will be opened for carriages on Tuesday next, the 13th instant.

"The road from the stairs near Fort Macquarie along Farm Cove, to the gate which crosses the road at the extremity of the Botanical Gardens, is reserved for the exclusive accommodation of persons on foot."

"Carriages and horsemen may enter the Domain at the gate near the School of Industry, or at the Woolloomooloo gate at the southern boundary of the Domain." A copy of the said proclamation is hereunto annexed, marked "D."

13. With regard to paragraph 9 of Sir William McMillan's affidavit, I am advised, and believe, that no determination has been come to by the Government as to how Government House or the grounds attached thereto, save as hereinafter appears, is to be used, and that save as aforesaid no determination has been come to that the said Government House and grounds shall not be used as and in connection with a residence for the Sovereign's representative, and no alteration of any kind whatever has been made to the said House, excepting that a stone bearing the coat-of-arms of His Excellency the present Governor-General is being placed in position in the northern verandah of the said House alongside the coat-of-arms of previous Governors, in accordance with the usual practice.

14. I am advised and believe that the Government have decided to utilise the buildings known as the stables, situated on the Government House Grounds, near the Macquarie-street entrance thereto, to house a Conservatorium of Music, and for that purpose to make all necessary structural alterations thereto. I am also advised and believe that the objects of the Conservatorium, for which the buildings will be used, are for giving instruction in and diplomas for music, and standardizing and cultivating the study of that art in New South Wales.

It has also been decided that the Conservatorium will be a branch of public instruction governed by a director and council of management appointed by the Government. Standardships and the scholarships and bursaries into and from it will be open to any resident of the State of New South Wales without restriction except in regard to the standard for admission and the regulations for conduct and payment usually governing such institutions.

The Government intends the Conservatorium to be a public utility for the cultivation and advancement and the co-ordination of teaching music in the State of New South Wales.

15. Since Governor Phillip marked out, in or about the year 1792 upon the official plan referred to, the boundaries of the land that was to be reserved for public purposes, and the subsequent proclamation of Governor Bligh, of the 23rd July, 1807, that the said land was required for Government purposes, portions of the said area have from time to time been taken and appropriated by successive Governments of New South Wales for public purposes as the public requirements of the Colony necessitated, for instance

RECORD.

No. 9.
Affidavit of
James Leslie
Williams,
sworn 5th
Feb., 1913
--continued.

RECORD.

No. 9.
Affidavit of
James Leslie
Williams,
sworn 5th
Feb., 1913
--continued.

(A) In the year 1810 Governor Macquarie appropriated part of the said area for the erection thereon of a general hospital and quarters for the surgeons and staff.

The buildings, as designed and ultimately erected, were in three main blocks—the northern wing is now the central portion of the present Parliament House—the southern wing is now the Royal Mint, and is only slightly altered from its original state; and the new Sydney Hospital now stands upon the site assigned to the old General Hospital in 1810.

(B) In or about the year 1816 portion of the said area was appropriated for the establishment of Botanical Gardens, and the said original 10 portion, with subsequent additions from the said area, continues to be used for that public purpose at the present time.

(C) In the year 1884, that portion of the Government Domain upon which is erected the present National Art Gallery, was set apart and authorised to be used for that public purpose by the Government of the day, the whole area to be covered by the buildings was marked out on the grounds and approved by the Government, the area taken being about 1½ acres.

(D) In the year 1879 the site occupied by the present Palace Gardens was land upon which the Governor's horses and stock used 20 to run—in the year mentioned Sir Henry Parkes's Government appropriated it for the establishment of the Palace Gardens and the erection of the International Exhibition building.

(E) In the year 1900 the Government of Sir William Lyne instructed the authorities of the Botanical Gardens to take 5 acres or thereabouts of the Government House enclosed grounds for the enlargement of the Botanical Gardens, and this was done—the then existing fence between the Gardens and the Government House Grounds being moved back to admit of this area being added to the Gardens.

(F) In the year 1910 portion of the said area was appropriated as a 30 site for the erection thereon of a National Library, of which the Mitchell Library was to form part.

16. Each of the areas enumerated being portion of the original reservation by Governor Phillip for public purposes, has been appropriated for the specific public purpose mentioned by the Executive act of the various Governments of New South Wales in office at the time thereof.

17. I crave leave to refer to the official documents and records relating to the various portions of the Government Domain for the building and establishment of the public institutions and grounds referred to in the preceding paragraphs of this my Affidavit, and to the public written and 40 printed records, despatches, and other documents referred to in the Affidavits of the said Sir William McMillan and the said Thomas Henley.

18. In reply to paragraphs 11 and 13 of the Affidavit of the said Sir William McMillan I am advised, and believe, that the Government have placed the Government House Gardens and Grounds under the care and supervision of the Director of the Botanic Gardens, who informs me, and I believe, that nothing has been done to the grounds in the way of removal

of trees or old fences, which does not constitute a real improvement to the grounds, whatever the ultimate purpose to which they may be put.

I attach a copy of the Director's report on the subject hereunto annexed marked "E," furnished to the Crown Solicitor in reply to the request contained in his letter to the said Director, dated the 30th January, 1913, shown to me at the time of swearing this my Affidavit, and marked with the letter "F."

19. In the year 1901 the Government of New South Wales leased, with the option of purchase, and subsequently purchased, the house known as
10 "Cranbrook," situated on the New South Head road, Rose Bay, near Sydney, together with eighteen acres of land attached to the said house, as a residence for the State Governors of New South Wales, and since the year 1902 the Governors of the said State have resided therein.

20. My knowledge of the intentions of the Government as herein set out has been obtained direct from Ministers of the Crown, but I have no personal knowledge of the other matters deposed to herein, my means of knowledge of which are the public maps, records, despatches, and other public documents supplied to the Crown Solicitor from the various Departments of State, and produced to me.

20 Sworn by the Deponent on the
day first above mentioned,
at Sydney, before me, }

J. L. WILLIAMS.

W. J. KESSELL, J.P.

"A."

General Orders.

Whereas His Excellency Governor Phillip did by Instructions from His Majesty's Ministers draw two lines of demarcation in the vicinity of Sydney, within which no Leases or Grants of Land for building were to be given, the said Land being the property of the Crown And whereas a number of
30 houses adjacent to Government House, to its great annoyance, now occupied by David Dickenson Mann, Abraham Ramsden, John Apsey, William Kimber, John Shea, Ferdinand Meurant, and others, within the said limits, have been built on land particularly marked out as making part of the Domain of the Governor's Residence, the Governor is pleased to extend the Notice already given to the fifth day of November next; at which time they, the present occupiers, are required and directed to quit possession of the said houses, taking away or disposing of their materials; the said grounds being wanted for Government purposes.

RECORD.

No. 9.
Affidavit of
James Leslie
Williams,
sworn 5th
Feb., 1913:
—continued.

His Excellency the Governor is ready on application to that effect, to grant permission to the said persons to build on such other ground unoccupied, in the town of Sydney, as may not interfere with his arrangements on that head.

By Command of His Excellency,

E. GRIFFIN, Sec.

Government House, Sydney, 23rd July, 1807.

This is the copy proclamation marked "A" referred to in the annexed Affidavit of James Leslie Williams, sworn before me this 5th February, 1913.

W. J. KESSELL, J.P. 10

"B."

Government Public Notice.

Government House, Sydney,

Saturday, 6th July, 1816.

Notwithstanding the repeated and positive orders which the Governor has deemed it expedient to issue and publish, with a view to caution and prohibit persons from trespassing on the Government Domain, which has been much injured, not only by persons breaking down the wall that incloses it, but by their cutting down or burning the shrubbery, destroying the young plantation of trees, quarrying of stones, removing of loam, and stealing the 20 paling within the said Domain; and notwithstanding the punishments that have been necessarily inflicted on some idle and profligate persons who had been detected in committing open and direct breaches of those Orders, in several of the instances abovementioned, His Excellency has observed with regret that trespasses of this description are still continued; and as it has been found necessary, from these circumstances, to have the said wall recently repaired and considerably raised, all persons are hereby again publicly warned, on no cause or pretence whatever to attempt to pull down or pass over the said wall, or to injure or deface the same, or otherwise to trespass in or upon the said Government Domain, on pain of being forthwith imprisoned, 30 and punished in a most summary and exemplary manner.

These orders, however, are not meant to extend to the prohibiting the respectable class of inhabitants from resorting to the Government Domain as heretofore, for innocent recreation, during the daytime; the road some time since constructed round Bennelong's Point furnishing easy access in that quarter, and the gate and style at the east end of Bent-street offering free admission in that direction.

By Command of His Excellency,

J. T. CAMPBELL.

Secretary. 40

This is the Proclamation marked "B" referred to in the annexed Affidavit of James Leslie Williams, sworn before me this 5th February, 1913.

W. J. KESSELL, J.P.

"C."

RECORD.

Government Order.

(No. 30)

Colonial Secretary's Office, Sydney,
June 8, 1829.No. 9.
Affidavit of
James Leslie
Williams,
sworn 5th
Feb., 1913
—continued.

His Excellency the Governor is pleased to direct that the following list of certain parcels of land in the town of Sydney, which have been heretofore reserved for public purposes, shall be published for general information, of which all parties concerned are hereby required to take notice accordingly, viz. [Paragraphs 1 to 42 refer to other portions of land] :—

- 10 43. Commencing at the corner of Elizabeth-street and Liverpool-street; bounded on the south by Liverpool-street to the western boundary of the Woolloomooloo Estate; on the east by that boundary to Woolloomooloo Bay and the waters of that bay to its western headland in the harbour of Port Jackson; on the north by the waters of Port Jackson, Farm Cove, and the east side of Sydney Cove to the north-west corner of Mrs. Reibey's allotment; on the south by the northern boundary of that allotment to Macquarie-place; on the west by Macquarie-place, Bent-street, and Macquarie-street, to East King-street; on the north by East King-street to Elizabeth-street; and on the west by Elizabeth-street to the commencing
20 corner, but excluding the two allotments between the walls of the Civil Hospital and the School of Industry.

By His Excellency's Command,
ALEXANDER MCLEAY.

This is the Proclamation marked "C" mentioned in the annexed Affidavit of James Leslie Williams, sworn before me this 5th February, 1913.

W. J. KESSELL, J.P.

"D."

Government Notice.

30

Colonial Secretary's Office,
Sydney, September 9, 1831.

His Excellency the Governor has directed that it be notified that the grounds in the Government Domain, near Anson's Point, have been laid out in walks for the recreation of the public, and that the Domain will be opened for carriages on Tuesday next, the 13th instant.

The road from the stairs near Fort Macquarie along Farm Cove to the gate which crosses the road at the extremity of the Botanical Garden is reserved for the exclusive accommodation of persons on foot.

- 40 Carriages and horsemen may enter the Domain at the gate near the School of Industry, or at the Woolloomooloo gate, at the southern boundary of the Domain.

By His Excellency's Command,
ALEXANDER MCLEAY.

This is the Proclamation marked "D" mentioned in the annexed Affidavit of James Leslie Williams, sworn before me this 5th February, 1913.

W. J. KESSELL, J.P.

" E. "

RECORD.

No. 9.
Affidavit of
James Leslie
Williams,
sworn
5th Feb.,
1913
—continued.

Botanic Gardens, Sydney,
1st February, 1913.

Sir,

In reply to your letter, No. C.L. 102 of the 30th ultimo, I desire to state that the improvements in Federal Government House Grounds, which have been carried out since the premises were vacated by His Excellency the Governor-General, may be classified under the following heads :—

(1) The Removal of Trees.—A register of these trees has not been kept, but the approximate number is ninety. These consist of unsightly and worn-out trees, and in seven cases Moreton Bay figs which had outgrown their present position. Some of the trees were quite small; others stunted. Not a single valuable tree has been removed.

The object of the removal of the trees was not only to sweeten the ground, to prevent their root-system encroaching on shrubberies, but also to admit additional light and air where there was crowding, and also to create additional vistas from the property and the other grounds surrounding it.

(2) The Removal of Unsightly Fences.—These consisted of single rails and wire fences round the garden proper, galvanised-iron fencing, and wooden fencing separating the grounds from the Botanic Gardens and Garden Palace Grounds.

The fencing enumerated under the above three heads was of great age, and much of it was utterly useless. Some of the galvanised iron has been stored, some of it has been used for the purpose of erecting temporary fencing to exclude the public from the back premises of the House and from the Gardener's Cottage.

As regards the wooden fencing, some of it has been re-used for posts for the galvanised iron, some of it has been stored; while a quantity, quite worthless has been used for tar boiling, &c.

(3) The following pathways have been constructed :—A path, which was simply formed by the removal of turf, has been made from the Man-of-War Steps entrance to the vicinity of the Gardener's Cottage, to facilitate the access of the public to the Grounds from the eastern side of Circular Quay. The length and width of that path are 392 feet by 12 feet. Five outlets from the Government House Grounds in the Botanic Gardens and Garden Palace Grounds have been constructed, but nothing has been done in regard to these outlets but to fulfil the simplest requirements of public access.

(4) Temporary barriers have been erected to control the traffic where the public have shown a tendency to make short cuts and damage the embankments, &c.

(5) In the vicinity of a disused tennis court, which is on the east side of the House, some filling has been employed with the view to improving the contours of the surface.

(6) Light iron gates have been fixed to the Guard House to prevent the public trespassing therein, while picket fencing, fitted with gates to admit

the public and to exclude dogs, horses, &c., has been erected at three entrances, viz., Man-of-War Steps, the side entrance near Moore's Steps, and the main entrance at the top of Bridge-street.

In addition, a number of notice boards have been provided informing the public of the by-laws of the Botanic Gardens and Domains.

(7) Minor improvements for working the ground as a public ground have been effected, such as the erection of six stand-pipes for drinking purposes, and twelve wire baskets for rubbish.

The flower gardens have been kept in the same condition as when His
10 Excellency the Governor-General was in residence.

That the grass in the vicinity is not quite in the same good order is owing to the fact that there is a good deal of necessary trampling by the public.

If it be desired to make improvements in the flower gardens to suit the altered conditions, they cannot be carried out before the winter months.

In fine, nothing has been done to these grounds which does not constitute a real improvement to them, whatever the ultimate purpose to which they may be put. No alterations of an extensive character have been effected. A minimum of expense has been incurred. Endeavour has been
20 made to keep up the floral display as already stated, to keep the grass cut in what may be termed the park portion of the Grounds, since, unless this was done, the public could not walk over it with comfort.

In addition, steps have been taken to abolish lurking-places for thoughtless and undesirable citizens, and to enable the grounds to be supervised at a minimum of expense.

I have, &c.,
J. H. MAIDEN,
Director.

The Crown Solicitor, Sydney.

30 This is the copy report marked "E" mentioned and referred to in annexed affidavit of James Leslie Williams, sworn before me this 5th February, 1913.

W. J. KESSELL, J.P.

"F."

Re Government House and Grounds.
Crown Solicitor's Office, Sydney,
30th January, 1913.

Sir,

I have the honour to inform you that my officer, under instructions
40 from the Government, visited Government House yesterday, and from the head gardener obtained particulars of slight improvements that had been carried out to the grounds since the premises were vacated by His Excellency the Governor-General.

I understand that a number of these improvements had been in contemplation for some time before the State Government resumed active control of the property, and what has since been done has been in the direction of carrying out these contemplated improvements.

RECORD.
 No. 9.
 Affidavit of
 James Leslie
 Williams,
 sworn 5th
 Feb., 1913
 —continued.

For the purpose of meeting an intended application to the Court next week by the Citizens' Committee for an interim injunction against the Government, I shall be obliged if you will furnish me with a statement showing the nature and extent of the improvements or alterations effected; the length and nature of any fences removed or erected, the number and nature of any trees removed; the number and extent of any pathways leading to the gardens or otherwise cut or made, and generally an exact state of all improvements, alterations, or additions.

As the matter will come on early next week, I should like to have the particulars asked for by Monday next. 10

I have, &c.,

JNO. V. TILLET,
 Crown Solicitor.

The Director, Botanic Gardens.

This is the copy letter marked "F" mentioned in the annexed affidavit of James Leslie Williams, sworn before me this 5th February, 1913.

W. J. KESSELL, J.P.

No. 10A.
 Notes of
 evidence and
 admissions of
 the Chief
 Justice.

No. 10A.

Notes of Evidence and Admissions of the Chief Justice.

Knox, K.C., Bethune and Wilson, for Informant.
 Blacket, K.C., and Browne, for Defendant. 20
 Motion in Equity before three judges.
 Suit turned by consent into motion for decree.

- Exhibit A.—Copy plan of Surveyor Meehan, 31st October, 1807.
 „ B.—Copy proclamation, 23rd July, 1807.
 „ C.—Copy proclamation by Governor Macquarie, 6th July, 1816.
 Copy proclamation, 17th October, 1812.
 „ D.—Copy despatch from Sir Thomas Brisbane to Lord Bathurst,
 25th May, 1825.
 „ E.—Copy despatch Lord Bathurst to Governor Darling, 30th June,
 1825. 30
 „ F.—Copy despatch Lord Bathurst to Governor Darling, 19th
 February, 1826.
 Copy proclamation by Governor Darling, 8th June, 1829
 (Gazette, 9th June, 1829). Appearing in Affidavit of
 Defendant.
 Copy proclamation by Governor Bourke, 9th September,
 1831. Appearing in Affidavit of Defendant.
 Copy Parliamentary paper ordered to be printed, 10th August,
 1847, containing a series of documents. Appearing as
 Exhibit to Affidavit of Henley. 40

- Exhibit G.—Copy report from Committee of Legislative Council, 12th August, 1836, with appendix and sketch appearing as Exhibit to Affidavit of McMillan. RECORD.
No. 10A.
Notes of
evidence and
admissions of
the Chief
Justice
—continued.
- „ H.—Map dated 1894, showing then present state of land, with red line showing subsequent diversion for Botanical Gardens.
- Blacket states that in Appropriation Act of 1836, £10,000 was voted for building Government House, while £15,600 came from sale of Crown land.
- 10 „ J.—Letter from Crown Solicitor to Cope & Co., showing total cost of building, about £25,000.

Affidavits read.

Wm. McMillan, 3rd February, 1913.	
Thomas Henley, 3rd „	1913.
H. A. Langley, 3rd „	1913.
C. T. Burfitt, 4th „	1913.
Wm. McMillan, 4th „	1913.
J. L. Williams, 5th „	1913.

Defendant's case.

- 20 Exhibit 1.—Sample grant of class mentioned in Act 4 Vic. No. 2, dated 31st July, 1844.
- „ 2.—Imperial Order in Council, 26th October, 1899.
- „ 3.—Copy proclamation by Governor Macquarie, 17th September, 1811, bringing Garden Island within the Domain.

Mr. Blacket admits that there is no minute showing that the Governor in Council has authorised or approved of the acts complained of in the information.

Notes of His Honour The Chief Judge in Equity—Mr. Justice A. H. Simpson.

Monday, 24th February, 1913.

Knox, K.C., Bethune, D. Wilson, for Informant.
Blacket, K.C., J. A. Browne, for Defendant.
By consent, Motion turned into Motion for Decree.

- Exhibit A.—Tracing of plan by Surveyor Meehan, 31st October, 1807.
 „ B.—Proclamation, 26th July, 1807.
 „ D.—Copy despatch by Sir Thomas Brisbane, 25th May, 1825.
 „ E.—30th June, 1825 (Copy), Despatch by Lord Bathurst. 10
 „ F.—19th February, 1826 (Copy), Despatch by Lord Bathurst.
 „ C.—6th July, 1816 (Copy), Proclamation by Governor Macquarie.
 17th October, 1812, Proclamation.
 8th June, 1829, Proclamation, Gazette, 9th June.
 Annexed to Affidavit.
 9th September, 1831, Proclamation by Governor Bourke.
 Parliamentary printed document annexed to Affidavit of
 Henley. 10th August, 1847.
 Exhibit G.—1836, 12th August, report of Committee Legislative Council,
 and appendix containing Sketch. 20
 „ H.—Plan, 1894.
 Appropriation Act, 1836.
 „ J.—Letter, 4th February, 1913, Crown Solicitor to Defendant's
 Solicitor.

Affidavits.

Sir W. McMillan, 3rd February, 1913.
 T. Henley do.
 H. A. Langley do.
 C. T. Burfitt, 4th February, 1913.
 Sir W. McMillan do. 30

Informants' Case.

Affidavit of J. L. Williams, 6th February, 1913.

Defendant's Case.

No evidence in reply.
 Knox : Land in question with other land, dedicated before 1845, for a
 residence for the representative of His Majesty.
 Exh. "G." : Never became "Crown land" which Minister had power
 to deal with.

5 and 6 Vict., C. 36, S. 23; 18 and 19 Vict., C. 54, S. 2; Att.-Gen. v. Eagar, 3 S.C.R., 283, 266, 267; Turner v. Walsh, 6 A.C., 636; Att.-Gen. of B.C. v. Att.-Gen. of Canada, 1906, A.C. 552; Crown Lands Act, 1861; s. 1; Crown Lands Act, 1884, s. 4, s. 105; Mun. of Numba v. Lackey, N.S.W., 229; Strahorn v. Williams, 55 W.N., 49; Commonwealth v. Miller, 10 C.L.R., 742; Evans v. O'Connor, 12 N.S.W., 8; Att.-Gen. v. Shrewsbury, 21 Ch. D., 752.

RECORD.
No. 108.
Notes of Mr.
Justice A. H.
Simpson,
Chief Judge
in Equity
—continued.

Blacket: No dedication, because King could dedicate to other public purposes. Ministry could use "Cranbrook" for any other public purpose; 10 Parramatta Park Act, 20 Vic., c. 35; 4 Vict. No. 2, lands for Military purposes.

Exh. 1.—Grant of land under the Land Act, 25th July, 1844.

Exh. 2.—26th October, 1899, Order in Council.

Exh. 3.—Copy Proclamation, 7th September, 1811, by Gov. Macquarie (Garden Island).

Tuesday, 25th February, 1913.

Blacket admits that there is no Minute showing that the Governor in Council authorised or approved the acts complained of.

(2) That Relators have no right to set the Att.-Gen. in Motion, and 20 Court will not, therefore, grant relief.

Colliery Employees, &c., v. Brown, 3 C.L.R., 255, 266.

Claims against Government Act, 20 Vic., No. 15; 24 Vic. No. 27; 1912, No. 27.

Not a case for relief under Claims against Government Act. Davidson v. Walker, 1 S.R., 196; Enever v. King, 3 C.L.R., 969-987.

What is complained of is a Ministerial Act for which Min. only responsible to Parliament, &c. Bradlaugh v. Gossett, 12 Q.B.D., 275; Dicey's Law of Constitution, p. 8; Keith, Representative Govt. in the Dominions, 1, 170.

30 Lowell, Gov. of Eng., p. 26; Clough v. Leahy, 2 C.L.R. 139, 157, 163; Raleigh v. Goschen, 98 1 Ch. 73; Todd, Parl. Govt., p. 2; Ellis v. Grey, 6 Sim. 214; 3 Mer. 102.

Injunction: Evans v. O'Connor, 12 N.S.W., R. 81.

J. A. Browne: Ct. will assume action of Min. app. by Gov. in Council.

Eng. Att.-Gen. only proper Plt.

Stuart-Robertson, Proceedings against Crown, p. 487.

Att.-Gen. v. Ironmongers, 2 Beav. 313. House of Lords Debates, 1910, Vol. VI.

26th February, 1913.

40 Court will regard suit as one to protect rights of public, not rights of King.

Att.-Gen. v. Mosman, 11 S.R. 133.

Toy v. Musgrove, 14 V.L.R. 397.

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No. 10B.
Notes of
Mr. Justice A.
H. Simpson,
Chief Judge
in Equity
—continued.

Knox in reply :—

(1) Gist of case : Is the act complained of unlawful ?

(2) Ipso, whether Att.-Gen. entitled to maintain the Suit.

(3) The land in question falls within the category of land for Naval and Military purposes, and not of ordinary administrative purposes, such as Post Office.

N.S.W. Parl. Handbook, p. 157, VIII.

Instns. to Gov. XI.

Keith, 172-4, 283, 298.

Gov. an Imperial Officer.

Land set apart for residence of Gov. by Imperial Govt. cannot be interfered with by Col. Gov. 10

(2) If there is a matter of public concern in which a public authority is exceeding its powers it is the right of Att.-Gen. to intervene.

London C.C. v. Att.-Gen., 02, A.C. 165.

Att.-Gen. v. Cockermonth, 18 Eq. 172, 176.

(Case of Telegraph Post).

Reg. v. United Kingdom Electric Telegraph, 31 L.J., M.C. 166.

Evans v. Fenn, 4 S.B. 305.

Claims against Govt. Act, S11. 20

Blacket: comments on London C.C. v. Att.-Gen., 02, A.C. 165; refers to Att.-Gen. v. Birmingham, 10, 1 ch., 48, 61, C.A.V.

Thursday, 20th March, 1913.

Three written judgments read.

H. H. MASON,

Associate to C. J. in E.

Knox, K.C., Bethune, and Wilson, for Plaintiff.

Blacket, K.C., and Browne for Defendant.

Exhibit A.—Plan made by Surveyor Mehan in 1807 (31st October)—
tracing put in.

„ B.—Proclamation of 26th July, 1807.

„ C.—Proclamation of Governor Macquarie of 6th July, 1816, also
of 17th October, 1812.

10 „ D.—Despatch—25th May, 1825, Governor Brisbane to Lord
Bathurst.

„ E.—Ditto 30th June, 1825, Lord Bathurst to Governor Darling.

„ F.—Ditto 19th February, 1826, Lord Bathurst to Governor Darling.
Proclamation of 8th June, 1829, published in Gazette of
9th June, 1829, is sufficiently set out in affidavit of
J. L. Williams, of 5th February, 1913.

Proclamation of 9th September, 1831, by Governor
Bourke, is set out in paragraph 12 of that affidavit.

Printed documents referred to in affidavit of T. Henley :—

20 Exhibit G.—Report of Committee of Legislative Council of 12th August,
1836—and appendix.

„ H.—Plan of Government House of 1894.

It is admitted that large sums of money were voted by the Legislative
Council for the building and furnishing of Government House.

Blacket : £15,600 was derived from sales of lands and £10,000 was voted
by the Council.

Exhibit J : Letter of Crown Solicitor to Cope & Co., of 12th February,
1913.

Affidavits :—

30 W. McMillan, of 3rd February.

T. Henley, of 3rd February.

H. A. Langley, of 3rd February.

C. T. Burfitt, of 4th February.

W. McMillan, of 4th February.

J. L. Williams, of 5th February.

Exhibit 1.—Crown Grant of 31 July, 1844.

„ 2.—Imperial Order in Council of 26th October, 1899.

„ 3.—Proclamation (copy) of 7th September, 1811.

Read over by the C.J., to Blacket, who assents.

40 Blacket : I admit that there is no minute showing that the
Governor-in-Council has authorised or approved of the Acts complained of.

CECIL H. COHEN,
Associate.

8th April, 1913.

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Reasons of
the Judges of
the Supreme
Court of
New South
Wales, dated
20th March,
1913,
Cullen, C. J.

Reasons of the Judges of the Supreme Court of New South Wales.

Chief Justice Cullen.

The land in question in this suit, on which stands the buildings known as Government House, originally formed part of a larger area set apart by Governor Phillip, soon after the foundation of the Colony of New South Wales "for the use of the Crown, and as common lands for the inhabitants of Sydney." By a proclamation issued by Governor Darling in 1829 certain lands, including that now in question, were described as "certain parcels of land in the town of Sydney which have been heretofore reserved for public purposes." In the early days of the colony two residences were provided for the Governor; one at Sydney, on another part of land so set apart, and the other at Parramatta. In course of time the necessity arose for providing a more suitable residence than either. As the result of communications between successive Governors and Secretaries of State for the Colonies, a portion of about 47 acres, including the land now in question and several acres more, was selected as a site for the new residence. The proposal for the erection of the new residence on that site was sanctioned by the Secretary of State for the Colonies on the recommendation of Governor Burke made in 1832 after report by the Surveyor-General of the Colony and approval by the Legislative Council, who also voted £10,000 towards the erection of the new building. On a portion of the site so selected stables had already been erected during the administration of Governor Macquarie, and these have been in use in connection with the present residence ever since its completion. The cost of the new residence was £25,000, of which £15,000 over and above the £10,000 voted by the Legislative Council was derived from the sale of part of the land constituting the larger area already referred to, over which moneys the Legislature of New South Wales had no power of appropriation. The building was completed in the year 1845, and was thenceforward continuously occupied by the Governors of New South Wales till the year 1900. In that year the Commonwealth of Australia was constituted, and for the purpose of providing a residence for the Governor-General an arrangement was made between the Commonwealth Government and the Government of New South Wales, whereby the residence now in question was leased to the Commonwealth. This arrangement was continued till the year 1912, when, under a power reserved in the lease, it was terminated by the State Government. Since 1900 the Governors of New South Wales have occupied another residence at Sydney provided at the expense of the State. Of the lands originally enclosed within the fences of Government House, and used in connection with it, some five acres were in the year 1900 separated from the rest and fenced in with the Botanical Gardens adjoining. Previously, in 1879, another area enclosed by an outer fence, and used for grazing purposes in connection with the residence, had been set out as a public park. The substance of the complaint laid in the present information is that Government House and grounds since the termination of the occupancy of the Governor-General have been diverted without lawful authority from the purpose of a residence

for the Sovereign's representative in New South Wales with a view to their application to some other purpose. The evidence in support of this charge is the statement of the intention of Ministers to devote the property to other State purposes, as appears in certain correspondence between them and Commonwealth Ministers on the subject of the termination of the arrangement already mentioned; the throwing open of the grounds to public access as a place of public resort in the month of December, 1912, the making of certain alterations in the grounds facilitating access between them and other public places adjoining them, as shown by the report of the Curator
 10 of the Botanic Gardens; and the preparation of plans and the taking of other steps towards the conversion of the stables into a building to serve as a Conservatorium of Music.

In the affidavit of the nominal Defendant he states that he is advised and believes that no determination has been come to by the Government as to how Government House or the grounds attached thereto, with a certain exception, is to be used, and that with that exception no determination has been come to that the House and grounds shall not be used as, and in connection with, a residence for the Sovereign's representative. The exception
 20 is that it has been decided to utilise the buildings known as the stables for the purpose of a Conservatorium of Music. It is needless to say that this Court cannot inquire into the propriety of any decision arrived at by Ministers respecting any question of public policy. It is only when policy finds expression in action, and some one aggrieved complains that the particular acts done are contrary to law, that the jurisdiction of the Court arises. Thus, a policy of railway construction involves interference with private property and public roads, and unless that interference has been effected in the way marked out by statute the question becomes one of law to be dealt with by the courts. The complaint here is that the lawful steps have not been
 30 taken to legalise certain physical acts done, and proposed to be done, upon these lands. Assuming for the moment that this suit is one in which that question of law can be raised, the question of fact arises whether the physical acts done on the land, coupled with the announcements of the intention of Ministers, sufficiently show that without the intervention of the Court (assuming it to have the power) there is reason to believe that the House and grounds will be diverted from their use as a Governor's residence and applied to some purpose incompatible with that use. On the question of fact, I think no other conclusion is open.

Another question of fact somewhat disputed was whether such a course of action had received, or must be regarded as having received, the approval
 40 of the Governor. Assuming, also, the relevency of this question, I again think no other conclusion is open on the evidence, taken together with an admission by counsel for the nominal Defendant on the hearing of this motion, that there is no Executive minute (the usual official record) showing that the proposed action had been submitted to the Governor, than that the question of the diversion of the residence to other purposes was never so submitted. The explanation of this probably is that Ministers have regarded the question as one within their own administrative competence without reference to the Governor, as would appear from the terms of the corres-

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pendence with the Commonwealth Government already referred to, from the 23rd of May, 1912, onward. An argument was addressed to us that as Ministers were retained in office, it must be assumed that all their Executive acts had received the sanction of the Governor. Such an argument entirely misconceives the relation between a Governor and his Ministers, and would charge the Governor with a responsibility unknown to our system of government.

So far as the change made in 1900 was concerned, whereby the Governor-General was placed in residence, there appears to have been some general correspondence between the State and the Imperial authorities on the 10 subject of the Governor-General's place of residence, and the subsequent arrangement made between State and Commonwealth, under which the Governor-General went into residence, must have been well known to the Imperial authorities. So far as regards the two portions of land detached from the grounds, as previously stated, it does not appear whether this was approved by the Governor or communicated to the Imperial Government, and I do not think that, on either supposition, the bare fact would assist in deciding the present controversy. Before touching on the somewhat difficult questions of procedure arising in this case I shall state some conclusions of law which I think arise upon these facts. In the first place, I am clearly of 20 opinion that the lands now in question have at all times been vested in the Crown as Imperial property, and that they have never become vested in the Crown as represented by the Government of New South Wales. Such a distinction is one recognised by the Claims against the Government and Crown Suits Act itself, which provides in sec. 11 that in the case of damages and costs adjudged against the nominal Defendant, or costs awarded against the Crown, and not paid within sixty days after demand, execution may be levied "upon any property vested in the Government, but not upon any "property vested in the Government on behalf of the Imperial Government, or "to which the Imperial Government has any claim, or is in anywise entitled." 30 The same distinction has also been recognised clearly in a number of decisions, of which that given in the case of the Attorney-General of British Columbia v. the Attorney-General of Canada (1906), A.C., 552, was an instance. In that case a declaration was claimed by the Attorney-General of the Province of British Columbia that the title to certain land within the Province, set apart for defence purposes before the federation of Canada, under the British North America Act, was vested in the Crown on behalf of the Province by virtue of a certain section of the Act. The Attorney-General of the Dominion contended that the title was in the Crown on behalf of the Dominion by virtue of a different section of the Act. But he relied, in the alternative, on the 40 effect of an Imperial Despatch issued subsequently. The Judicial Committee of the Privy Council held that the Act had not given title to either of the contesting Governments, but that the land remained Imperial property till the effect of the subsequent despatch had carried it to the Government of the Dominion. In other cases it has been pointed out that the Legislature of a British possession may have wide powers of legislation in relation to particular lands of the Crown within its territorial limits without possessing any proprietary rights in those lands, or any power to dispose of their revenues,

or to sell them and appropriate their proceeds. [Attorney-General for the Dominion of Canada *v.* Attorneys-General for the Provinces of Ontario, Quebec, and Nova Scotia (1898), A.C., 700; Ontario Mining Company *v.* Sybold (1903), A.C., at p. 79; St. Catherine's Milling and Lumber Co. *v.* The Queen, 14 A.C., 46].

The lands in question in the present suit were appropriated to the special purpose of a Governor's residence at a time when the Crown lands within the Colony were being administered by the Imperial Government itself. It was not until the enactment of the Constitution of 1855 by the
 10 Statute 18 & 19, Vic. c. 54, that the management and control of the waste lands belonging to the Crown in New South Wales, and the appropriation of moneys derived from them, passed to the Legislature of New South Wales. There had then been a Legislature in New South Wales for about thirty years, originally created under Statute 4, Geo. 4, c. 96, but it was not till the Constitution of 1855 that the power was conferred "to make laws for the peace, welfare, and good government of the Colony in all cases whatsoever." The lands we are now concerned with clearly did not come within the term "waste lands," and on the authority of the Attorney-General of British Columbia *v.* the Attorney-General of Canada, the conferring of
 20 a general power of legislation did not affect the proprietary right in them, unless the purpose to which they had been appropriated was a purpose in which the Government of New South Wales and not the Imperial Government was charged with the responsibility of administration.

Now, I think it is clear that the purpose to which these lands had been appropriated was one necessary for the maintenance of government in Imperial affairs as well as affairs over which the exercise of the authority of the Crown was exercisable by the local Government. Both before and after the establishment of the Constitution in 1855 the office of Governor remained an Imperial office. Though the responsibility for advising him in
 30 all matters of administration affecting the Colony was cast upon the local Ministers, he himself remained responsible to the Crown for the due discharge of his own duties, some of which were of Imperial rather than of local concern, and in regard to some of which he was bound to exercise an independent judgment. This has always been recognised, even by those who have asserted the powers of the local Executives in the widest terms. Having regard to the relation of the Governor to the Crown, both as Executive head of the Empire and as Executive head of New South Wales, I think that the proprietary right in lands set apart before the Constitution Statute for the purpose of a Governor's residence did not, any more than the case of lands
 40 set apart for Military or Naval purposes, pass from the Imperial Government to the Government of New South Wales. The true position of the New South Wales Executive in regard to them seems to have been that of custodians only. In the next place, I am of opinion that though the land might have been disappropriated from the purpose of a Governor's residence and applied to a purely local purpose by Executive act without legislation, as appears to have been done in the case of the earlier residence, this could not be done by the Governor acting upon the sole advice of his local Ministers, much less by the action of Ministers themselves without his concurrence.

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By whatever means such a change in the proprietary right might have been effected, there would need to be some evidence of the concurrence of His Majesty's Imperial Government. The approval of the Governor, had that been obtained, might have been taken as evidence of such concurrence, because it would lead to the presumption that the Imperial Government had been made acquainted with the proposal and had expressly or impliedly given their consent to it.

On the evidence as it stands, I come to the conclusion that the appropriation of the property to the purpose of a Governor's residence has never been altered in law; that, until that has been effected, any act done to the 10 property by any officer or servant of the Government contrary to that purpose would be without warrant in law; and that, assuming some appropriate procedure to exist, the Government could be held responsible in law for such acts. This leads to the further questions—(1) whether the Claims against the Government and Crown Suits Act, No. 27 of 1912, enables a proceeding to be brought in the name of the Attorney-General against a nominal defendant sued on behalf of the Government, and, if so, whether orders of the kind now asked could be made in such proceedings; and (2) whether in the present case there is any right in the members of the public for the infringement of which such relief could be claimed. On the first of 20 these questions, it is objected, firstly, that such a proceeding is, according to its legal effect, a suit by the King, whereas the Act was only intended to give rights of action to subjects; and, secondly, that it is a suit against the King, and, therefore, would amount to a proceeding by the same litigant against himself.

I agree with the contention that the Act does not extend to the authorisation of proceedings on behalf of the Crown itself, its plain intention being to afford the subject a remedy by action which he did not formerly possess, whereas the rights of the Crown itself were always sufficiently remediable by other forms of procedure. I think this sufficiently appears from the 30 nature and history of the legislation on the subject, which is fully set out in the judgment of the Privy Council in the case of *Farnell v. Bowman*, 12 A.C., 643.

But when the Attorney-General sues on the relation of an informant who complains that some right of the public has been infringed, he undertakes the burden of proving, not that the King has, but that some aggregate of his subjects have, a grievance remediable by some order of the Court. In that sense, I think it would be an undue limitation of the utility of the Act to hold that though an individual may sue under it to remedy his own grievances, another grievance affecting all individuals alike, though no one 40 more than the rest, lies outside its provisions.

The second branch of the contention, though it has some bearing on the nature of the remedy, if any, to be obtained in the proceeding, cannot, in my opinion, be maintained in view of the frequency of litigation in recent years between different branches of the King's Government. I refer to such cases as those between Province and Province and between Province and Dominion in the case of Canada, and the parallel line of proceedings in the case of Australia. This case is not strictly analagous to those, because here,

though the complaint rests on a suggested conflict between two governmental authorities, the party alleged to be wronged, *i.e.*, the public of New South Wales, is not a governmental authority. But, unless some other difficulty stand in the way, the fact that the King as *parens patriae* should be in litigation with the King as represented by the Government of New South Wales is no more anomalous than the fact that one of his Governments in Canada or Australia can be in litigation with another. The apparent confusion arises from the application of language correctly enough descriptive of proceedings in the English Courts where only one Government exercises

10 authority and no power to sue that Government exists, but misleading when applied without caution to a British federation where the Imperial, the Federal, and the Provincial Governments are each entitled to exercise certain functions, and the two latter have been made amenable by legislation to legal proceedings.

The question whether an injunction can be granted in a proceeding under the Claims against Government and Crown Suits Act arose in the case of *Evans v. O'Connor*, 12 N.S.W., 81, and was there decided in the negative. It was pointed out by Sir Frederick Darley, C.J., that neither the nominal defendant personally nor individual Ministers could be properly named in such

20 an injunction—the nominal defendant because the Act exonerated him from liability in person and property, and Ministers because they were not parties to the action. Windeyer, J., pointed out that it had already been held that neither a discovery order nor a garnishee order could be maintained against the Government. It was afterwards held by the Supreme Court in *Morrissey v. Young*, 17 N.S.W., Eq. 157, that an order for discovery might be made; and in the case of the Commonwealth *v. Miller*, 10 C.L.R., 742, it was held by the High Court that discovery could be ordered against the defendant Commonwealth in a suit under the Crown Remedies and Liability Act, 1890; in the case of *Strahorn v. Williams*, 25 W.N. 49, an injunction

30 was granted by the Chief Judge in Equity in a suit under the Act.

In regard to the difficulties formerly felt, it is to be remembered that the real party affected by any order made, whether for the payment of money or specific performance (remedies specially mentioned in the Act), or any other, is the Government of New South Wales itself, not Ministers individually or collectively, but the Executive Government, in which the Governor is as essential a component as Ministers themselves. The exemption of the nominal defendant from individual liability and the absence from the record of the real litigant would be as immaterial in the case of an injunction as

40 in any other case. The suggested difficulty of the enforcement of orders would apply to discovery or specific performance as much as to injunction. Section 9 of the Act provides that "In any action or suit under this Act all "necessary judgments, decrees, and orders may be given and made, "including every species of relief, whether by way of—(A) specific performance; or (B) restitution of rights; or (C) recovery of lands or chattels; "or (D) payment of money or damages."

Injunction, though not expressly mentioned, may not only become a "necessary order" for the purpose of effectuating a "just claim or demand," but may in some cases be essential to the efficacy of such a remedy as specific

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performance or restitution of rights. The abstention from acts, which is involved in injunction, offers at least as little difficulty as the doing of acts involved in specific performance; and as a Government can only act through its servants and agents and an order for injunction commonly includes these, the suggested difficulty seems to be unreal.

There remains the question whether any right of the public of such a kind as could be made the subject of litigation has been shown to have been transgressed. In one sense it is true that all property held by the King for any purpose of Government is property held by him in trust for that purpose. An instance of the application of that term by the Legislature is found in the Imperial Act 40 & 41 Vic. c. 23, which deals with "fortifications, works, buildings, or land in any Colony held in trust for the defence of that Colony." So here, it would not be an incorrect use of language to describe the land in question as land held in trust for the maintenance of Government in New South Wales. But, as we have seen, it is property which can be diverted from that trust by the act of the trustee himself. In so far, then, as the case bears any analogy to that of trusts in general, it would resemble land held to certain uses which could be altered by revocation and fresh appointment without the consent of those entitled for the time being to the benefit of those uses.

Supposing a public charity to be the object of such a provision, the precarious nature of the interest of the public would not necessarily be an obstacle to the maintenance of a suit by the Attorney-General to prevent any interference with the lands or other assets of the charity by unauthorised persons. In the same way the rights of the public could be protected in cases where land has been dedicated to the public as a public road or park, even though a power may have been reserved under some Act of Parliament to close the park or road. Until that power is exercised or the Act is repealed the public right subsists and can be protected by suit.

In the case of a residence provided for the King's representative the public are only benefited in the same sort of way as they are in the case of offices or residences provided for the carrying on of the ordinary Executive Government of the State or Commonwealth, any difference being only one of degree. In each case the right to have these means and instrumentalities of government provided is usually a purely political or constitutional right not enforceable by litigation. But when such lands and buildings have once been provided, I conceive that the public would have an interest in seeing that they are not diverted from that purpose without lawful authority. In ordinary cases that lawful authority would be the Executive Government either of State or Commonwealth, as the case may be. But supposing land to be appropriated to a specific purpose by an Act of the Legislature of the State, such, for instance, as a State Forestry, there could be no lawful disappropriation from that purpose without a repeal of the Act, unless the Act itself had made provision for the purpose. In such a case, it seems to me, that the Court would have jurisdiction to entertain a suit to prevent the destruction of the trees or any other act done for the purpose of diverting the land from its special purpose while the Act remained unaltered, on the ground that the public had an interest in safeguarding the provision so made for its benefit.

I am of opinion, therefore, that the public has such an interest in the preservation of the land and buildings now in question for the purpose of a Governor's residence as to enable this suit to be brought, and that the first declaration asked for should be made, viz., that the House and Grounds are vested in His Majesty the King, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales, with an additional declaration that the action or concurrence of His Majesty's Imperial Government is a necessary condition precedent to their diversion from that purpose. I am also of opinion that the interests involved are of sufficient importance to justify the granting of an injunction restraining the commission of the acts complained of. Should the lands hereafter become lawfully disappropriated from their present purpose a new situation would arise to which such an injunction would no longer apply. (*Jefferies v. Day*, L.R. 1, Q.B. 374.)

Order.

(1) Declaration as above.

(2) Injunction restraining Defendant as Nominal Defendant for and on behalf of the Government of New South Wales and the officers and servants of the Government from any unauthorised interference with that purpose.

(3) Defendant to pay costs of this suit.

Mr. Justice A. H. Simpson, Chief Judge in Equity.

This is a suit by the Attorney-General of New South Wales on the relation of three named persons, asking—

(1) For a declaration that Government House and Grounds, which are shown on plan, Exhibit "H," are vested in His Majesty the King, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales.

(2) For a declaration that neither the Government of New South Wales nor the Governor in Council has power to interfere or alter the said public purpose to which the said House and grounds are dedicated.

(3) For an injunction restraining the Defendant as nominal Defendant for and on behalf of the Government of New South Wales, the Ministers, officers, and servants of the Crown, from using or causing or allowing to be used the said House and grounds for any purpose other than the public purpose of a residence for the Sovereign's representative in New South Wales.

(4) For costs.

No defence has been filed, but by consent the motion for an interlocutory injunction has been turned into motion for decree. The allegations in the information cannot therefore be taken as admitted.

It is clear on the evidence that the Government intended to use the stables of Government House as a Conservatorium for Music, and have already taken steps to carry out this purpose.

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The stables are in law part of the House, and if the Government can use the stables for this purpose, it follows the Government can use the House and grounds for any public purpose.

Two questions are raised :—

- (1) Is the act complained of unauthorised by the proper authority, *i.e.*, is it unlawful?
- (2) If yes, can the Attorney-General maintain this suit?

1. It is not disputed that the land in question, Government House Ground shown in Exhibit "H" is the property of His Majesty, which he might appropriate for any purpose not forbidden by law. 10

It was originally part of a much larger piece of land shown in Exhibit "A," but the evidence shows that large parts of this land have been, with the consent of His Majesty, either sold or appropriated to other purposes. The proceeds of sale, some £15,000, were used, with the approval of His Majesty, in erecting Government House and laying out the grounds.

The evidence also shows that the whole of the land comprised in Exhibit "A" was appropriated by His Majesty for public purposes for the benefit of the inhabitants of New South Wales. I refer particularly to the affidavit of the Defendant himself and the documents annexed to his affidavit or referred to therein. 20

The evidence also shows the Government House Grounds have been appropriated by the King as a residence for the Governor of New South Wales, and that they were for many years used for this purpose.

If the use of them as such residence is no longer desirable, the King could appropriate them to any other public purpose, but until His Majesty the King has taken some step to so apply them, the Government House Grounds must be taken to be appropriated to the purpose of a residence for the Governor of New South Wales.

Lands held by the King appropriated for Naval or Military purposes seem to me to stand on an analogous footing, and in the Imperial Act 30 of 1877, 40 & 41 Vict., c. 23, such lands are referred to in the preamble as held in trust for the defence of the Colony, whether actually vested in the Crown or in other persons.

Whether it is more accurate to say that the King has appropriated the land for the residence of the Governor of New South Wales, or that he holds it in trust for such purpose, seems to me immaterial. In neither case can the appropriation or trust be interfered with except with the consent of His Majesty.

A Minister of the Crown, simply as Minister, has no power to give such consent, nor, in my opinion, does it make any difference that some 40 or all of his colleagues agree with his action. Whether a resolution by the Governor in Council would bind the Crown is another matter, for on the evidence it is clear that there was no such resolution. Both sides asked us to express an opinion on this point, but to do so would be to express an opinion on a hypothetical case, which would be extra-judicial and not binding on anyone. I think it is safer to refrain from giving any opinion on this point.

If this is so, the direction by the Minister to use the stables for a Conservatorium of Music, or any purpose other than a residence for the Governor of New South Wales, was unauthorised and in that sense unlawful.

The second question then arises, whether the Attorney-General can complain of the wrong. If I am right in the view that the whole of the land in Exhibit "A" was appropriated by the King for public purposes for the benefit of the inhabitants of New South Wales, the Attorney-General, as the only person who can represent the public, is the proper person to sue. It is "a matter which concerns the public," to quote the language of Lord
 10 Halsbury, L.C., in the London County Council v. The Attorney-General, 1902, A.C., p. 165-168, and it is immaterial when the suit is once instituted whether it is instituted by the Attorney-General *ex-officio* or at the relation of a private individual. "Except for the purposes of costs there is no difference between an *ex-officio* information and an information at the relation of a private individual. In both cases the Sovereign as *parens patriae* sues by the Attorney-General," per Sir G. Jessel, M.R., in A.G. v. Cokermonth Board, 18 E.Q. 172, p. 176.

It was contended by the Defendant that the Attorney-General in this case was suing to protect what I may call the private rights of the King :
 20 I do not think this is so : I think he is suing to protect public rights, and it seems to me a question of words whether you say the Crown as *parens patriae* is suing by its Attorney-General to protect public rights or the Attorney-General is suing to do the same thing.

The Attorney-General can sue to complain that lands held for charitable purposes are being improperly administered, A.G. v. Vivian, 1 Russ 226 ; that public bodies are exceeding their powers, London County Council v. A.G., 1902, A.C. 165 ; or using them wrongfully, A.G. v. Birmingham, &c., Board, 1910, 1 Chancery 48.

For these reasons I think the informant is entitled to a declaration
 30 that the Government House and Grounds are appropriated for the residence of the Governor of New South Wales until His Majesty has otherwise determined, and that no Minister has power to interfere with this purpose ; and to an injunction restraining the Government from so doing until the pleasure of His Majesty can be ascertained.

The Defendant must pay the costs.

H. H. MASON,
 Associate to C.J. in Eq.

MR. JUSTICE STREET :

Street, Jt

This is a suit by the Attorney-General, acting on the relation of certain
 40 individual members of the community against a nominal Defendant appointed to represent the Government under the Claims against the Government and Crown Suits Act, 1912. He informs the Court (to use the words of the information) that the members of the Government of New South Wales after having met in Cabinet have determined and announced publicly that the said House and grounds shall no longer be used as a residence for the Sovereign's representative in New South Wales, but shall be devoted to

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some other purpose, and he says that he fears that unless restrained by the order and injunction of this Court the Government of New South Wales will carry this determination into effect so as to permanently exclude the Sovereign's representative in New South Wales therefrom contrary to the public purpose to which the said House and grounds were dedicated. He asks that it may be declared that the property is vested in the King, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales, and for consequential relief.

The matter comes before us on motion for decree. In an affidavit filed by the nominal defendant he states that he is advised and believes that the Government has decided to turn the building previously used as stables into a Conservatorium of Music, but that with this exception he is advised and believes that no determination has been come to as to how the House and grounds are to be used and no determination has been come to that they shall not be used as and in connection with a residence for the Sovereign's representative. ¹⁰

It appears, however, that in addition to the intention to utilise the stables as a Conservatorium of Music, the fencing separating the grounds from the Botanical Gardens and the Garden Palace Grounds have been removed; gates, paths, and outlets have been provided and made to facilitate public access to the grounds; notice-boards informing the public of the by-laws of the Botanical Gardens and Domain have been erected, and, in addition, the Premier, on 14th December last, attended at the grounds and in the presence of a considerable number of the public declared that the grounds were open to people. It is difficult to understand why the state of indecision and indetermination said to exist should be dissembled under so considerable a display of inconsistent activity, and I do not think it can be doubted that the evidence before us is sufficient to justify the allegations of the Attorney-General in the information as to the intention of the members of the Ministry. The serious question which we have to consider is whether the facts disclosed amount to such an interference or threatened interference with the public rights as to entitle the Attorney-General, as the protector of the rights of the public, to ask for the Court's interference. The argument covered a wide range, but I think that the position was correctly put by Mr. Knox in his reply, to the effect that the two questions which emerge for consideration are—(1) Is the action complained of unauthorised by law, and (2) if it is, is the Attorney-General entitled to maintain the present suit. ²⁰ ³⁰

From the evidence before us it appears that as early as 1792 Governor Phillip issued a Government Order declaring that all land lying between the waters of the harbour, or the river as it was then called, and a boundary line extending from the head of Darling Harbour on the west to the head of Woolloomooloo Bay on the east was reserved for the Crown and for the use of the town of Sydney, and that no ground within it was ever to be granted or let on lease. Within the area so reserved a smaller area, extending roughly from the head of Circular Quay to Woolloomooloo Bay, was set apart as ground necessary for the use of Government House. Notwithstanding Governor Phillip's prohibition against leasing, a general order was issued by Governor King in 1801 authorising leases for short terms of years, and in ⁴⁰

1807 not only had a considerable number of leases been granted of portions of the reserved area, some of them being within the smaller area to which I have referred, but in addition a number of unauthorised houses had been built adjacent to Government House and within the smaller area. In that year Governor Bligh issued a proclamation calling upon the occupants of houses built without authority on land "particularly marked out as making part of the domain of the Governor's residence" to quit possession by a specified date, as the grounds were wanted for Government purposes. It does not appear when the smaller area set apart as necessary for the use of

10 Government House first came to be spoken of as the Government Domain, but in 1812 Governor Macquarie issued a proclamation stating that the whole of the Government Domain extending from Sydney Cove to Woolloomooloo Bay had been completely enclosed by stone walls and palings except such parts as were under lease, and giving notice that stock found trespassing would be impounded, and that the public were prohibited from removing stone or loam or cutting down timber. Apparently the public were allowed access to the Government Domain so enclosed, inasmuch as in 1816 Governor Macquarie found it necessary to issue a proclamation calling attention to the injury which has been done by the breaking down of the wall and various

20 other acts of destruction, and prohibiting persons from trespassing, but at the same time pointing out that the order was not meant "to extend to prohibiting the respectable class of inhabitants from resorting to the Government Domain as heretofore for innocent recreation during the daytime." In 1829 the lands known as the Government Domain were included in a list of lands reserved for public purposes which Governor Darling caused to be published in the "Government Gazette." Previously to this, portion of the area known as the Government Domain had been appropriated for the purposes of a hospital, another portion had been appropriated for the establishment of botanical gardens, while stables for the use of the Governor had been

30 built upon a further portion. As time progressed it became desirable that a new residence should be erected for the Governor, and a portion of the Government Domain, consisting of about 47 acres and including the ground on which the stable buildings stood and still stand, was selected as a site for the residence and grounds. To raise the necessary funds for building portions of the Government Domain in the vicinity of Circular Quay were sold, and with the proceeds of sale, supplemented by a sum of money voted for the purpose by the Legislative Council, the present Government House was built. It became ready for occupation in about the year 1845, and ever since then it has been continually used as a residence, first for the Governor of New

40 South Wales and afterwards for the Governor-General of the Commonwealth, until 1st December last, when the arrangement under which it was occupied by the Governor-General came to an end. The grounds surrounding it and used in connection with it as garden and pleasure grounds have been slightly curtailed in area by the diversion on, I think, two occasions to other public purposes of small portions, but with this exception they were the same on 1st December last as in 1845.

The allegation in the information that the ground became permanently dedicated to the public purpose of a residence for the Sovereign's representa-

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tive in New South Wales is too widely stated. The Crown has never divested itself of the land, and it is manifest that power resides somewhere to permit of its diversion to some other public purpose.

Where that power resides must depend upon the question whether the purpose of a Governor's residence for which the land has been appropriated is to be regarded as an Imperial purpose or a local purpose, but the position taken up by Mr. Knox was that on this part of the case all that it is necessary for the Attorney-General to establish is that, wherever the power may reside, no authority has been conferred upon those who have claimed to exercise it. In my opinion the evidence is sufficient to establish this. The allegation in 10 the information is that the members of the Government (meaning of course Ministers of the Crown) after meeting in Cabinet determined that the land should be devoted to some other public purpose, and the evidence shows that effect has been given to this determination by Ministerial action. The constitutional functions of the Cabinet are, however, to advise, not to act. It is a consultative and deliberative body, not an executive body. It determines what policy ought to be pursued, and advises as to action to be taken or orders to be given, but beyond this it has no power of determination. If action is to be taken or orders are to be given in accordance with its advice, this must be done by the Governor in Council. The primary function of each Minister 20 is, in like manner, that of an adviser merely, and a Minister has no executive power except in so far as it is conferred upon him by the Legislature or delegated by the Governor in Council. It is abundantly plain to my mind that no power belonged to the Ministers of the Crown, either individually or collectively, to take action on their own responsibility for the purpose of diverting the land from the purpose for which it was being used, and that their action in this respect was illegal, in the sense that it was an unauthorised interference with the purposes to which the land had been appropriated by the properly constituted authorities. Mr. Blackett admitted that there is no Executive minute showing that the Governor in Council has authorised 30 or approved of the acts complained of; but both he and Mr. Browne urged that, inasmuch as the Governor had not dismissed his Ministers, he must be taken to have assented to what was done, and that the acts must therefore be looked upon as acts of the Governor in Council. The proposition is a startling one, and I cannot assent to it. The Governor takes no part in the deliberations of the Cabinet, and if he had given Executive authority to its determination this would have been evidenced by some Executive minute or other record.

The inference which I draw from the absence of any such minute is that what has been done was done without the authority of the Governor in 40 Council.

Mr. Knox, as I have already said, was not inclined to take any further burden on his shoulders than the necessities of his case demand, and he contented himself with arguing that the Ministerial interference proved was unauthorised and therefore unlawful. We might perhaps content ourselves with taking up the same attitude, but I do not think that we should do so, and I am prepared to go further. In my opinion the specific purpose for which the land in question was set apart—that of a residence for the Governor

—is an Imperial purpose and not a matter of purely local concern, and I think therefore that the land cannot properly be diverted from that purpose to some other without the consent of the Imperial Government. As I have already pointed out, the land has never been divested from the Crown, and having been set apart for a specific public purpose prior to the conferring of a constitution on New South Wales, it was not waste land of the Crown within the meaning of section 2 of the Imperial Act 18 and 19 Vic., c. 54, or section 43 of the Constitution Act, 17 Vic., No. 41; and therefore the power of dealing with it did not pass to the Legislature under the provisions of those sections which vested the control of waste lands of the Crown in the Legislature (see *A.G. v. Eager*, 3 S.C.R. 234). Seeing, moreover, that the purpose for which it was set apart was not a purely local purpose, such, for instance, as that of a post office, a public school, or a lock-up, but was, in my opinion, an Imperial purpose analogous to the case of lands set apart for naval or military purposes, I do not think that the Legislature acquired power to deal with it under the general powers conferred upon Parliament by the authority given by section 1 of the Constitution Act to make laws for the peace, welfare, and good government of New South Wales. The land was set apart for a specific public purpose of an Imperial, and not a merely purely local character, and in my opinion power to deal with it was never vested either in the local Government or the local Legislature, but remained vested in the Crown as represented by the Imperial Government. The conception of the Imperial Government, and of the Governments of the various dominions and dependencies within the Empire, as distinct entities capable of acquiring and asserting rights against one another, is familiar enough to lawyers of the present generation accustomed to see questions between the Governments of different States or dependencies within the Empire litigated in courts of justice.

The land cannot therefore, be diverted to other uses without the assent of the Imperial Government, and the proper person to assent to any such diversion is in my opinion the Governor of this State, acting, not on the advice of his Ministers, but under instructions from Imperial Government. It may very well be that if, in point of fact, it were found that action had been taken in the matter by the Governor in Council, it would be the duty of the Court to assume that in so acting the Governor was acting in accordance with instructions from the Imperial Government, but that is a question which we need not at present consider.

Another argument put forward by Mr. Blacket was that even assuming that the land could not be diverted from its use as a residence for the Governor of New South Wales without the assent of the Imperial Government, this assent had in fact been given in the year 1900 after the establishment of the Commonwealth, when the residence of the State Governor was, with the assent of the Imperial Government, removed elsewhere in order that the Governor-General might be housed in the old residence. He urged that as the obligation to provide a residence for the Governor of New South Wales had been satisfactorily discharged and as the Government of New South Wales was under no obligation to provide a residence for the Governor-General, it was at liberty without consulting the Imperial Government to

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appropriate the site of the old residence to any other public purpose it might see fit. On the assumption, however, that the Imperial Government is entitled to be consulted before any diversion is effected, I do not think that the inference of waiver of this right, which Mr. Blacket seeks to draw, is maintainable. The papers before us show that the assent to the removal elsewhere of the State Governor's residence was not an unconditional assent, but was given merely in order that the old residence might be availed of for the use of the Governor-General.

The acts complained of being then in my opinion unlawful, in the sense that they are unauthorised, the remaining question for consideration is 10 whether the present proceedings are maintainable in respect of them. It is conceded that the provisions of the Act No. 27 of 1912 relating to claims against the Government are applicable only to proceedings brought or sought to be brought by subjects of the Crown, and if the unauthorised diversion of the land were a matter which concerned the King only, and in which the public had no concern, I should be disposed to think that the present suit would not be maintainable. Having regard to the fact that the specific public purpose to which the land was appropriated was that of a residence for the King's representative in New South Wales, I have felt some doubt whether an unauthorised diversion of the land from that purpose to another 20 public purpose could be said to amount to such an interference with a public right as to justify members of the public in approaching the Court for relief through the Attorney-General, as the protector of the rights of the public, and as the only available mouthpiece of the public in such a case; but upon the whole I have come to the conclusion that the matter is one that concerns the public and does not merely concern the right of the Crown, and that there has been such an interference with a public right as to justify these proceedings. The evidence to which I have previously referred shows that the land forms part of a larger area, the whole of which was set apart in the year 1829 for public purposes. In my opinion this was sufficient to create 30 a public interest and a public right in the lands so set apart. The right so created would not entitle the public to dictate in respect of the specific public purposes to which the land might from time to time be put, nor to interfere in respect of a diversion from one public purpose to another by the proper authority in that behalf, but in my opinion it would be sufficient to entitle the public to interfere if the land had been unlawfully diverted to private uses; and if the right and the interest created are sufficient to justify proceedings by the public in respect of an unauthorised interference of one kind, I think that they are sufficient to justify proceedings in respect of an unauthorised interference of another kind. Though the public cannot 40 control the particular public purpose to which the lands may be put, I think that they have sufficient right and are sufficiently concerned to justify them in asking for the Court's interference in respect of an unauthorised diversion from one public purpose to another. The Ministerial action in the matter is no doubt capable of ratification, and it may be that it will be ratified. We are not concerned with that. All that we are concerned with is whether the acts complained of are unauthorised, and, if so, whether the public are sufficiently concerned to ask for the Court's interference, and for the reasons

which I have given I think that both these questions must be answered in the affirmative.

It was urged that the Court could only regard the suit as one brought to protect some legal right of the Relators and others, and that there had been no infringement of any legal right either of the Relators or of any other citizen. The interest, however, which the public have in maintaining the proceedings is based, not upon evidence of any actual injury to the public or to any member of the public—this is unnecessary,—but upon an unauthorised interference with public rights in a matter in which the public have an interest recognised by the law, and which affects the public generally. It is not necessary where an illegal act of a public nature is complained of to adduce evidence of actual injury to the public, and in such cases the Attorney-General is allowed to intervene “for the purpose of asserting, on behalf of the public generally, that public interest and that public right which probably no individual could be found willing to effectually assert, even if the interest were such as to allow it” (see *A.G. v. Compton*, 1 Y. and C., 417, at p. 427). In such cases the Attorney-General sues not as the representative of the Sovereign in respect of a violation of the rights of the Crown, but as the proper public officer to represent the public, and the circumstance that in the present case the suit is to external appearance a suit by the Crown against the Crown presents no difficulty to my mind.

In so far as an injunction is asked for, it was contended that this Court has no power to grant an injunction in a proceeding of this character. The first ground upon which this contention was based was that the Legislature had stated in section 9 of the Act four specific kinds of relief which might be obtained, and that a litigant was not entitled to any other relief than that particularly specified in the section. I am clearly of opinion that this contention is untenable. The section states in plain terms that every species of relief is to be obtainable, and I do not think the circumstances that some of the remedies available under the Act are particularly mentioned has the effect of curtailing the general provision that all kinds of relief may be obtained. The other ground relied upon was the decision of this Court in *Evans v. O'Connor* (12 N.S.W., R, 81), that an injunction cannot be granted against a nominal Defendant. With great respect, I do not think that this is a sound decision, or that it is one which we should follow. The difficulties which were suggested in that case as lying in the way of enforcing obedience to an injunction are no greater than the difficulties which lie in the way of enforcing an order for specific performance; and yet the Legislature has expressly mentioned specific performance as a form of relief which is obtainable. Since *Evans v. O'Connor* was decided it has been held in *Morrissey v. Young* (15 N.S.W., R., Eq., 157) that a nominal Defendant can be ordered to give discovery, and I can see no reason why an injunction should be put on a different footing from an order for discovery or for specific performance, or an order for restitution of rights. It was said that a difficulty is created by the circumstance that the persons to be enjoined must be named in an order for an injunction, and that the nominal Defendant, the only party to the action, is expressly protected from individual liability either in person or property. It is, however, a matter of common knowledge that—in this

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branch of the Court's jurisdiction, at all events—an order for an injunction is not limited in its operation, and its efficacy to persons who are before the Court as parties, but in a proper case extends to others as well; and having regard to the purposes for which the Act was passed, I can see no reason why an order should not be made in a proper case restraining, not merely the nominal Defendant, but also other servants of the Crown, from committing unauthorised or unlawful acts.

For the foregoing reasons I am of opinion that the Plaintiffs have made out a case entitling them to relief, and I concur in the order proposed by the Chief Justice.

10

CECIL H. COHEN,
Associate.

No. 12.
Decree of
the Supreme
Court of New
South Wales,
dated 20th
March, 1913.

No. 12.

Decree of the Supreme Court of New South Wales.

Thursday, the 20th March, 1913.

Upon motion for injunction, made this day to this Court, in the presence of counsel for the above-named parties, it was by consent ordered that the said motion be turned into a motion for decree, and this suit coming on to be heard accordingly upon motion for decree before the Hon. Sir William Portus Cullen, K.C.M.G., Chief Justice; the Hon. Archibald Henry Simpson, Chief Judge in Equity; and the Hon. Philip Whistler Street, Judge in Equity; upon the 24th, 25th and 26th February last: Whereupon, and upon reading the information filed herein, the said notice of motion, the two several affidavits of Sir William McMillan, K.C.M.G., sworn respectively the 3rd and 4th February last, together with the annexures to the said first-mentioned affidavit marked "A," "B," "C," "D," "E," and "F" respectively, the affidavit of Thomas Henley, sworn the said 3rd February last, together with the annexures thereto, marked "A," "B," "C," and "D" respectively, and the exhibits thereto marked "E," "F," "G" respectively, the affidavit of Charles Trimby Burfitt, sworn the 4th February last, and the affidavit of Henry Archdall Langley, sworn the 3rd day February last, together with the annexure thereto marked "A," and all filed herein on behalf of the Informant: And upon reading the exhibits marked "A," "B," "C," "D," "E," "F," "G," "H," and "J," put in evidence on behalf of the Informant: And upon reading the affidavit of the above-named nominal Defendant, sworn the 6th February last, together with the annexures thereto, marked "A," "B," "C," "D," "E," and "F," filed herein: And upon reading the exhibits marked "1," "2," and "3," put

in evidence on behalf of the said nominal Defendant: Whereupon and upon hearing what was alleged by Mr. Knox, K.C., Mr. Bethune, and Mr. Wilson of counsel on behalf of the informant, and by Mr. Blacket, K.C., and Mr. Browne of counsel on behalf of Defendant, it was ordered that this suit do stand for judgment: And this suit standing for judgment this day, in the presence of the said counsel for the Informant and the Defendant, this Court doth declare that the House and grounds in the said information referred to are vested in His Majesty the King, dedicated to the public purpose of a residence for His Majesty's representative in New South Wales: And that
 10 the action or concurrence of His Majesty's Imperial Government is necessary to divert the same from such purpose: And this Court doth order that the Defendant as nominal Defendant for and on behalf of the Government of New South Wales, and the officers and servants of the said Government, be restrained by the order and injunction of this Court from any unauthorised interference with that purpose: And this Court doth further order that it be referred to the Master in Equity to tax and certify the costs of the Informant herein: And that the said costs when so taxed and certified as aforesaid be paid by the said nominal Defendant to the Informant, or to Mr. William Cope, his solicitor, within 14 days after service upon the said Defen-
 20 dant, or upon the Crown Solicitor of an office copy of such certificate of taxation.

H. P. OWEN (L.S.),

Master in Equity.

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No. 13.

Exhibits put in at the Hearing of the Suit.

Informant's Exhibit A.

Copy Plan of Surveyor Mechan.

(Copy sent herewith.)

No. 13.
 Exhibits
 put in at the
 Hearing of
 the Suit.

Informant's
 Exhibit A.
 Copy Plan
 of Surveyor
 Mechan.

Informant's Exhibit B.

30 Copy Proclamation by Governor Bligh of 23rd July 1807.

(Appearing in paragraph 8 of Affidavit of J. L. Williams at p. 25).

Informant's
 Exhibit B.
 Copy Pro-
 clamation by
 Governor
 Bligh, dated
 23rd July,
 1807.

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No. 13.
Informant's
Exhibit C.
Copy
Proclama-
tion by
Governor
Macquarie of
6th July,
1816.

Informant's Exhibit C.

Copy Proclamation by Governor Macquarie of 6th July, 1816.

(Appearing in paragraph 10 of Affidavit of J. L. Williams at p. 25).

Informant's
Exhibit C.
Copy Pro-
clamation of
17th October,
1812.

Informant's Exhibit C.

Copy Proclamation of 17th October 1812 published in the Sydney Gazette.

Sydney, 17th October, 1812.

The whole of the Government domain at Sydney extending from Sydney Cove to Woolloomooloo Bay being now completely enclosed by stone walls and palings, except that part of it which is at present under lease to Mr. Palmer and Mr. Riley where their windmills and Bakery are erected NOTICE is ¹⁰ hereby given that no Cattle of any description whatever, are, after the present date, to be permitted to graze or feed on the said domain, those belonging to Government only excepted, and any Horses, Cows, Sheep, Asses, Pigs or Goats, which may after this notification, be found trespassing thereon will be taken up and impounded for damages. The public are further to take Notice that for the future no stones are to be quarried, or Loam dug within the said Domain for other than Government purposes unless by special Permission obtained from His Excellency the Governor and none of the Wood or shrubs growing within the said Domain are on any account whatever to be cut down, or otherwise destroyed on Pain of Prosecution for Felony, and no boats ²⁰ except those belonging to the Government are to land in Farm Cove or any other part of the Shore bounding the Domain except at Bennelong's Point on Pain of being forfeited and the persons who shall have so brought them there severely punished for trespassing on the Government Domain after being thus cautioned by Public Notice.

By Command of His Excellency the Governor,

(Sgd.) J. T. CAMPBELL,

Secretary.

Informant's Exhibit D.

Copy Despatch from Sir Thomas Brisbane to Lord Bathurst.

Government House,
New South Wales.

25 May, 1825.

RECORD.

No. 13.
Informant's
Exhibit D.
Copy Des-
patch from Sir
Thomas
Brisbane to
Lord
Bathurst,
dated 25th
May, 1825.

My Lord,

I have for some time had it in contemplation to address your Lordship upon the very important subject of the Government Domain, as it is called in Sydney, and the want of a suitable Government House and Public Offices,
10 and I have now the Honour to lay my views before your Lordship.

It will be perceived by referring to Captain King's Chart of Port Jackson that one half of Sydney Cove in which Sydney Harbour is situated, has been reserved by Government, and at present is of no further use than affording a pleasing prospect to the eye; while the remaining half is crowded with the stores and houses of the merchants to an inconvenient degree from the want of sufficient space for shipping and other commercial purposes. I am of opinion that it would be highly desirable to sell, or let on Building Leases, the whole of the water side of the Domain, as far as Fort Macquarie, and so many feet back as may be sufficient for the erection of stores and warehouses, so
20 as to admit of a street, fronting the present Government House, which is in a most dilapidated state, and unfit for the residence of the Governor in consequence. This arrangement may be done without any substantial loss to the Domain, as the land thus disposed of, is applied to no valuable purpose at present.

The revenue arising from this manner of disposing of part of the Domain, will I apprehend afford ample Funds for the erection of a suitable residence for the Governor in Sydney and the present Government House, which is very unfit for such a purpose may with great convenience be converted into Public Offices which are very much wanted and cannot be procured, but at
30 a very considerable expense. I would further beg to suggest that the Gothic Building on the pleasantest site of the Domain which was intended for Government stables is utterly useless at present, from the great disproportion to the establishment of the Government may be easily and advantageously improved into a Government Residence.

In submitting this measure to your Lordship, I feel an assurance that it will be attended with great gain to the Public in Commerce as well as Revenue, and a great saving of expense to the Government.

I have the honor to be

&c. &c.

(Signed) THOS. BRISBANE.

RECORD.

No. 13.
Informant's
Exhibit E.,
Copy
Despatch
Lord
Bathurst to
Governor
Darling,
dated 30th
June, 1825.

Informant's Exhibit E.

Copy Despatch Lord Bathurst to Governor Darling.

Downing Street,
30th June, 1825.

Sir,

The dilapidated state of the Government House at Sydney having been brought under my consideration, and as I deem it very essential to the Public Service that His Majesty's representative in that distant quarter of the World should be accommodated with a convenient and suitable residence, I have to authorise the construction of a new Government House, should you 10 find on your arrival in the Colony that the old building is not in a habitable state and that it does not admit of being repaired—or you will consider yourself at liberty to convert into a permanent Residence for the Governor, the Gothic Building erected by General Macquarie for stables if the latter measure should be found practicable and more economical. Although I am induced under the circumstances of the case to waive the Regulation which requires that an estimate and plan should be first submitted for the consideration of His Majesty's Government before any new work of that description is undertaken, I have to direct that you take the earliest opportunity of sending home an estimate of the expense of the Building which it may be 20 intended to erect and I need not point out to you the necessity of your limiting the expenditure on this account within the narrowest possible limits, that may be consistent with your suitable accommodation.

I am Sir,

Your most obedient humble Servant,
(Signed) BATHURST.

Lt. Genl. Darling.

Informant's
Exhibit F.,
Copy
Despatch
Lord
Bathurst to
Governor
Darling,
dated 10th
Feb., 1828.

Informant's Exhibit F.

Copy Despatch Lord Bathurst to Governor Darling.

Downing Street,
19th February 1828.

30

No. 11.

Sir,

With reference to my despatch of the 30th of June last by which you were authorised to undertake the construction of a new Government Residence, should you find upon your arrival in the Colony that the present building was unfit for your accommodation, I do myself the honor of calling your attention to the enclosed copy of a despatch which I have just received from Sir Thomas Brisbane dated the 25th of May 1825, as the views entertained by him upon this subject appear to me to be judicious.

I have the honor to be,

40

Sir,

Your most obedient humble servant,
(Signed) BATHURST.

Lt. Genl. Darling,
&c. &c.

Informant's Exhibit F.

Copy Proclamation by Governor Darling of 8th June 1829.
(Printed as annexure C to Affidavit of J. L. Williams at p. 31.)

Copy Proclamation by Governor Bourke of 9th September 1831.
(Printed as annexure D to Affidavit of J. L. Williams at p. 31.)

Copy Parliamentary Paper ordered to be printed 10th August, 1847, containing a series of Documents appearing as Exhibit E to the Affidavit of Thomas Henley.

1847.

10

New South Wales.

Government House, Sydney, and Grose Farm, Parramatta.

Laid upon the Council Table, and Ordered, by the Council, to be Printed,
10th August, 1847.

Return to Address ; Mr. Cowper, dated 20th July, 1847, for :—

- “Copies of any Correspondence which has taken place between the
“Secretaries of State for the Colonies and the Governor of this Colony,
“during the respective administrations of Sir Richard Bourke, Sir
“George Gipps, and Sir Charles Fitz Roy, respecting the erection of the
“New Government House, Sydney, and the appropriation, for the per-
20 “sonal use of the Governor for the time being, of the Parramatta
“Domain or Grose Farm.”

Schedule.

- 1.—Extract of a Despatch from Lord Viscount Goderich to Major General Bourke, dated 29th September, 1831
- 2.—Major General Sir R. Bourke to Lord Viscount Goderich, 2nd November, 1832
- 3.—The Earl of Aberdeen to Major General Sir R. Bourke, 25th March, 1835, with enclosure
- 30 4.—Sir R. Bourke to Lord Glenelg, dated 3rd November, 1836
- 5.—Lord Glenelg to Sir R. Bourke, dated 3rd October, 1837, with two enclosures
- 6.—Sir George Gipps to Lord Stanley, dated 9th July, 1844
- 7.—Sir George Gipps to Lord Stanley, dated 15th June, 1845
- 8.—Lord Stanley to Sir George Gipps, dated 9th November, 1845
- 9.—Sir George Gipps to Lord Stanley, dated 21st January, 1846
- 10.—The Right Honourable W. E. Gladstone to Sir Charles A. Fitz Roy, dated 14th June, 1846

o

E

RECORD
No. 13.
Informant's
Exhibit F.,
Copy
Proclamation
by Governor
Darling,
dated 8th
June, 1829.

Copy
Proclama-
tion by
Governor
Bourke,
dated 9th
September,
1831.
Copy
Parliamen-
tary Paper,
printed
August 10th,
1847.

RECORD

No. 13,
Informant's
Exhibit F.,
Copy
Parliamentary
Paper,
printed 10th
August,
1847
—continued.

(1)

Extract of so much of a Despatch, No. 27, of 29th September, 1831, addressed by Lord Viscount Goderich to Major-General Bourke, K.C.B., as relates to the Government House.

“ Having thus stated to you the principles on which Her Majesty's Government have determined that reductions of establishment are to be carried into effect, I will proceed to notice, in their order, the various recommendations of the Commissioners as contained in the Report and in the Appendix.

“ 1st.—The first subject to which they have adverted is the advantage of adhering to the principle of remunerating every individual employed in the public service by a fixed payment of money, to the exclusion of houses and every other emolument whatever.

“ In this recommendation I entirely concur, and it has, I am happy to find, been already recognised in the instructions sent to General Darling. On this I have, therefore, only to observe that the Governor of New South Wales has at present two places of residence allowed to him. This appears to me to be unnecessary, and you will therefore give your consideration to the best means of disposing of the house hitherto kept up at Parramatta.

“ As I am, however, informed that the Government House at Sydney is in a very bad state of repair, and that it is in a situation in which it occasions great inconvenience to the town, while it may be sold to great advantage, you will consider yourself at liberty to retain the house at Parramatta until you shall have been able to ascertain whether I have been correctly informed; and if this should turn out to be the case, until you can submit for my consideration what you may conceive to be the most convenient and economical plan for providing the Governor with one suitable residence.”

(2)

Copy of Despatch from Sir Richard Bourke to Lord Viscount Goderich. 30

(No. 113.)

Government House, Sydney,

2nd November, 1832.

My Lord,

Many circumstances, public and private, which I will not take up your Lordship's time in enumerating, have prevented until now the fulfilment of your Lordship's desire to transmit a Report upon the state of the Government House in Sydney. I now proceed to obey those commands by reporting on the condition of the building as it now stands, upon the expediency of erecting a new house on a different site, and of giving up to the public, for the purposes of quays, and wharfs, and storehouses, a portion 40

of the ground on the eastern side of Sydney Cove, now enclosed within the Government Gardens.

In the first place I have to observe that the present Government House in Sydney is a collection of rooms built at different times by successive Governors, and is, in consequence, not only extremely inconvenient and unsightly, but in such a bad state of repair as to demand the immediate expenditure of a large sum of money to render it habitable and decent. The roof and flooring are in many parts decayed; and the bad smells which prevail in the principal sitting room are not only unpleasant, but unwholesome. So bad, indeed, was the condition of this house considered to be upon the close of Sir Thomas Brisbane's Government, that Lord Bathurst authorised General Darling to commence building a new one immediately on his arrival here in 1826. This permission, as your Lordship is aware, was not acted upon; and since that period nothing has been done for the improvement, and but little towards the repair of the old house, and it has now reached that state of deterioration in which it would be a waste of money to expend any large sum for its preservation.

Having then ascertained the inexpediency of attempting to make the present Government House a suitable habitation for a Governor, who is to have but one official residence, I considered in what way a new house might be built with least expense to the public. I directed the Surveyor General, on returning from his expedition to the north-west, to consider and report upon the subject; and, after several conferences, and frequent examinations of the ground, he has prepared the accompanying Report, in the main points of which I entirely concur. I approve of the site he has chosen for the new house, and of the surrender of the ground required for the new quay and buildings. Perhaps that part of his plan which contemplates the improvement of the town by the sacrifice of such good houses as those of the Chief Justice and Colonial Secretary may be for the present abandoned.

The sum which the Surveyor General calculates the sale of the water-side allotments in the Government Gardens would produce is not taken too high at £15,400, if the allotments be sold at such intervals of time as the apparent demand for such situations shall seem to require. For this sum it is presumed the construction of a moderate house, and the enclosure, by a brick wall, of the garden and grounds (an indispensable protection to a residence situated almost in the heart of such a town as Sydney), may be accomplished. Rooms in the present stables (which, your Lordship may be aware, were built by Governor Macquarie on a handsome scale) will accommodate several servants, and the principal building, though it must necessarily contain some large rooms for company, need not have many sleeping apartments. I could have wished to have transmitted a plan and estimate of such a building as appeared to me suitable; but I am obliged to confess that there is no person here in whose professional experience as an architect I can place any reliance with reference to a work of the kind. I have, therefore, stated the number of rooms of which I think the house should consist, and transmit a drawing of the stables near which it is proposed to place the new house, in order that the professional person in London, from whom I

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper,
printed 10th
August,
1847

—continued.

No. 32-536.

[Enclosure referred to.]

(Copy.)

Report on the accompanying plan of the site proposed for a New Government House at Sydney, shewing also a division of part of the eastern shore of the Cove into allotments for sale.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper,
printed
10th August,
1847
—continued.

1. The site proposed is a spot immediately adjacent to the stables, which, consisting of a mass of modern gothic building, may be so grouped with a Government House in the same style of architecture as to contribute much to the general appearance of the whole. In the accompanying view
10 of the stables this site is shewn on the right of that building.

2. It is proposed to cut off from the Government Domain the site of the present house, and to lay off the lower ground on the shore of the harbour into water-side allotments for wharfs and warehouses, for which the sites required by the merchants are very scarce in Sydney, and the water being deeper close in shore there than at any other part, the value of this to the merchants is obvious; and whereas the harbour would be thus unquestionably much improved, for the purposes of trade and commerce, the proceeds of the sale would be more than sufficient for the accomplishment of the other contemplated improvements of this part of Sydney.

20 3. The several streets immediately adjoining the present Government House, are opposed to each other at acute angles, in a most inconvenient and unsightly manner; it will be seen by the accompanying plan that by the removal of the present house, and the several buildings occupied by the Chief Justice and Colonial Secretary (Nos. 1, 2, and 3), and opening a semi-circular space, there would be no obstruction between each of these streets and the new Government House, but that on the contrary, these streets would then form radii, diverging from the new gate towards the different parts of the town.

4. The prolongation of the line of buildings in Macquarie-street, gives
30 the line of an extensive quay precisely in the direction of the shelving rock on which the quay may be made without much building, and an easy and nearly direct access to this quay may be made from Pitt-street, which affords the least inclined approach to the water from the interior streets. This it is proposed to accomplish by a slight modification of Tank-street, and the western side thereof being Crown land, it will probably be possible to compensate Mr. Phillips, whose property on the opposite side would be interfered with, by an adequate portion of ground. It will be seen by the map that thus Pitt-street would at once be connected with Tank-street and O'Connell-street, and would become in fact an equally important
40 and much better communication with the eastern side of the cove, than George-street now forms with the western, the access to the water being left open and public along the whole length of the quay.

5. The division of the lumber yard into building allotments, affords the means of opening Bridge-street into an elegant and commodious line of communication between these two important streets, by the introduction of an

RECORD.

No. 13.
Informant's
Exhibit F.
Copy
Parliamentary Paper,
printed 10th
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—continued.

uniform plan of building with a Colonnade, and as Mr. Manning is disposed to adopt a similar plan in building on the opposite side of that street, even by the sacrifice of part of what he has done, I consider it practicable, as it would also much improve the access to Government House from George-street, to raise the lower part of Bridge-street to a level, sufficiently high to admit of the formation of a Colonnade uninterrupted by breaks, which from the lowness of the present surface of the bridge would be otherwise unavoidable.

6. The communication from Macquarie-street by the semicircular sweep, past the gate of Government House uninterruptedly round towards the quay¹⁰ and Bridge-street, would complete these alterations, which are proposed in connection with the other arrangements, chiefly with the view to rectify in some measure a very ill-laid-out part of the town.

(Signed) T. L. MITCHELL,
Surveyor General.

Surveyor General's Office,
11th September, 1832.

Estimated value of the building allotments in the accompanying plan, if sold at once.

George-street—4 plots, 22 feet front, by a depth of 60 feet (at £220)	£880 20
Bridge-street—11 plots, 22 feet front, by average depth of 90 feet (at £176)	£1,936
3 plots, 25 feet front, by average depth of 100 feet (at £200)	£600
	<hr/>
	£3,416
	<hr/>

New-street fronting Domain, and back frontage to street by waterside for warehouses.

20 plots, 50 feet by depth 150 feet (£500)	£10,000
18 plots, with back foot entrance to path by waterside, 50 feet by 120 feet (£300)	£5,400 30
	<hr/>
	£15,400
	<hr/>

The above is the lowest estimate laid out, and I am of opinion that if all the plots laid out in George and Bridge-streets were sold by auction now, they would average half as much more.

(Signed) T. L. M.

Copy of Despatch from the Earl of Aberdeen to Sir Richard Bourke.

(No. 33.)

Downing-street,
25th March, 1835.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper,
printed 10th
August,
1847
—continued.

Sir,

I have the honour to acknowledge the receipt of your Despatch, No. 118, of the 2nd of November, 1832, reporting upon the state of the present Government House at Sydney, and submitting the propriety of erecting there
10 another residence for the Governor. No time was lost by my predecessor in directing the Colonial Agent, according to your suggestion, to obtain, from an eminent Architect in London, plans and estimates for a suitable building; these appear to have been sent to the Colony some time since, but, in consequence of the Colonial Agent having omitted to report that circumstance to this department at the time, the necessary reference of the subject to the Treasury was not made until November last, and a considerable delay has thereby been occasioned in answering your communication.

His Majesty's Government would have been very reluctant (notwithstanding the authority which appears to have been given to your predecessor,
20 so far back as the year 1826) to sanction the erection, at the present moment, of a new house for the accommodation of the Governor, had the old house been in a tolerably habitable state. The very decided opinion, however, which you have expressed as to the impolicy of expending any large sum in the repair of the present building, coupled with the expectation held out by you that sufficient funds can be raised by selling a portion of the Government Domain to meet the expense of a new house, has induced His Majesty's Government to consent to the measure, as you will perceive by the enclosed copy of a letter from the Treasury. You are, accordingly,
30 at liberty to dispose of the land in question, and to apply the proceeds to this service, but you must distinctly understand, that the total expense of building the house, and of fencing in the portion of the Domain immediately adjoining it, is not, under any circumstances, to exceed the sum of £12,000 in the whole.

There will be no objection to allow the Governor of New South Wales to retain, for his own use, the land called "Grose Farm," but all the expenses attending its management, as well as of keeping in repair the various buildings attached to it, must be defrayed out of his own funds.

As soon as the House at Sydney is fit for your reception, that at Parramatta which you now occupy must be given up, and I have to request that
40 you will inform me in what way you consider that it can be disposed of most advantageously to the public.

Your Despatch does not afford sufficient information to enable me to judge how far it may be advisable to adopt the suggestions of the Surveyor General for improving the streets adjacent to the Government House;

RECORD.

No 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper, printed 10th
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1847
—continued.

but I agree with you in thinking that that part of his plan which involves the sacrifice of the good houses occupied by the Colonial Secretary and the Chief Justice, should, for the present, be abandoned.

I am, &c.,

(Signed) ABERDEEN.

Major-General Sir Richard Bourke,
&c., &c., &c.

(Enclosure to the foregoing.)

(Copy.)

Treasury Chambers,
30th January, 1835. 10

Sir,

Having laid before the Lords Commissioners of H.M. Treasury your letter, dated 26th November last, enclosing copy of a Despatch from Major-General Bourke, submitting a plan for the erection of a new residence for the Governor, at Sydney, in lieu of the one now existing, I have it in command to request you will acquaint the Secretary of State, that adverting to the authority given in the year 1826 for rebuilding the Government House at Sydney, and to the more recent transmission, with the sanction of the Secretary of State, of plans and specifications for the new building, and likewise to the very dilapidated state in which the present house is reported 20 to be, my Lords cannot withhold their assent to the proposed arrangement for the erection of a new residence for the Governor.

My Lords are also of opinion that the land revenue derived from the sale of that portion of the Government Demesne it is intended to dispose of may very properly be appropriated to defray the expense of this work; and as they apprehend that the value of the land in question will not have deteriorated since General Bourke's estimate was formed, they trust that the proceeds upon which he has calculated will be fully realized, and that the whole charge to be incurred may be provided for from this source.

At the same time, my Lords conceive that the restriction by the Secretary 30 of State of the estimate for the house to the sum of twelve thousand pounds has been a very necessary precaution, and they would request the Governor may be enjoined to take care that the whole expense of the building does not exceed this estimate.

My Lords cannot, however, give any sanction for the very heavy charge it is proposed to incur for enclosing the grounds of the new residence without much more detailed information as to the extent and situation of the area to be enclosed, and the necessity that may exist for comprising the whole of it within the kind of enclosure contemplated by the estimate annexed to Governor Bourke's Despatch. You will also observe to the Secretary of 40 State that it might have been desirable, before the plans and estimates procured by the Agent were forwarded to the Colony, that my Lords should have had the opportunity of submitting them for the revision of the Officers of the Ordnance Department, which they conceive might be made available as a department of useful reference in regard to all works of any magnitude to be executed abroad.

As my Lords have not received the plan to which the Report of the Surveyor General refers, they are not enabled to form any opinion with respect to the improvement proposed by that Report in laying out the streets adjacent to the Government House; but they quite concur in the suggestion of the Governor, that the part of the plan which contemplates the sacrifice of good houses, occupied by the Chief Justice and the Colonial Secretary, should, for the present, not be acted upon.

It only remains for my Lords to express their decided opinion, with reference to the concluding part of General Bourke's Despatch, that more than one residence ought not to be provided for the Governor of New South Wales at the public expense, and that whenever a suitable residence at Sydney can be prepared for him, the Government House at Parramatta should be disposed of in such manner as may be most advantageous for the public. My Lords would, however, wish to be favoured with the opinion of the Secretary of State in regard to the proposition that the Governor should be allowed to retain the use of the land called "Grose Farm," either on the terms mentioned by General Bourke, or on further condition that the farm buildings should likewise be kept in repair at the expense of the occupant.

20

I am, &c.,
(Signed) J. STEWART.

R. W. Hay, Esquire,
&c., &c., &c.

(4)

Copy of Despatch from Sir Richard Bourke to Lord Glenelg.

(No. 117.)

Government House, Sydney,
3rd November, 1836.

My Lord,

I have the honour to acknowledge the receipt of your Lordship's Despatch, of the 25th March, 1835, authorizing the erection of another residence for the Governor of this Colony, the house which now stands in Sydney, being hardly habitable. Thinking it likely that, in the course of this or the next year, there might arrive such a supply of workmen as would enable me to proceed with the building, I appointed a Committee of the Legislative Council, at the last Session, to examine and report upon the plan and estimate; I have the honor to transmit their Report with the Minutes of Evidence.

Your Lordship will perceive, that the sum required for the Government House is much larger than that to which the expenditure is limited by your Lordship's Despatch; and I should add, that the enclosing wall or paling will require another considerable sum. The wages of labour have risen considerably here within the last year, and some of the materials for building are much enhanced in price since the year 1832, when the first communication on the subject was made to the Secretary of State; on the other hand,

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper, printed
10th August
1847
—continued.

RECORD.
No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper,
printed
10th August,
1847
—continued.

the value of land, and especially in or near Sydney, has so much increased, as to ensure the perception of a much larger sum for that which the Government is to give up, than will be required for the erection of the proposed buildings, and the completion of the other contemplated improvements; the general feeling also is in favour of the erection of a building which shall be an ornament to the shores of Port Jackson, and create a favourable impression of the importance and resources of the Colony. Upon the whole, therefore, I would respectfully recommend to your Lordship to accede to the proposal of the Committee.

The Council, at the last Session, voted the sum of £10,000 towards the 10 erection of the New Government House, for the year 1837; so great an outlay is not likely to take place, within the year, for want of workmen. Before its expiration, I hope to be honored with your Lordship's commands on the subject.

I have, &c.,
(Signed) RICHD. BOURKE.

The Right Honourable Lord Glenelg.

(5)

Copy of Despatch from Lord Glenelg to Sir R. Bourke.

Downing Street, 20
3rd October, 1837.

Sir,

I have the honor to acquaint you, with reference to your Despatch, No. 117, of the 3rd November last, that Her Majesty's Government have sanctioned the Estimates submitted by a Committee of the Legislative Council of your Government, for the erection of a new Government House at Sydney.

I enclose the copy of a correspondence between the Board of Treasury and this Department on the subject. Your particular attention should be directed to the observation of the Lords Commissioners, that as the Committee seem to have paid great attention to the details of the arrangements 30 relating to this work, their Lordships presume that the efficiency of the amended Estimate may be relied on, and they are willing to confide in this respect to the vigilance of the Council.

You will not be at liberty to sanction any further alteration in the plans of the building than those already recommended by the Committee of the Legislative Council of your Government.

I have, &c.,
(Signed) GLENELG.

Sir Richard Bourke, K.C.B.,
&c., &c., &c.

40

[Enclosures referred to.]

(No. 1.)

Downing-street,
27th July, 1837.

Sir,

Referring to former correspondence relative to the erection of a New Government House in New South Wales, I am directed by Lord Glenelg to transmit to you, for the consideration of the Lords Commissioners of Her Majesty's Treasury, the enclosed copy of a Despatch from the Governor of
 10 New South Wales, with a Report of a Committee of the Legislative Council, and Minutes of the Evidence taken before that Committee, on the plan sent out from this country by the Colonial Agent for the proposed building.

The Lords Commissioners will, probably, receive with some hesitation a proposal that such a sum as £25,000 should be laid out in the erection of a residence for the Governor of the Colony, especially as it is not proposed that the building should be undertaken on the credit of any contractor who has pledged himself for the completion of it, even at that price, but in reliance on estimates which may of course prove fallacious.

Except the magnitude of the proposed expenditure, there is not, as
 20 Lord Glenelg apprehends, any just ground for objection to the present plan of the undertaking; that plan, in every essential respect, appears to correspond with that which was sent out to the Governor.

The necessity for a New Government House is indisputable; the resources of the Colony are abundant; the possibility of accomplishing the work with any material reduction of the estimated outlay seems very doubtful; and considering the growing importance of the Colony, the great embellishment which the capital would derive from such an edifice, and the necessity of maintaining in so remote a dependency of the Empire some
 30 of the visible state and splendour which should belong to Her Majesty's Representative, Lord Glenelg is, on the whole, of opinion that there are sufficient grounds to justify Her Majesty's Government in giving their sanction to the proposed expenditure.

I have, &c.,

(Signed) JAS. STEPHEN.

A. Y. Spearman, Esq.
&c., &c., &c.

(No. 2.)

Treasury Chambers,
31st August, 1837.

40 Sir,

The Lords Commissioners of Her Majesty's Treasury having had under their consideration the copy of a Despatch from the Governor of New South Wales, concerning the report of a Committee of the Legislative Council, with Minutes of the Evidence taken before it, on the plan sent

RECORD.

No. 13.
 Informant's
 Exhibit F.,
 Copy
 Parliamentary Paper,
 printed 10th
 August,
 1847
 —continued.

RECORD.
 No. 13.
 Informant's
 Exhibit F.,
 Copy
 Parliamentary
 Paper,
 printed 10th
 August,
 1847
 —continued.

from this country by the Colonial Agent for the erection of a new Government House at Sydney, which was transmitted to their Lordships in your letter of the 27th ultimo, signifying the recommendation of Lord Glenelg, that the proposal of the Committee should be acquiesced in for the reasons set forth in your said letter, notwithstanding the very great expense which would be thereby incurred. I have received the commands of the Lords Commissioners of Her Majesty's Treasury, to request you will state to Lord Glenelg, that as the alterations in the plan for the Government House at Sydney do not appear to be open to any objection, and as the increase in the amount of the Estimate for the building would appear to be principally 10 occasioned by the differences between the prices and rates of workmanship at which the calculations of the expense had been made in this country and those at which the work can be executed in the Colony, their Lordships, adverting to the circumstances to which reference is made in your letter, do not deem it necessary to withhold their sanction to the adoption of the recommendation of the Committee of the Colonial Council.

As the Committee seems to have paid great attention to the details of the arrangements relating to this work, their Lordships presume that the sufficiency of the amended Estimate may be relied upon, and they are willing to confide in this respect in the vigilance of the Council; but they conceive 20 it will be advisable that the Governor should be informed that he is not at liberty to sanction any further alterations in the plans for the building, than those already recommended by the Committee of the Legislative Council of the Colony.

I am, &c.,

(Signed) A. Y. SPEARMAN.

James Stephen, Esq.,
 &c., &c., &c.

(6)

Copy of Despatch from Sir George Gipps to Lord Stanley.

30

(No. 138.)

Government House, Sydney,
 9th July, 1844.

My Lord,

I have the honor to forward herewith a Bill, passed on the 14th ultimo, by the Legislative Council of this Colony, fixing the salary of any future Governor of this Colony at the sum of £4,000 per annum, in lieu of £5,000, at which latter sum it is fixed by Schedule A, appended to the Act for the Government of New South Wales, 5th and 6th Vict., ch. 76.

This Bill has been passed in virtue of the powers given to the Council by the 31st and 38th clauses of the said Act of Parliament; and is reserved for 40 Her Majesty's pleasure, in consequence of the express enactment contained in the first mentioned of these clauses.

In forwarding this Bill to your Lordship, I think it right to abstain from making any comment on it, though I feel it my duty to inform your Lordship, that the advantages hitherto enjoyed by the Governors of New South Wales were reduced, during the Session of 1843, by the refusal of the Council to vote any sum for the maintenance of the Government Domain at Parramatta, for which provision was made in each of the preceding years, since the establishment of the former Legislative Council, at the average rate of about £700 per annum; to the discontinuance of this allowance I did not in any way oppose myself.

10

I have, &c.,

(Signed) GEORGE GIPPS.

The Right Honorable Lord Stanley,
&c., &c., &c.

RECORD.
No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper,
printed 10th
August,
1847
--continued.

(7)

Copy of Despatch from Sir George Gipps to Lord Stanley.

(Separate.)

Government House, Sydney,

15th June, 1845.

My Lord,

20

Having in my Despatch of this day's date, No. 103, expressed my opinion on the proposed reduction in the Governor's salary, in as far as the measure may be regarded a public or political one, I feel that it may be right for me to add a few observations on the same subject, in reference to the Governor's personal interests or convenience.

30

Having held the Government of New South Wales upwards of seven years, with a salary of £5,000 per annum, I have nothing to complain of for myself; but it seems to me only right it should be borne in mind, that no office under the Crown is of more uncertain tenure than that of a Colonial Governor; that he may hold his Government only a few months, and that in the generality of cases he is exposed to very considerable expense before he enters upon his salary. In my own case I expended £2,500 in the necessary expenses of my outfit for, and passage to New South Wales, before I received a shilling from the Colony.

I have further to submit to your Lordship, that I am now on the point of moving into the New Government House, which was commenced in the time of my predecessor; and that the occupation of this House must of necessity increase greatly the expenses of the Governor.

40

I further think this a proper occasion to bring under your Lordship's consideration the manner in which future Governors will be affected by the loss of the country house and Domain of Parramatta. By a Despatch from Lord Goderich, dated so long ago as the 29th September, 1831, it was amongst other things ordered, that the house at Parramatta should be given up

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper,
printed 10th
August,
1847

—continued.

whenever the Governor might be provided with a sufficient residence in Sydney; and the same order was repeated in a Despatch from Lord Aberdeen, of the 25th March, 1835. In obedience to these decisions, I shall make arrangements for relinquishing the house and grounds at Parramatta on the 1st January next; but I propose, in the first instance, to let them (by public competition) for one year only, by which not only will the value of them be better ascertained, but the question as to the ultimate disposal of them be kept open.

In Lord Aberdeen's Despatch, already mentioned, permission was given to the Governor to retain for his own use the land called Grose Farm; but this, I think, must now be considered out of the question, for not only is Grose Farm (consisting of one hundred and ninety-four acres), from its contiguity to Sydney, more valuable than Parramatta, but streets are already about to be laid out through part of it, and the whole will, in the course of a few years, be comprehended within the Town of Sydney; it is now divided into grazing paddocks, and let in eight lots to the butchers of Sydney; the rent derived from it being carried to the public account.

Parramatta was of considerable value to the Governor, so long as sums were annually voted by the Legislative Council for the support of it; but in my Despatch, No. 138, of the 9th July, 1844, I stated that the present Council has voted no money towards keeping it up; and I consider that it has therefore, since the 1st January, 1844, ceased in a pecuniary point of view to be of any great advantage to the Governor, though it still supplies him with farm produce and fuel.

Whilst kept up at the expense of the Government, I considered Parramatta to be worth to the Governor from £500 to £700 a year; I mean that I considered it equal to what an addition to his salary of that amount would have been. Since the 1st January, 1844, it has been of comparatively little value; and the expense of keeping it up would necessarily every year increase. If retained by the Governor it would, however, afford to him, as it hitherto has done, the means of obtaining occasional retirement with change of air and scene, which I have no hesitation in saying is absolutely necessary for his health and comfort, and not less so for the transaction of public business requiring careful thought and deliberation. The occasional residence of the Governor at Parramatta, I will also add without fear of contradiction, has during the last seven years not been unattended with public benefit of another nature; for it has enabled him to give the advantage of his frequent inspection to the public establishments situated at that place, and particularly to the Female Factory and the Orphan Schools.

Though, therefore, I do not feel that I can (and especially under existing circumstances) retain Parramatta for my own use beyond the 1st January next, I consider it due to the person who may be my successor, to urge upon your Lordship the re-consideration of the question, whether the Governor of New South Wales should not have the means afforded him of occasionally escaping from the turmoil of a residence in Sydney.

In concluding this Despatch I beg leave to quote the following passage from one on the same subject, written by Sir Richard Bourke between twelve and thirteen years ago:—

"I have made this proposal" (relating to Grose Farm) "under the supposition that your Lordship may not choose to depart from an intention lately expressed, of depriving the Governor of a country house at Parramatta. Were your Lordship fully acquainted with the endless labour and detail, and the personal importunity attending the administration of this Government, and with the expense consequent upon a constant residence in Sydney, I am convinced you would not hesitate to allow the Governor the partial rest from fatigue, and needful economy of money, which an occasional retirement to the country affords him."

RECORD.
No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper,
printed 10th
August,
1847
—continued.

10

I have, &c.,

(Signed) GEORGE GIPPS.

The Right Honorable Lord Stanley,
&c., &c., &c.,

(8)

Copy of Despatch from Lord Stanley to Sir George Gipps.

(No. 130.)

Downing Street,

9th November, 1845.

Sir,

I have received your Despatch marked "Separate," of the 15th June last, in which, in connection with the question of the proposed reduction, by the Legislative Council, of the salary of the Governor of New South Wales, and adverting to the advantages attached to that office, you refer to the relinquishment of the Government House at Parramatta, which it had previously been directed should be no longer retained for the use of the Governor, when a sufficient residence should have been provided for him at Sydney.

The circumstances which you have pointed out in proof of the advantages which would result not only to the Governor personally, but also to the public, from the continued appropriation of that house to its present purpose, appear to me sufficiently to justify that measure.

I shall not, therefore, call on your successor in office, or yourself, to relinquish the occupation of the house, but no portion of the expense of maintaining that establishment must fall on the public, nor may any part of the property called "Grose Farm" be retained for the Governor's use.

I have, &c.,

Governor Sir George Gipps,
&c., &c., &c.

(Signed) STANLEY.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper, printed 10th
August,
1847
—continued.

Copy of Despatch from Sir George Gipps to Lord Stanley.

(Separate.)

Government House, Sydney,
21st January, 1846.

My Lord,

In my Despatch marked "Separate," of the 15th June, 1845, I stated my intention of giving up the Government House at Parramatta, on the 1st January, in the present year.

I now do myself the honor to enclose a copy of a notice which was published by my order, in the "Government Gazette," intimating that Tenders¹⁰ would be received, on the 15th November, 1845, from persons willing to take on lease, the house and land, in two lots, for the period either of one or three years from 1st January, 1846.

I also enclose a copy of the Report made by the usual Board, which was formed on the 15th November, to open the Tenders.

By this Report your Lordship will perceive, that one Tender only was received for the land, and no Tender for the lot which contained the house.

The person who tendered for the land was duly put into possession of it on the 1st January; the stock which I had on the ground, having been previously sold by auction, on the 30th December.²⁰

The Government House is now untenanted, and I propose that it shall remain so, until an answer may be received from your Lordship to my Despatch of the 15th June last; and though I have not given up possession of it, I do not propose again to fix my abode in it, during the short period which I may remain in the Colony.

I have, &c.

(Signed) GEORGE GIPPS.

The Right Honorable Lord Stanley,
&c., &c., &c.

(10)

30

Copy of Despatch from the Right Honourable W. E. Gladstone to Sir Charles A. Fitz Roy.

(No. 40.)

Downing Street,
14th June, 1846.

Sir,

I have received your predecessor's Despatch, marked "Separate," of the 21st January last, on the subject of the disposal of the Government House and grounds at Parramatta, and in reply I have to refer you to Lord Stanley's Despatch, No. 130, of the 9th of November, 1845, as showing the terms on which it was permitted that the house should be retained for the Governor's⁴⁰ use.

I have, &c.,

(Signed) W. E. GLADSTONE.

Governor Sir C. A. Fitz Roy,
&c., &c., &c.

Informants' Exhibit F.

Copy Parliamentary Paper ordered by the Legislative Assembly of New South Wales to be printed 1st August 1905, relating to the residence of the Governor General in New South Wales appearing as Exhibit F to the affidavit of Thomas Henley.

1905.

Legislative Assembly.

New South Wales.

The residence of the Governor-General in New South Wales.

10

(Papers Relating to.)

Ordered by the Legislative Assembly to be printed, 1 August, 1905.

The Secretary of State for the Colonies to The Governor of New South Wales.

Downing Street, 10 August, 1899.

My Lord,

I have the honor to request that you will call the attention of your Ministers to a question arising out of Clause 125 of the Bill to constitute the Commonwealth of Australia, as amended by the Federal Convention at Melbourne, providing that "The Parliament shall sit at Melbourne until it meets at the seat of Government."

20 2. I presume that during this period the Governor-General of Australia will mainly reside at Melbourne; and, unless it is intended that he should hold *pro tempore* a Commission as Governor of Victoria, I shall be glad to learn the views of your Ministers as to the provision which should be made for his residence.

3. Similar despatches have been addressed to the Governors of Victoria, South Australia, and Tasmania.

I have, &c.,

J. CHAMBERLAIN.

The Honorable the Premier.—Beauchamp, 15/9/99. Copy of reply 30 attached.—C.E.F.R., 25/9/99. Records.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating
to the
residence of
the Governor
General in
New South
Wales,
printed 1st
August, 1905

RECORD.

The Premier of Tasmania to the Premier of New South Wales.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to the
residence of
the
Governor-
General in
New South
Wales,
printed 1st
August,
1905
—continued.

Premier's Office, Hobart, 19 September, 1899.

Sir,

Referring to the Secretary of State's confidential despatch, dated 10th August last, upon the subject of the residence of the Governor-General, a copy of which I understand has already reached you, I shall be glad to learn what reply you propose to give to the same.

I have, &c.,

E. BRADDON.

Mr. Robberds.—Ask the Honorable the Premier if we shall send a copy 10 of his despatch to His Excellency the Governor on the subject to the Hon. the Premier of Tasmania.—F.K., 25/9/99. Urgent. Telegram to Mr. Lyne.—C.E.F.R., 26/9/99. Records.

Minute for His Excellency the Governor.

The Treasury, New South Wales, Sydney, 25 September, 1899.

The Prime Minister presents his humble duty to His Excellency the Governor, and begs leave to state, with reference to Colonial Office despatch of 10th ultime, relative to the question of the residence of the future Governor-General of the Commonwealth of Australia, that Clause 125 of the Commonwealth of Australia Constitution Act does not make any provision that the 20 Governor-General should reside in Melbourne, but simply provides that Parliament shall meet in Melbourne until it meets at the seat of Government.

It is therefore suggested that the Governor-General be received in the first instance in New South Wales, and during the Session of the Federal Parliament reside mainly in Melbourne. This Government will make ample provision for his residence in Sydney at other times.

WILLIAM JOHN LYNE.

Despatch in terms of above Minute to Secretary of State for the Colonies. —27/9/99. The Honorable the Prime Minister.—B., 27/9/99. Records.

Telegram from The Premier of New South Wales to The Under Secretary 30 for Finance and Trade.

Tumberumba, 27 September, 1899.

Send confidential copy of my reply to Premier, Tasmania, *re* Governor-General.

Mr. Robberds.—F.K., 28/9/99. Copy of Minute to His Excellency the Governor, of 25/9/99, sent to Sir Ed. Braddon.—C.E.F.R., 28/9/99. Records.

Telegram from The Premier of Queensland to The Premier of New South Wales.

Brisbane, 19 December, 1899.

Re Mr. Chamberlain's despatch of tenth August relative to question of provision for residence of Governor-General under the Commonwealth. Kindly acquaint me with the views of your Government on the subject.

Papers, please.—F.K., 21/12/99. Registrar. Herewith.—C.E.F.R. The Under Secretary. Submitted.—F.K., 22/12/99. Will communicate next week.—W.J.L. Wire sent, 30.—C.E.F.R.

10 Telegram to The Premier of Victoria from The Premier of New South Wales. 9 March, 1900.

Re Barton's confidential cable. When Parliament not in session strongly urge that Governor-General's headquarters should be in Mother Colony, which is by Commonwealth Bill to be the seat of Government; of course presuming he will visit other Colonies too. Trust you will concur. Do not know of any good reason why delegates should not return as desired by them.

(Similar telegram to the Premier of South Australia, 10th March, 1900.)

Minute for His Excellency the Governor.

The Treasury, Sydney, 28 March, 1900.

20 Mr. Lyne will be glad if His Excellency the Governor will be good enough to cause the following message to be sent to the Right Honorable the Secretary of State for the Colonies:—

30 “Confidential. Referring to question of permanent residence for Governor-General of Federated Australia this Government offers present Government House for such purpose, and is now arranging for another residence for future State Governor. Following are some of reasons urged for such course:—New South Wales is Mother Colony of Australia, and Captain Cook first landed near Sydney, making it most fitting that Governor-General should do likewise. The Federal idea originated in New South Wales. The Colony has the largest population, and is the wealthiest. Sydney is headquarters of Naval Station. Government House is beautifully situated and very convenient. Clause 125 provides seat of Government shall be in New South Wales. Would suggest Governor-General should land at Sydney, then proceed Melbourne to reside during first sessions of Parliament, returning Sydney afterwards, and that from commencement of the Commonwealth the recognised ‘seat of Government’ should be in this Colony, as provided in Federal Bill.”

WILLIAM JOHN LYNE.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August, 1905
—continued.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper relating to the
residence of the Governor-
General in New South
Wales,
printed 1st
August, 1905
—continuel.

Cable and despatch to Secretary of State, 29/3/00. The Hon. the Premier.—B., 29/3/00. Records.

Cablegram from the Premier of New South Wales to Mr. Barton.

29 March, 1900.

Following telegraph was despatched to Secretary of State for Colonies yesterday :—“Confidential. Referring to permanent residence Governor-General, this Government offers present Government House for the purpose. Arrangement is being made for another residence future State Governor. Following reasons urged to adopt this : New South Wales is Mother Colony ; Captain Cook first landed near Sydney, most fitting Governor-General do likewise. Federal idea originated New South Wales. This Colony has largest population and wealthiest. Sydney headquarters Naval Station. Government House beautifully situated. Clause 125 provides seat of Government in New South Wales. I would suggest that Governor-General should land at Sydney, proceed Melbourne, reside during first sessions Parliament, returning Sydney afterwards, and that from the commencement of the Commonwealth recognised seat of Government be in New South Wales, as provided Commonwealth of Australia Bill. Call Anderson, Colonial Office, dealing Australian interest ; urge strongly, press claim.”

20

Reply from Mr. Barton to The Premier of New South Wales.

29 March, 1900.

I am willing to act in accordance with instructions contained in your telegram of to-day. Still I venture to suggest required representation be entrusted Agent-General, or alternatively may I inform delegates my action so as to preserve harmony. Absolutely necessary success of mission Commonwealth of Australia Bill. Please telegraph reply as soon as possible.

Cablegram from The Premier of New South Wales to Mr. Barton.

30 March, 1900.

I have communicated with you because acting in Federation question. My telegram of yesterday is private and confidential. Ask Agent-General take action mentioned instead you.

Cablegram from Agent-General to The Premier of New South Wales.

11 April, 1900.

In reply to your telegram about Governor-General residence. Had an interview with the Secretary of State for the Colonies yesterday. Strongly pressed your views and other grounds supporting them. Secretary of State for the Colonies will fully consider matter.

Cablegram from Mr. Barton to The Premier of New South Wales.

London, 9 May, 1900.

Code book being unavailable, sending message McLean.

Cablegram from Mr. Barton (per Premier of Victoria) to The Premier of New South Wales.

9 May, 1900.

At Conference to-day, Secretary of State for Colonies wholly unsatisfactory as to clause seventy-four; delegates expressed supreme disappointment except Dickson, who claimed authority from his Government to support full
10 appeal to Privy Council and congratulated Secretary of State for Colonies on his decision. Bill introduced 14th May, embodying amendments only strongest representations by Premiers likely to be considered. Secretary of State for Colonies desires our individual opinions as to residence of Governor-General when Federal Parliament not in session, and status of Provincial Governors which we can refer to you. Propose return as soon as possible as protest against amendment, unless you reason why we should remain to see Bill passed. Secretary of State for Colonies desires strictest secrecy till after Bill introduced.

20 Telegram to The Premiers of Queensland and Tasmania from the Premier of New South Wales.

9 May, 1900.

Re Barton's confidential cable. I hope you will agree that Governor-General's head-quarters when Parliament not in session should be in Mother Colony, which is by the Bill ultimately made the seat of Government. I presume, of course, that he will visit periodically the other Colonies.

Telegram from The Premier of South Australia to The Premier of New South Wales.

Adelaide, 10 May, 1900.

30 If delegates consider that their further stay in England will be unproductive of good, we think they may well leave but not in such a way as to look like pique. Question of status of State Governors should be dealt with through Agent-General. We think that when Federal Parliament not in session, head-quarters of Governor-General should be in New South Wales with provision for periodical residence in the other Colonies.

Mr. Robberds—Has this been acknowledged?—F.K., 15/5/00. Acknowledgement perhaps unnecessary.—C.E.F.R., 17/5/00. The Under Secretary. Records.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the
residence of
the Governor-
General in
New South
Wales,
printed 1st
August,
1905
—continued.

RECORD.

Telegram from The Premier of Queensland to The Premier of New South
Wales.

Brisbane, 10 May, 1900.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August,
1905,
—continued.

I concur with you that Governor-General's head-quarters when Parliament not in session should be in the Mother Colony, and have instructed our delegate accordingly.

Acknowledged.—F.K., 15/5/00. Mr. Robberds. Several telegraphic communications have passed between the Colonies on this subject, and, perhaps, under the circumstances, acknowledgement is not necessary.—C.E.F.R., 17/5/00. The Under Secretary. Records. 10

Telegram from The Premier of Victoria to The Premier of New South Wales.

Melbourne, 12 May, 1900.

I have telegraphed to Mr. Barton to-day as follows:—Referring to your telegram of 8th May, majority of Premiers think nothing more can be done as to amendment of Bill, but that delegates should not leave until more known as to ultimate fate of measure. Majority agree as to residence of Governor-General in New South Wales during recess, but consider that he should visit other Colonies. Status of Provincial Governors might be deferred for the present.

Cablegram from Mr. Barton to The Premier of New South Wales. 20

15 May, 1900.

Re latter part McLean's last cable Governor-General, Provincial Governors, delegates would suggest direct communication by Premier with Secretary of State for the Colonies.

Telegrams to The Premiers of Victoria, Queensland, South Australia, West
Australia, and Tasmania, from The Premier of New South Wales.

16 May, 1900.

Am in receipt of following cable from Mr. Barton:—" *Re* latter portion "McLean's last cable Governor-General, Provincial Governors, delegates " would suggest direct communication by Premiers with Secretary of State " for the Colonies. (Cablegram ends.) I propose carrying out the suggestion of the delegates. 30

Telegram from the Premier of Victoria to The Premier of New South Wales.

Melbourne, 17 May, 1900.

I see no objection to your communicating with Secretary of State, as proposed by Barton, in terms of last part of my telegram to Barton of 12th May, as to residence of Governor-General and status of Provincial Governors, you are, therefore, authorised to do so on behalf of this Colony.

The Hon. The Premier, Milson's Point.—U.S., Finance and Trade.

RECORD.

Cablegram to Agent-General from The Premier of New South Wales.

5 July, 1900.

Referring to your telegram of 11th April, and referring to my telegrams of 29th March and 30th March to Barton, Premier of Victoria, cabled Barton 12th May, majority Premiers agree residence Governor-General in New South Wales, visiting other Colonies during the recess. Premiers of Queensland, South Australia, Tasmania, have agreed this. Obtain an interview with Secretary of State for the Colonies, strongly urge our claim. If you possibly can, obtain assistance Lord Jersey. This is very urgent. Impression this recommendation is likely to be ignored. You must well know what would be the effect on people in New South Wales.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the
residence of
the
Governor-
General in
New South
Wales,
printed 1st
August,
1903
—continued.

Cablegram from Agent-General to the Premier of New South Wales.

8 July, 1900.

Had an interview Lord Jersey, and acting with his concurrence, was about writing Secretary of State for Colonies, assuming that Premier of Victoria telegram 12th May, would be adhered to. Unfortunately, on reading cable find as follows:—Majority agree as to residence of Governor in New South Wales during the recess, but consider that he should visit other colonies (quotation ends), which bears different meaning to your cipher telegram of 5th instant. Await further instructions from you. Secretary of State for Colonies absent.

Cablegram to Agent-General from The Premier of New South Wales.

9 July, 1900.

Referring to your telegram of 7th instant, urge strongly that Governor-General disembark at Sydney, be guest Governor New South Wales, then proceed Melbourne. After session permanent residence at Sydney, visiting occasionally other Colonies. I am arranging for residence State Governor. See my despatch of 27th September, and my telegram 29th March, Secretary of State for Colonies.

Cablegram from Agent-General to The Premier of New South Wales.

9 July, 1900.

Written Secretary of State forcible letter advocating your wishes. Copy goes by next mail.

The Under Secretary for Finance and Trade.—C.E.F.R., 10/7/00. Seen.

RECORD.

Cablegram to Agent-General from The Premier of New South Wales.

10 July, 1900.

Have you copies of documents mentioned in my telegram 9th inst. Anxious Lord Jersey and yourself should see Mr. Chamberlain. Important and urgent. Rumour here Hopetoun will be Governor-General. Jersey's appointment would be very popular in New South Wales, but many expressions that Governor-General should be someone not here before. Probably there will be immediate legislation here reducing status of State Governors, think likely present occupants not wish to continue in reduced positions. Also, legislation to curtail members (numbers ?) in State Legislatures. 10

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August,
1905
—continued.

Cablegram from Agent-General to The Premier of New South Wales.

14 July, 1900.

Have persistently pressed Secretary of State for the Colonies for definite reply my letter 9th instant. At interview on Thursday Secretary of State admitted he had not seen my letter. Reply is promised on Monday. Have acted throughout in consultation with Lord Jersey, who thought it impolitic to accompany me.

Telegram from The Premier (at Newcastle) to His Excellency the Governor.

14 July, 1900.

In reply to your telegram of to-day's date, thanks for suggestion. Please 20 transmit following telegram to Secretary of State for Colonies :—" I desire " invite serious attention Secretary of State to my recent telegrams and " representations of Agent-General, urging disembarkation Governor-General " in Mother Colony, and to emphasise request as only due New South Wales." (Telegram ends.) I shall be in Sydney breakfast-time to-morrow.

Minute for His Excellency the Governor.

Premier's Office, Sydney, 17 July, 1900.

The Prime Minister will be glad if His Excellency the Governor will be good enough to cause the following cablegram to be despatched to the Right Honorable the Secretary of State for the Colonies :— 30

" Am desired by Prime Minister to say that in order to celebrate " properly establishment of Commonwealth, Government of New " South Wales intend to promote great public rejoicings here on the " arrival of the Governor-General.

" My Prime Minister has suggested that I should remain on here " to entertain him and the Governors of all federating Colonies, but " his wishes are that Government House should be vacated by me and " ready for the residence of the Governor-General not later than after

"the first session of Federal Parliament in accordance with my confidential despatch of 27th September and my telegram of the 29th March.

"If, however, Lord Hopetoun, with your concurrence, desires to find this Government House free I shall be ready, of course, to agree with your wishes.

"Prime Minister submits for consideration of Parliament this week Bill altering position and salary and allowances of Governor, to take effect from establishment of the Commonwealth.

10 "I shall be glad to fall in with course recommended by Prime Minister, and desire to know if it meets with your approval."

WILLIAM JOHN LYNE.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August,
1905

--continued.

Cable and despatch in terms of within Minute to Secretary of State for the Colonies, 17/7/00. The Honorable the Prime Minister.—B., 18/7/00. Records.

Cablegram from His Excellency the Governor of New South Wales to The Secretary of State for the Colonies.

Sydney, 17 July, 1900.

Am desired by Prime Minister to say that in order to celebrate properly establishment of the Commonwealth, Government of New South Wales intend to promote great public rejoicings here on the arrival of the Governor-General.

My Prime Minister has suggested that I should remain on here to entertain him and the Governors of all federating Colonies, but his wishes are that Government House should be vacated by me and ready for the residence of the Governor General not later than after the first session of Federal Parliament in accordance with my confidential despatch of 27th September and my telegram of the 29th March.

30 If, however, Lord Hopetoun, with your concurrence, desires to find this Government House free, I shall be ready, of course, to agree with your wishes.

Prime Minister submits for consideration of Parliament this week Bill altering position and salary and allowances of Governor, to take effect from establishment of Commonwealth.

I shall be glad to fall in with course recommended by Prime Minister, and desire to know if it meets with your approval.

RECORD.

Cablegram from Agent-General to The Premier of New South Wales.
(Received 18 July, 1900.)

17 July, 1900.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August,
1905
—continued.

I have received a letter from Secretary of State for the Colonies with copy of cable sent to Governor of New South Wales yesterday. In addition letter states impracticable for Governor-General to disembark first at Sydney owing to steamer's route, and must land first as private individual to arrange with Prime Minister for the inauguration of Commonwealth previous to date of event. Secretary of State for the Colonies thinks if Governor-General is to exercise hospitalities in fitting manner and reside in two or more cities, ¹⁰ paying visits to other Colonies, should have £25,000 per annum. If State or Federal Government, or both combined, would guarantee £10,000 annually for the maintenance of Government Houses, payment of staff, and travelling expenses, this would be deemed satisfactory footing for performance of all functions required by Australian Governments.

Minute for The Honorable the Prime Minister.

Government House, Sydney, 18 July, 1900.

The Governor has to submit for the information of the Honorable the Prime Minister a further copy of the telegram of the Secretary of State for the Colonies dated London 16th July:—Referring to your telegram of the 7th ²⁰ July, question as to which opinion of delegates was asked was as to temporary residence of Governor-General pending establishment of permanent Federal capital and permanent provision for residence.

Governor-General will be sworn in and Commonwealth inaugurated at Sydney, and if other Colonies have agreed to his mainly residing there during Parliamentary recess Her Majesty's Government will not object, subject of course to decision of Federal Administration, but it will be impossible for him to maintain two establishments, and three when Government House built at new capital, unless States or Commonwealth provide for upkeep of Government House, Sydney and Melbourne, for travelling expenses ³⁰ for himself and household, and for entertainment allowances.

BEAUCHAMP,

Governor.

Cablegram from The Agent-General for New South Wales to The Premier of
New South Wales.

18 July, 1900.

I have received your telegram of to-day. Had an interview with the Secretary of State for the Colonies about (a) Man-of-war, will take time. Must consult Admiralty, perhaps other Colonies. Have since had an interview Hopetoun, who favours suggestion, also personally favours Sydney residence ⁴⁰

during the recess. Have so informed Secretary of State for the Colonies. Hopetoun wishes me assure you and other Colonies his strongest desire do justice to all. Proposes leaving 1st October.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August, 1905
—continued.

Cablegram from The Premier of New South Wales to The Agent-General.

18 July, 1900.

Your cipher telegram of yesterday. Obtain an interview with the Secretary of State for the Colonies. Suggest a Man-of-war meet Lord Hopetoun at Albany for conveyance to Sydney direct.

Cablegram from The Premier of New South Wales to The Agent-General.

19 July, 1900.

Compliments your promptness in dealing with matters. Novelty for Agent-General's office. Please take care that matter Man-of-war will be approved.

The Agent-General to The Premier of New South Wales.

Westminster Chambers, 9, Victoria-street, Westminster, S.W.,

20 July, 1900.

Sir,

Referring to the telegrams which have passed between us in regard to the residence of the Governor-General, and in particular to my message of the 9th instant, wherein I informed you that I had written to the Secretary of State for the Colonies a forcible letter advocating your wishes, I have now the honor to forward, as promised, a copy of that communication.

A.G. to C.O.,
9 July.

On the 10th instant I received your telegram expressing the wish that Lord Jersey and myself should interview Mr. Chamberlain regarding the rumour current in Sydney that Lord Hopetoun was to be appointed Governor-General. I at once saw Lord Jersey and mentioned your wishes, but his Lordship thought it better that he should not accompany me, deeming it more politic, under the circumstances, to abstain from acting upon your suggestion.

Mr. Chamberlain being out of town, I could not see him until the 12th, when I waited upon him at the House of Commons and read to him your cablegram previously mentioned. At this interview I took occasion to press for a reply to my letter of the 9th instant, but Mr. Chamberlain informed me that he had not up to that time seen it, having been absent from the Colonial Office. I gathered in conversation with Mr. Chamberlain that the rumour of the appointment of Lord Hopetoun was not altogether without foundation. On the morning of the 14th instant, the formal announcement of his lordship's appointment was duly made in the newspapers.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August,
1905

—continued.

C.O. to A.G.,
22,087—1900
—16 July.

Confidential.
Copy memo.
of Mr.
Chamber-
lain.

A.G. to C.O.,
8,058—
18 July.

A.G. to C.O.,
20 July.

Not having received from Mr. Chamberlain a reply to my letter of the 9th, I called again at the Colonial Office (16th instant), and was informed by Mr. Anderson that although Mr. Chamberlain had returned to town, he had asked for certain information, and, until he received it, could not reply to me. It was, therefore, not until the 17th that his reply reached me.—(See copy enclosed.) On the afternoon of that day I saw Mr. Chamberlain in regard to his letter, and had a long conversation with him, more particularly on the question of the salary of the Governor-General. On this point Mr. Chamberlain wrote a memorandum of his personal opinion, and handed it to me. I enclose a copy of it for your information. 10

Upon my return to the office I telegraphed to you the purport of Mr. Chamberlain's reply to my letter of the 9th instant, and of his personal opinion regarding the salary of the Governor-General above alluded to. I duly received your acknowledgment of the foregoing the next day (18th instant), in which you suggested that the Governor-General when going to Australia, should be met at Albany by a man-of-war, and conveyed to Sydney direct.

I, therefore, again called upon Mr. Chamberlain and read your telegram to him, and urged that he would be good enough to acquiesce in your suggestion. He did not appear to receive the proposal very favourably and stated 20 that in any case he would have to refer to the Admiralty, and possibly also to the other Colonies. In addition to seeing Mr. Chamberlain on this matter, I wrote to him officially in regard to it—(copy letter enclosed)—particularly as after leaving the Secretary of State for the Colonies I called upon Lord Hopetoun and consulted him *re* your suggestion. His Lordship was much gratified with the proposal, and said he had himself been thinking that such an arrangement might possibly be carried out. While with his Lordship I availed myself of the opportunity to refer to his residence in Sydney during the recess, and he acquiesced in this opinion should it be approved by the Secretary of State. 30

I was much impressed by the evident and earnest desire of Lord Hopetoun, as Governor-General, to do ample justice not only to New South Wales, but to all the Colonies concerned; and you will observe that I mentioned this in my letter to Mr. Chamberlain. My telegram of the 18th instant will have acquainted you of the foregoing.

I was much gratified to receive your message of the 19th, and pleased that you recognised with satisfaction the expedition exercised here in dealing with the important features of your telegrams under reference in this letter. You may rest assured that I shall do my utmost to prevail upon the authorities in London to allow the Governor-General to be met at Albany by a 40 man-of-war, in order that His Excellency may have an entrance and reception at Sydney commensurate with the exceptional interest and dignity of the occasion. I am so impressed with the desirability of this that I have this day addressed a further communication to Mr. Chamberlain, strongly urging that the proposal may receive the most favourable consideration of Her Majesty's Government. I enclose a copy of my letter.

I have, &c.,

HENRY COPELAND.

[Enclosures.]

The Agent-General to the Secretary of State for the Colonies.

9, Victoria Street, London, S.W., 9 July, 1900.

Sir,

In view of the fact that the Australian Commonwealth Bill has now passed through the Imperial Parliament, and is to receive the Royal assent to-day, I have the honor to state that I have been requested by the New South Wales Government to again bring under your notice the urgent necessity for making definite arrangements as to the reception and accommodation of the Governor-General on his arrival in Australia, and I trust I may be permitted to remind you of the following facts :—

1. Through a very liberal concession on the part of the premier Colony of New South Wales, it was agreed at a meeting of former Premiers that "The Parliament shall sit in Melbourne until it meet at the seat of Government," but that such "seat of Government of the Commonwealth . . . shall be in the State of New South Wales."

2. At a more recent meeting of Premiers, held in Melbourne in May last, it appears to have been further conceded (doubtless with a view to facilitating communications between His Excellency and Ministers) that during the sitting of the Federal Parliament the Governor-General should take up his temporary residence in Melbourne; and as the session of Parliament is not expected to extend over, say, four months, it was understood that for the other eight months, or for the remainder of the year, the permanent residence of the Governor-General should be in Sydney, which should be considered his headquarters, and from which he should pay the necessary visits to the other Colonies of Queensland, South Australia, and Tasmania, as might suit his own convenience and inclinations. In support of which view I may quote from a cable message the Chairman of the last-mentioned Conference—the Honorable A. McLean—sent to our Federal Delegate—the Hon. Edmund Barton—bearing date 12th May, 1900, as follows :—"Majority agree as to residence of Governor-General in New South Wales during recess, but consider that he should visit other Colonies"; and I need hardly point out that the Government and people of New South Wales are firmly relying on this definite arrangement meeting with your approval and that of His Excellency, whoever may have the honor of being appointed to fill this Vice-regal position.

3. It is the strong desire of my Government that the Governor-General should disembark at Sydney and be the guest of the present Governor of New South Wales prior to proceeding to Melbourne, and that when the Parliamentary session closes he should take up his permanent residence in Sydney. In support of this desire, I may point out that this would be following the order of settlement, inasmuch as Captain Cook made his first landing and settlement in a suburb of Sydney. That Sydney, with its magnificent surroundings, is readily acknowledged by all Australia as the most beautiful capital of the group, the scenery and climate of Sydney Harbour, on the foreshore of which Government House is situated, is admittedly unsurpassed

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 Wales,
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 —continued.

by any harbour in the world. That New South Wales, as the statistics clearly demonstrate, is not only the most populous of the States, it is the Mother Colony from whose loins all the other Colonies have sprung. It was the first to practically originate and deal with the question of Federation, and, having the most to lose by such amalgamation of interests, has had to bear the brunt of the fight. That its material wealth and interests are greater than those of any of the other States, having a much greater total of imports and exports, as well as more accumulated wealth per head of population. Our annual revenue and expenditure, our mineral production, our wool, and our shipping tonnage, as well as our trade with Great Britain, considerably exceed those of any other State. We, therefore, justly claim—what is readily and invariably accorded us—the honour of being considered the premier State of Australia.

4. That Sydney is, and must ever remain, the principal Naval Station of Australia, as well as the chief port of call for all friendly foreign naval ships, as well as being the terminal port for the principal mail steamers. These positions are permanently secured, as well by her coal supplies as her superior harbour accommodation.

In conclusion, I desire to emphasise the fact that the Premiers of Queensland, South Australia, and Tasmania are in accord with the Premier of New South Wales in this matter. I have, therefore, to express the hope that you will be pleased to ratify the cablegram of the Premier of Victoria of the 12th May last, as I am informed by my Government that they are arranging for a residence for the State Governor with a view to having the present Government House made available for the permanent residence of the Governor-General.

I have, &c.,
 HENRY COPELAND.

The Under Secretary of State, Colonial Office, to the Agent-General.

[Immediate.]

Downing Street, 16 July, 1900. 30

Sir,

In reply to your letter of the 9th instant, I am directed by Mr. Secretary Chamberlain to transmit, for your information, copy of a telegram which has been sent to the Governor of New South Wales on the subject of the residence of the Governor-General of Australia.

2. Mr. Chamberlain is anxious to meet the wish of New South Wales, which he understands to be also the wish of the majority of the Federating Colonies, as far as possible; but, as you will see from what is stated in the telegram to Earl Beauchamp, the decision must be subject to provision being made to meet the extra expenditure which the maintenance of two, and at no very distant date, three, Government Houses, and also, of course, to the decision of the Federal Administration, the wishes and convenience of which must mainly determine the movements of the Governor-General.

3. In regard to your suggestion that the Governor-General should disembark first at Sydney, Mr. Chamberlain feels that such an arrangement would be impracticable owing to the route followed by the steamers, even if, as may be the case, the Governor-General did not wish to proceed to Sydney overland, and it will be necessary for the Governor-General to land as a private individual and arrange with his Prime Minister for the inauguration of the Commonwealth some little time before the date fixed for that event.

10 4. Mr. Chamberlain thinks, however, that the ceremony of swearing-in the Governor-General and inaugurating the Commonwealth Administration should take place at Sydney, and he hopes that this will sufficiently meet the wishes of your Government, and be regarded as a fitting recognition of the position occupied by New South Wales amongst the Federating Colonies.

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—continued.

I have, &c.,

H. BERTRAM COX.

Cablegram from The Secretary of State for the Colonies to The Governor of New South Wales.

4.55 p.m., 16 July, 1900.

20 Your telegram of 7th July question as to which opinion of delegates was asked was as to temporary residence of Governor-General pending establishment of permanent Federal capital, and permanent provision for residence. Governor-General will be sworn in and Commonwealth inaugurated at Sydney, and if other Colonies have agreed to his mainly residing there during Parliamentary recess, Her Majesty's Government will not object, subject, of course, to decision Federal Administration, but it will be impossible for him to maintain two establishments, and three when Government House built at new capital, unless States or Commonwealth provide for up-keep of Government Houses, Sydney and Melbourne, for travelling expenses of himself and household, and for entertainment allowance.

Minute by The Secretary of State for the Colonies.

30

House of Commons, 17 July, 1900.

I believe that no Governor-General of Australia can perform the duties of the office—and exercise its hospitalities in a fitting manner—if he is to reside in two or more cities during each year and pay visits to other Colonies, for less than £25,000 a year. The salary offered is £10,000 a year. If the States and the Federal Government, or both combined would guarantee an additional £10,000 a year for the up-keep of the various Government Houses, for the pay of the Governor's staff, and for travelling expenses, I think the arrangements might be made as a satisfactory footing for the performance of all the functions desired by the Australian Governments.

40

The above expresses my personal opinion.

J. C.

RECORD. The Agent-General to The Under Secretary of State, Colonial Office.
Governor-General of Australia.

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tary Paper
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Governor
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—continued.

9, Victoria-street, London, S.W., 18 July, 1900.

Sir,

Referring to my interview this morning with the Secretary of State for the Colonies, I have the honor to forward herewith, for his information, copy of a cablegram received by me from the Honorable the Premier and Colonial Treasurer of New South Wales, requesting me to obtain the interview in question, and suggest to Mr. Secretary Chamberlain that a man-of-war should meet Lord Hopetoun at Albany for the conveyance of His Excellency to Sydney direct. ¹⁰

Since seeing Mr. Secretary Chamberlain this morning I have had an interview with Lord Hopetoun, and have informed his Lordship of the message received by me from my Government referred to herein. His Lordship expressed himself as very greatly pleased with the suggestion, and intimated that he had himself been thinking that such an arrangement might be possible. Lord Hopetoun was also good enough to acquiesce in the opinion that he should reside in Sydney during the recess, if such should meet the approval of the Secretary of State.

I should like to say that I was much impressed with the very evident desire of his lordship, as Governor-General, to do ample justice to the Colony I have the honor to represent, as well as to Victoria and the other Colonies concerned. ²⁰

I have, &c.,
HENRY COPELAND.

Cablegram from The Premier of New South Wales to the Agent-General.

Sydney, 18 July, 1900.

Your cipher telegram of yesterday. Obtain an interview with the Secretary of State for the Colonies. Suggest a man-of-war meet Lord Hopetoun at Albany for conveyance to Sydney direct. ³⁰

Opinion of Mr. R. E. O'Connor respecting Seat of Government of the Commonwealth.

Chambers, 18 July, 1900.

I have been asked to advise whether any place outside New South Wales can legally be the seat of the Government of the Commonwealth.

I am clearly of opinion that so long as section 125 remains part of the Constitution the seat of Government cannot be legally anywhere outside New South Wales.

That section, which takes effect the moment the Constitution come into force, enacts in mandatory terms that the seat of Government of the Commonwealth shall be in New South Wales. From that moment it becomes impossible that the seat of Government can legally be anywhere outside of New South Wales.

The portion of New South Wales which, subject to the provisions of the section, is to be chosen as the permanent seat of Government can be determined only by the Parliament of the Commonwealth; but before the Parliament determines that question there must, of necessity, be some place
10 selected temporarily as the seat of Government in which the public business of the Executive of the Commonwealth will be transacted.

The power to make this selection must, of necessity, be vested in the Federal Executive, but that power must be exercised subject to the provisions of section 125. To fix the seat of Government even temporarily outside of New South Wales would be as much a breach of the Constitution as to fix it permanently outside of New South Wales.

For these reasons, I am clearly of opinion that under no circumstances can the Federal Executive or any other authority, legally fix the seat of Government of the Commonwealth outside New South Wales.

20

R. E. O'CONNOR.

The Agent-General to The Secretary of State for the Colonies.

9, Victoria-street, Westminster, 20 July, 1900.

Sir,

Adverting to my recent interview with you with reference to the urgent request of the Government of New South Wales that His Excellency the Governor-General should be met at Albany by one of Her Majesty's ships on the Australian Station, may I be permitted to support that request by one or two facts which, though doubtless fully impressed on your own mind, I should be glad if you would bring before the Lords Commissioners of the
30 Admiralty, with a view to favourably influencing their decision should the request have been remitted for their consideration.

Such an event as the landing of our first Governor-General, which will represent the initial local demonstration of the accomplishment of our union, ought not to pass without appropriate jubilation of a national character in contra-distinction to a purely colonial event, and you may rely upon the Colonies contributing their share of the Imperial spirit if the Home Government assists in the only manner apparently possible, viz., by bringing to our shores their and our connecting link, the Vice-regal representative of the British Empire, with that amount of State ceremony as can only be
40 conferred by the use of one of Her Majesty's ships on the occasion; whereas little *éclat* could be given to the event should the Governor-General land from an ordinary mail steamer in which any person, at the cost of £16, could travel as a steerage passenger. Moreover, His Excellency would simply be worried to death should he call in at Albany, Adelaide, and Melbourne, before arriving at Sydney; and from a recent conversation with his

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Lordship, I feel sure that in his present state of health he would gladly welcome the carrying out of the proposal of our Government. I may point out that the only other alternative, viz., that of landing at Adelaide, and travelling by train to Melbourne, and thence to Sydney, would be still more fatiguing, inasmuch, as in addition to the capital cities named, he would have to run the gauntlet of all the large towns when the train must necessarily stop for water and coal, to say nothing of the exhaustive character of a railway journey of 1,059 miles.

That the event is one in which one of Her Majesty's ships might well, and without loss of dignity, take part, inasmuch as such an occasion has 10 never in British history before arisen, nor is it likely ever to arise again. That the welding together of 4,000,000 British subjects under the Crown is an event that Her Gracious Majesty herself, as well as Her Majesty's Imperial Government, may contemplate with a considerable degree of pride and pleasure, and when the territory embraced within the Federation is glanced at, it will be seen what immense possibilities for the expansion of the British nation are presented. The compact and ocean-girt continent of Australia, including the ear-drop of Tasmania, represents over one-eighteenth part of the land surface of the world, and even if we deduct half its superficial area as barren country (though I might point out that one of the richest 20 gold-fields of the world—Kalgoorlie—is within the supposed barren country), we then have left a territorial possession on which the British race can thrive as large as the combined territories of Great Britain, Norway, Sweden, and Denmark, Germany, Belgium, and Holland, Austria-Hungary, Switzerland, and Italy, France, Spain, and Portugal. Surely a territory twice as large as all these European countries, with an increasing British population equal to about 2,000 per week, would not degrade even one of Her Majesty's ships to honor.

I may point out that my Government only ask that one of the ships on the Australian Station should be utilised by taking His Excellency the 30 Governor-General from the mail steamer at Albany, so that she would not be leaving Australian waters in executing this commission, and I have little doubt that his landing at Sydney would be made such a gala day that many people from the neighbouring Colonies would personally participate in the event.

I have, &c.,

HENRY COPELAND.

The Premier of Queensland to The Premier of New South Wales.

Chief Secretary's Office, Brisbane, 21 July, 1900.

Sir,

I have the honor to acknowledge the receipt of your telegram 40 of the 17th instant embodying certain information received by you through His Excellency the Governor of New South Wales concerning the question of the residence of the Governor-General of the Australian Commonwealth during the recess of the Federal Parliament.

Records.

I have, &c.,

ROBERT PHILP.

Minute for the Prime Minister.

Government House, 26 July, 1900.

The Governor has to submit for the information of the Honorable the Prime Minister the subjoined copy of a telegraphic despatch which has been received from the Secretary of State for the Colonies :—“ Referring to your telegram “ of the 17th July, Lord Hopetoun will be glad to fall in with arrangements “ suggested by Premier.”

BEAUCHAMP,
Governor.

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—continued.

10 The Private Secretary, Government House, Sydney, to The Premier of New South Wales.

Government House, Sydney, 7 August, 1900.

Dear Sir William,

His Excellency has desired me to send you the enclosed for your private information.

Yours faithfully,

WILFRID ABEL SMITH.

[Enclosure.]

20 Cablegram to the Secretary of State for the Colonies from the Governor of New South Wales.

Sydney, 6 August, 1900.

I will do as desired as to leaving after or before arrival of Governor-General. Prime Minister has been informed that Governor-General would much prefer to find Government House empty and ready for occupation, and has telegraphed to ascertain whether information is correct. I shall be much obliged if you can ascertain wishes of Governor-General, with which I will gladly comply.

Cablegram from Agent-General to The Premier of New South Wales.

8 August, 1900.

30 I have received a letter from Secretary of State for the Colonies agreeing conveyance Hopetoun from Western Australia to Sydney in a man-of-war, but inasmuch as his commission dormant to take effect from date of establishment Commonwealth of Australia hopes great demonstration may be deferred until that date.

RECORD.

Cablegram from Agent-General to The Premier of New South Wales.

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—continued.

9 August, 1900.

Referring to your telegram of 2nd instant, Governor-General in Germany.
Wishes consult Lady Hopetoun before replying.

The Under Secretary for Finance and Trade.—C.E.F.R., 10/8/00.

Telegram from The Premier of Victoria to The Premier of New South Wales.

30 August, 1900.

I am informed by the Australian Natives' Association in this Colony that a request is being made by the Association through its branches in each Colony to every Premier that the 26th January, "Foundation Day," should be the day named in the Proclamation for the Inauguration of the Commonwealth in lieu of 1st January. What are your views?

Submitted. No doubt the 26th January, as the anniversary of the foundation of the Colony of New South Wales, has considerable claims from an historical point of view, but I think the 1st January, as the beginning of the year and of the century, will be such an obviously convenient starting-point, easily remembered for all time, so appropriate that with the close of the century the old order of things ceases and the new begins, that it will be well to adhere to the decision already arrived at, *i.e.*, that New South Wales favours the 1st January as the date for the inauguration of the Commonwealth.—W.D.B., 31/8/00.

Inform.—W.J.L., 31/8/00. Mr. Robberds.—F.K., 31/8/00. Wired to Premier of Victoria.—C.E.F.R., 1/9/00. Records.

The Secretary of State for the Colonies to The Officer administering the Government of New South Wales.

New South Wales.—No. 143.

Downing-street, December, 1900.

Sir,

I have the honor to acknowledge the receipt of your telegram of the 27th instant, from which I have learnt with much gratification that the Legislature of New South Wales has provided for an annual contribution of about £3,000 towards the maintenance of the Governor-General's establishment.

I have, &c.,
J. CHAMBERLAIN.

The Honorable the Prime Minister.—Fredk. M. Darley, Lieut.-Gov.,
17/1/01. Accountant — F.K., 30/1/01. Noted. — C.G.L.B. Records.—
31/1/01, J.V.

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—continued.

Minute for His Excellency the Lieutenant-Governor.

Premier's Office, Sydney, 27 December, 1900.

The Prime Minister will be glad if His Excellency the Lieutenant-Governor will be good enough to cause the following cablegram to be despatched to the Right Honorable the Secretary of State for the Colonies.

- 10 “New South Wales Parliament passed Act contributing proportion
“of £10,000 as per population basis, say, about £8,000 per annum.
“In Victorian Parliament similar Bill introduced but rejected. Every-
“thing has been done, in addition to above, for the convenience of
“Lord Hopetoun at Government House, Sydney.”

WILLIAM JOHN LYNE.

The Honorable the Prime Minister.—Fredk. M. Darley, Lieutenant-Governor, 28/12/00. Records.

The Secretary of State for the Colonies to The Officer administering the Government of New South Wales.

New South Wales.—No. 1.

20

Downing-street, 11 January, 1901.

Sir,

I have the honor to acknowledge receipt of your telegram of the 28th of December, on the subject of the contribution made by the Parliament of New South Wales towards the expenses of the Governor-General's establishment.

2. I have already expressed in my despatch No. 143 of the 14th December the gratification with which I learned of this action on the part of the Legislature, which is in keeping with the generous reception accorded to the Governor-General by yourself and by the Government and people of the
30 State.

I have, &c.,

J. CHAMBERLAIN.

The Honorable the Prime Minister.—Fredk. M. Darley, Lt.-Governor,
15/2/01. Records.

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—continued.

The Secretary of State for the Colonies to The Officer Administering the Government of New South Wales.

New South Wales.—No. 143.

Downing-street, 25 January, 1901.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 133 of the 11th ultimo, reporting that you have assented to a Bill passed by the Legislature of the Colony, providing for the contribution to be paid by New South Wales towards the maintenance of the establishment of the Governor-General of Australia.

10

I have, &c.,

J. CHAMBERLAIN.

The Honourable the Prime Minister.—FREDK. M. DARLEY, Lt.-Gov. 28/2/01. Mr. Robberds.—F.K., 7/3/01. No action necessary on these papers.—C.E.F.R., 12/3/01. Records. The Under Secretary. Send to Prime Minister.—T.W., 23/10/01. The Principal Under Secretary.—F.K., 24/10/01. Put copy of Bill herewith, 1/11/01. Put by.—J.M.G., 1/11/01.

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

13 August, 1901. 20

Dear Mr. Barton,

The question having arisen as to who is to look after the interior of Government House, Sydney, during the Governor-General's stay in Victoria, I desire to transmit to you copy of a communication which has been received by the Principal Under Secretary from the Governor-General's Private Secretary on the subject.

As certain properties are to be transferred to the Federal Government, and as this forms part of one of them, it appears to me that this is a matter to be determined by the Federal, and not by the State Government.

I shall be glad, therefore, if you will kindly say whether you concur in my views, and let me have a reply at your earliest convenience.

Yours, &c.,

JOHN SEE.

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

2 April, 1902.

Sir,

In continuance of previous correspondence, I have now the honour to inform you that this Government is agreeable to place Government House, Sydney, at the disposal of His Excellency the Governor-General of the Commonwealth upon the same terms and conditions as those offered by the Government of Victoria in respect to the Vice-regal residence in Melbourne.

I have, &c.,

JOHN SEE.

The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Department of External Affairs, Melbourne, 29 May, 1902.

Sir,

I have the honour to inform you that I have been asked in Parliament whether I will obtain from your Government copies of all correspondence between the Government of New South Wales and the Colonial Office relating to the residence of the Governor-General, and matters appertaining thereto.

To that request I replied that I was not in a position to acquire copies
10 of the documents referred to, but that I would ask for them, and would be glad to lay them on the table of the House if they were furnished.

I would be pleased to have an opportunity of perusing this correspondence, and I should be much obliged if you would be so good as to direct that copies of the letters mentioned be forwarded to me, and at the same time kindly intimate whether your Government will give its permission for those copies to be made public.

I have, &c.,

ALFRED DEAKIN.

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residence of
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printed 1st
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1905
—continued.

20 The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Department of External Affairs, Melbourne, 4 July, 1902.

Sir,

I have the honour to refer to my letter of 29th May last, informing you that it had been asked in Parliament whether I would obtain from your Government copies of all correspondence between the Government of New South Wales and the Colonial Office, relating to the residence of the Governor-General and matters appertaining thereto.

May I ask you to be good enough to cause me to be furnished with the information in question at your early convenience.

30 The House of Representatives will probably reassemble on the 22nd instant, and I shall be glad to be in a position to table this information on that date.

I have, &c.,

ALFRED DEAKIN .

Acknowledge.—Done, 10/7/02. Copies may perhaps be supplied.—
C.W., 11/7/02. Approved.—J.S., 11/7/02.

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1905
—continued.

The Premier of New South Wales to The Prime Minister of the Commonwealth
of Australia.

5 April, 1905.

Sir,

I have the honour to intimate that I shall be glad if you will be so good as to inform me as to the terms and conditions on which the Victorian Government place the Government House, Melbourne, at the disposal of the Commonwealth as a residence for His Excellency the Governor-General.

I have, &c.,

J. H. CARRUTHERS.

Telegram from The Premier of Victoria to The Premier of New South Wales. ¹⁰

Melbourne, 2 May, 1905.

No formal agreement executed between State and Federal Governments respecting Government House. Am sending copy of letter asked for by to-morrow's mail.

The Acting Under Secretary for Finance and Trade to The Under Secretary
Chief Secretary's Department.

The Treasury, New South Wales, Sydney,
3 May, 1905.

Sir,

I shall be glad if you will furnish for the information of the Premier, as early as possible, a brief statement, showing the amount expended in one year (say for the financial year ended 30th June, 1904) by the Director of the Botanic Gardens in the maintenance of the Government House Grounds (Federal).

The information is required in connection with an endeavour to ascertain the total annual cost to the State of the Governor-General's establishment, and I should like to receive it during the course of to-morrow, if practicable.

I have, &c.,

C. J. SAUNDERS.

Acting Under Secretary for Finance and Trade. ³⁰

The Examiner. Information herewith.—S. F.

Mr Maiden states that the vouchers which have passed through his hands for the upkeep of Federal Government House Grounds for the financial year ended 30th June, 1904, amount to £681 19s. 5d. The Acting Under Secretary for Finance and Trade.—J.M.G., U.S., B.C., 5/5/05.

The Acting Under Secretary for Finance and Trade to the Under Secretary
for Public Works.

The Treasury, New South Wales, Sydney, 3 May, 1905.

Sir,

I shall be glad if you will furnish for the information of the Premier, as early as possible, a summarised statement showing the amount expended under your Department in one year (say for the financial year ended 30th June, 1904) in the upkeep and maintenance of Government House (Federal).

The information should show the cost of furniture, lighting, wages of 10 employees paid from State funds, &c., and should be complete. It is required in connection with an endeavour to ascertain the total annual cost to the State of the Governor-General's Establishment, and I should like to receive the particulars during the course of to-morrow, if possible.

I have, &c.,

C. J. SAUNDERS,
Acting Under Secretary for Finance and Trade.

Please supply at once.—J. D., 4/5/05. Bookkeeper. Statement herewith.—S.S., 4/5/05. The Under Secretary.—O.C. Forward at once.—J.D., 4/5/05.

20 Department of Public Works, N.S.W., Accounts Branch, 4 May, 1905.

Federal Government House, Macquarie-street, Sydney.

Return of Expenditure from 1st July, 1903, to 30th June, 1904.

	£	s.	d.
*Repairs and Alterations	481	1	5
Wages—Employees	1,046	17	5
Lighting	148	0	9
Furniture	122	19	0
Total	£1,798	18	7

30 *£223 4s. 10d. of this amount was paid from State funds, remainder from Commonwealth funds.—S.S., 5/5/05.

O.C.—S.S., 4/5/05.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the
residence of
the Governor
General in
New South
Wales,
printed 1st
August,
1905
—continued.

RECORD.

The Premier of Victoria to The Premier of New South Wales.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 1st
August,
1905
—continued.

Premier's Office, Melbourne, 4 May, 1905.

Sir,

In accordance with the promise contained in my telegram of the 3rd instant, in reply to yours of the same date, I have now the honour to forward herewith a copy of the letter forwarded to the Honorable the Premier of New South Wales from this Office on the 25th March, 1902, respecting the matter of the draft agreement between the Commonwealth and the Victorian Governments in connection with the occupation of Government House, Melbourne, by the Governor-General.

I have, &c.,

THOMAS BENT,
(per R.W.R.).

10

Connect with A5,870 and put away.—J. B., 27/5/05.

[Enclosure.]

Sir,

Premier's Office, Melbourne, 25 March, 1902.

In continuation of my letter of the 14th January, No. 173, respecting the basis upon which expenses incidental to the maintenance of the Governor-General's residence are charged to the Commonwealth, I have now the honor to inform you that it has been arranged that this Government will allow 20 of Government House being occupied for the purposes of the Governor-General, for a term of three years (with the option of two years' extension), free of cost to the Federal Government; and, in consideration of this, the latter will maintain the house, offices, grounds, &c., and effect any repairs which may become necessary, during the term of occupancy; and also, on giving up occupation, put the building, offices, grounds, &c., in the same order and condition as they were placed when first occupied by the Governor-General.

I have, &c.,

A. J. PEACOCK,
Premier.

30

Précis.

Establishments in New South Wales of the Governor-General and the Governor of the State.

Unfortunately the correspondence which passed in 1901 between the Federal Premier and the Premier of New South Wales, which followed the opening of the question of the Governor-General's occupancy of Government House, Sydney, is not available. Diligent search has proved that the documents went to Melbourne last November with a file of papers relating to more recent happenings in this connection, and cannot now be recovered.

40

An inspection of the registers in the Chief Secretary's Office and the Public Works Department discloses the following information :—

On 16th June, 1901, the Federal Premier wrote requesting occupation of Government House, Sydney, by the Government of the Commonwealth for purposes of the residence of the Governor-General.

Victoria, as the only other State directly interested on the point, decided that the expenses of maintenance of the Governor-General's establishment should not be a charge on State funds.

The Under Secretary for Public Works, in a report dated 28th August, 1901, recommended that the Federal authorities be offered the house and premises at a rental of £4,500 per annum, constituted as follows :—

4%	on value of existing buildings (£66,000)	..	£2,640
4%	on cost proposed new ballroom (£19,000)	..	760
6%	on value furniture (£10,000)	..	600
	Nominal rental of land (34 acres)	..	500

£4,500

the Federal Government to maintain the premises in their existing condition.

This recommendation received the approval of the Secretary for Public Works, by whom it was transmitted to the Premier of the time.

There is, however, no trace of an offer in these terms ever having been communicated to the Commonwealth ; but there is evidence of the receipt of successive requests from the Federal Premier for a reply to his proposals for "handing over Government House, Sydney, to the Federal Government."

We come to something definite on 2nd April, 1902, however, for on that date Sir John See (Premier and Chief Secretary), by letter informed the Prime Minister of the Commonwealth that "this Government is agreeable to place Government House, Sydney, at the disposal of His Excellency the Governor-General of the Commonwealth upon the same terms and conditions as those offered by the Government of Victoria in respect to the Vice-regal residence at Melbourne."

No formal agreement has been executed between the State and the Federation respecting Melbourne Government House, however, but the following constitute the conditions under which the Commonwealth occupation holds :—

"The Government of Victoria allows of Government House being occupied, for the purposes of the Governor-General, for a term of three years (with option of two years' extension) free of cost to the Federal Government ; and in consideration of this the latter will maintain the house, offices, grounds, &c., and effect any repairs which may become necessary during the term of occupancy ; and also on giving up occupation put the building, offices, grounds, &c., in the same order and condition as they were placed when first occupied by the Governor-General."

It remains to be added that all expenditure in the shape of maintenance (gardeners, furniture, lighting, repairs, &c.), has, in the case of Sydney Government House, in accordance with the above understanding, been borne

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—continued.

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—continued.

by the Commonwealth, although until 30th June, 1904, the pay of the hall-porter (£160 p.a.) for the period during which the house was not in occupation, has been a charge on State funds. The policy in regard to the cost of any works in the nature of structural alterations to the buildings has been to defray the expenditure from State money.

As interest may centre in the actual time the various Governors-General have spent in Sydney Government House, the information is as under :—

1900 (Lord Hopetoun)	21 days	
1901 (do)	110 „	
1902 (Lords Hopetoun and Tennyson)	15 „	10
1903 (Lord Tennyson)	150 „	
1904 (Lord Northcote)	140 „	
1905 (do)	from 25th March to 26th June.	

The periods during which the Federal Parliament has been in recess since its inauguration are as follows :—

	Days.	
1902.—11th October to 31st December	82	
1903 { 1st January to 25th May	} 215	20
{ 23rd October to 31st December		
1904 { 1st January to 1st March	} 76	
{ 16th December to 31st December		
1905. 1st January to 27th June	178	

The circumstances of the fixing of the salary of the Governor-General are as under :—

The Colonial Office considered £25,000 per annum a reasonable and necessary allowance.

The Constitution Act provides for £10,000 a year.

On representations from the Home authorities that this latter sum was inadequate, the New South Wales Legislature (vide the “Governor-General’s Establishment Contribution Act, 1900,”—copy herewith) agreed to raise the total amount to £20,000, but a similar measure introduced to the Victorian Parliament was rejected.

This circumstance is only cited to still further demonstrate that New South Wales has at all times evinced a readiness to bear her share of the expenses associated with the Governor-General.

The cost annually of the establishments of the various State Governors are as under :—

New South Wales (“Cranbrook” and “Hill View”)	£12,368	
Victoria	8,732	
Queensland	7,132	40
New Zealand	7,000	
South Australia	4,250	
Western Australia	4,000	
Tasmania	2,750	

E. B. HARKNESS.

6/5/05.

[Enclosure.]

Act No. 78, 1900.

An Act to authorise certain annual payments to be made towards the maintenance of the Establishment of the Governor-General. [Assented to, 11th December, 1900.]

Whereas it is thought desirable that this Colony should contribute to raise the annual amount to be received by the Governor-General to twenty thousand pounds: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and
10 Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

1. This Act may be cited as the "Governor-General's Establishment Contribution Act, 1900."

2. It shall be lawful for the Governor, with the consent of the Governor-General, acting with the advice of the Federal Executive Council, to cause to be paid annually from the Consolidated Revenue Fund towards the maintenance of the establishment of the Governor-General, an amount which bears the same proportion to the difference between twenty thousand pounds and the amount appropriated by or under the Commonwealth of Australia Con-
20 stitution Act for the salary of the Governor-General as the number of people of New South Wales bears to the number of people of the Commonwealth, excluding in both cases aboriginal natives.

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 12 July, 1905.

Sir,

I desire to invite your attention to the important question of the residence of His Excellency the Governor-General.

In this matter not only has the larger constitutional right of New South
30 Wales to the permanent establishment of the Vice-regal head-quarters within the State been withheld, but the agreement entered into with respect to his residence in Sydney during recess has never been fairly honored.

At the inauguration of Federation it was universally admitted that the Mother Colony's right to the seat of Government involved as a necessary consequence the permanent residence of the Governor-General in New South Wales, from which he should depart only for the purpose of convenient consultation with his Ministers during the sessions of Parliament, and for periodic visits to the other States of the Commonwealth. This, which was a matter of general public expectation, was confirmed by Interstate negotia-
40 tions, and by the publicly expressed opinions of Federal Ministers.

In a despatch to Lord Beauchamp, dated 10th August, 1899, the Secretary of State for the Colonies admitted the convenience of His Excellency remain-

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August, 1905
—continued.

Preamble.

Short title.

Contribution
of this
Colony
towards
raising
amount
received by
the Governor-
General to
twenty
thousand
pounds.

RECORD.
 No. 13.
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 tary Paper
 relating to
 the residence
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 Governor-
 General in
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 Wales.
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 August, 1905
 —continued.

ing in Melbourne during the sittings of Parliament, but clearly recognised that, during recess, other arrangements must be made by asking what provision Ministers proposed to make for his establishment in New South Wales.

Sir William Lyne, in reply to this request, while pointing out that the Constitution Act did not provide that the Governor-General should reside in Melbourne, concurred in the assumption that he would probably remain there during sessions, and informed Mr. Chamberlain that this State would make arrangements for his residence in Sydney at other times. Following up this reply, Sir William addressed the Premiers of Victoria, South Australia, Queens- 10
 land, and Tasmania, asking for their concurrence in this understanding, and received from them communications indicating their recognition of this State's right to the permanent head-quarters, with a proviso in one instance for periodic visits to the other States.

New South Wales, moreover, has always been ready to make any sacrifice or incur any expense involved in the discharge of its obligations in this matter in the firm expectation that the compact would be respected. When the question of increasing the statutory allowance of the Governor-General to £20,000 was suggested, our legislature immediately passed an Act for the payment of our share of the extra amount, whereas a similar pro- 20
 vision was rejected by the Victorian legislature; and, moreover, while New South Wales has to bear its share of the cost of the Vice-Regal establishment in Victoria, the surrender of the State Government House for the Governor-General imposes on us the whole burden of making other provision for the State Governor.

Such being the history of the matter, and such the nature of the Interstate compact, it is but natural that this State should feel profoundly dissatisfied with the continued violation during the five years of Federation of the understanding arrived at, and that the fact that the Vice-Regal residence has for all practical purposes been permanently fixed in Melbourne should have 30
 aroused a widespread feeling that the rights of New South Wales have been entirely disregarded.

From the establishment of Federation up to the present date, the Governor-General has, on the average, spent only eighty-nine days per annum in Sydney. That is to say, for the greater portion of the year the costly State Government House which we, in the discharge of our part of the compact, made available for the Governor-General, is empty and unused, while for the purpose of providing other quarters for the State Governor we have to incur a large expense, for which we receive no adequate return.

We think the time has now arrived at which a clear and unmistakable 40
 understanding must be arrived at with respect to the following points:—

1. Are arrangements to be made making Sydney or any other place in New South Wales, the permanent head-quarters of the Governor-General? If not, what place is to be selected for that purpose?

2. If the rights of New South Wales in this matter are not to be honoured, are the Federal authorities prepared to hand back Government House, Sydney, to New South Wales, and accept other arrangements for the occasional residence of the Governor-General in this State?

This offer is not be construed as a surrender of the State's claims, but merely as an act of necessity under compulsion on its part (and not an act of option) until some tribunal enforces our rights.

I have, &c.,

J. H. CARRUTHERS.

The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Melbourne, 13 July, 1905.

Sir,

10 I have the honor to acknowledge the receipt of your letter of the 12th instant, with reference to the question of the residence of His Excellency the Governor-General, and to inform you that your communication will receive consideration.

I have, &c.,

ALFRED DEAKIN.

The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Melbourne, 24 July, 1905.

Sir,

20 With reference to your letter of the 12th instant, on the subject of the residence of the Governor-General, I have the honor to inform you that the papers in the possession of this Government bearing upon the question have been perused. They do not seem to be complete, but those which we have belonging to the period after the acceptance of the Commonwealth Constitution by the People of Australia do not disclose either the nature of the interstate arrangements to which you allude, or the authority for making them.

2. The only despatch from the Secretary of State, of 10th August, of which we have a copy, is marked "confidential," but appears to have been laid before Parliament. After calling attention to Clause 124 of the Constitution, providing that "the Parliament shall sit at Melbourne until it meets at the seat of Government," Mr. Chamberlain there said, "I presume that during this period the Governor-General of Australia will mainly reside at Melbourne."

3. As far as can be ascertained, the Commonwealth Government has not yet been furnished with particulars of any interstate negotiations mentioned by you, though there are illusions to them at the time in cablegrams to and from London.

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1905.
—continued.

4. Under these circumstances, I am, as you will see, unable to follow the preliminary part of your letter relating to "the history of the matter and . . . the nature of the interstate compact."

5. I am also unaware of any proof "that the Vice-regal residence has for all practical purposes been permanently fixed in Melbourne." As you are aware, the sessions of the Federal Parliament have been extremely prolonged, and the stay of the Governor-General in Melbourne has of necessity been correspondingly extended. This contingency, of course, cannot be provided against.

6. Unfortunately, there is no record in this office of the periods spent by 10 previous Governors-General in the several States, but I find that since Lord Northcote's assumption of office, until the 1st instant, he had spent 179 days in Sydney and 182 days in Melbourne. As you are doubtless aware, Lord Northcote had arranged to remain in your State for a further period of fourteen days, but the recent political crisis demanding his immediate return to Melbourne reduced it by that period.

7. Although the present session is only just commencing, His Excellency proposes, if possible, to pay a visit during September to Western Australia, the only State which he has not yet made himself personally acquainted. As a consequence, for the greater part of this year the remarks which you 20 have made as to your Government House will apply with at least equal force to the condition of Government House, Melbourne, which is made available for His Excellency on exactly the same terms. Such absences from the capitals of the two most populous States must continue while the Governor-General visits all the States in order to keep in touch with the whole of the people of the Commonwealth.

8. In reply to the questions raised in the latter part of your letter under reply, allow me to say (1) that this Government is of opinion that the Federal Capital, when created, will be the permanent head-quarters of the Governor-General; and (2) that, in the meantime, while there are no permanent 30 head-quarters, it is the wish of this Government to retain Government House, Sydney, for the use of the Governor-General. I therefore invite your concurrence to an extension of the present arrangement, which for reasons submitted by me to Parliament in August, 1902, appears to be highly desirable.

I have, &c.,

ALFRED DEAKIN.

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

29 July, 1905. 40

Sir,

In reply to your letter of the 24th instant, on the subject of the residence of the Governor-General, I have the honor to say that I intend to lay before

Parliament on Tuesday next, the enclosed document, which shows the correspondence, interstate and otherwise, relating to this matter. I understood that copies had been furnished to you as therein is recorded.

I need only, at this stage, refer to the eighth paragraph of your letter, wherein you state (1) that your Government is of opinion that the Federal capital, when created, will be the permanent head-quarters of the Governor-General, and (2) that, in the meantime, while there are no permanent head-quarters, it is the wish of this Government to retain Government House, Sydney, for the use of the Governor-General. In reference to statement
 10 No. 1, I wish to say that, whilst the proposition put forward therein is self-evident, the Constitution under which your Government and the Governor-General are called into existence distinctly provides in section 125 (*inter alia*) that "the seat of Government shall be in the State of New South Wales." The head-quarters of the Governor-General, it will be admitted, I presume, must be at the seat of Government. On this subject I invite your attention to the opinion of Mr. R. E. O'Connor, now one of the Justices of the High Court of Australia, dated 18th July, 1900, wherein he states that "to fix
 "the seat of Government, even temporarily, outside New South Wales,
 "would be as much a breach of the Constitution as to fix it permanently
 20 "outside New South Wales." The despatches show that, pending a decision of Parliament as to the permanent seat of Government, it is a matter for the Federal Executive to determine the temporary or provisional seat of Government, and Mr. O'Connor says, "The power to make this selection must of necessity be vested in the Federal Executive, but that power must be exercised subject to the provision of section 125."

I, therefore, beg most respectfully to ask you to clearly and definitely state if the Federal Executive has ever decided where the seat of Government and the Governor-General's head quarters are to be pending the determination of the permanent Federal capital site. If no such decision has ever
 30 been arrived at, it will be interesting to learn why so important a matter has escaped the attention which I now invite you to give to it in justice, not only to New South Wales, but to the whole Commonwealth, which should no longer be in doubt as to the place from whence it is being governed under the Constitution.

In reference to statement No. 2, I ask for an assurance from you that the Federal Constitution and the compact made prior to its acceptance by the people of New South Wales, as well as the arrangements agreed to by a majority of the States, will in future be duly respected, and, if in doubt, be better defined. Pending your consideration of this matter in all its
 40 hearings, and a more definite conclusion of our correspondence, the existing arrangements may continue, as I am sure neither Government wishes to precipitate events by any abrupt termination of arrangements affecting the personal convenience of the Governor-General.

I have, &c.,

J. H. CARRUTHERS.

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 ---continued.

Informants' Exhibit F.

RECORD.

No. 13.
Informant's
Exhibit F.,
Copy
Parliamentary
Paper
relating to
the residence
of the
Governor-
General in
New South
Wales,
printed 17th
September,
1912
—continued.

Copy Parliamentary Paper ordered by the Legislative Council of New South Wales to be printed, 17th September, 1912, relating to the residence of the Governor-General in New South Wales, appearing as Exhibit G to the Affidavit of Thomas Henley.

1912.

Legislative Assembly.

New South Wales.

The Residence of the Governor-General in New South Wales.

(Correspondence and Papers Relating to.)

10

Ordered by the Legislative Assembly to be printed, 17 September, 1912.

The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Melbourne, 9 August, 1905.

Sir,

Adverting to your letter of the 29th ultimo, with enclosure, I have the honour to state that I am advised that until the Federal Capital is established there will be no permanent headquarters of the Governor-General and no "Seat of Government" within the meaning of Section 125 of the Constitution Act. 20

2. The Federal Executive Council has not decided, nor is it necessary for it to decide, where either shall be pending the determination of the permanent Federal Capital site. The Appropriation Acts make provision for two residences for the Governor-General—one in Melbourne and the other in Sydney—which are occupied by His Excellency at will, according to the exigencies of his office.

3. At present Parliament meets in Melbourne, as provided in the Constitution, and while its deliberations are proceeding it is as a rule found desirable that His Excellency the Governor-General should reside there. This necessity was clearly recognised from the first (see despatch August 30 10th, 1900), and experience has since supported it.

4. There are Federal offices and officers in every State, but the heads of Departments and their central staffs are inseparably associated with the transaction of Parliamentary business. These conditions will continue to exist until the permanent Federal Capital site is determined.

5. When Parliament is not in session the Governor-General spends the greater part of the balance of the year in Sydney, but is free to visit, and does visit, the other States in the discharge of his official obligations. I see no manner in which these natural arrangements can be altered with

advantage, or why they should be altered at this juncture. They accord with the Federal Constitution and with any compact of which I am acquainted "made prior to its acceptance."

6. The arrangements agreed to by the Ministers of a majority of the States after the Constitution had been accepted by the people are upon a different footing, but even in respect to these I fail to see that there has been any departure from them when the prolonged sittings of the Federal Parliament are taken into account.

7. I am happy to be officially informed that you have no intention of terminating the arrangements you have been good enough to make for the personal convenience of the Governor-General.

I have, &c.,
ALFRED DEAKIN.

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Exhibit F.,
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residence of
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Governor-
General in
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Wales,
printed 17th
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1912
—continued.

The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Melbourne, 6 December, 1905.

Sir,

I have the honour to forward herewith, at the instance of my colleague, the Minister for Home Affairs, copy of the agreement for the occupation of Government House, Melbourne, by His Excellency the Governor-General, which has been accepted by the Government of the State of Victoria, and to request that your Government will accept a similar agreement in respect of the occupation of Government House, Sydney, by the Governor-General.

2. In a communication forwarded by your Government on the subject, dated 2nd April, 1902, the Premier stated that he would "place Government House, Sydney, at the disposal of His Excellency the Governor-General of the Commonwealth upon the same terms and conditions as those offered by the Government of Victoria in respect of the official residence at Melbourne."

Anticipating your courtesy in this matter.

I have, &c.,
ALFRED DEAKIN.

Agreement.

An Agreement made the _____ day of _____ one thousand nine hundred and five between His Excellency the Governor of the State of Victoria in Council of the one part and the Commonwealth of Australia (hereinafter called the Commonwealth) of the other part for the use and occupation by his Excellency the Governor-General of the Commonwealth of the Government House, St. Kilda-road, Melbourne, with the buildings and grounds appurtenant thereto, and the furniture and other effects therein, witnesseth as follows:—

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1912
—continued.

1. The Governor of the State of Victoria in Council under the powers in that behalf conferred upon him by an Act of the Parliament of the State called the "Commonwealth Arrangements Act, 1900," agrees with the Commonwealth that the Government House, St. Kilda-road, Melbourne, together with the buildings, offices, and grounds appurtenant thereto, which grounds are delineated in the Plan attached hereto and marked with the letter "A," and the furniture and other effects specified in the Schedule attached hereto and marked with the letter "B," shall be and are hereby let rent free to the said Commonwealth for the term of five years from the first day of January, one thousand nine hundred and one, and thereafter from year to year until this tenancy shall be determined as in Clause 9 of this agreement mentioned for the use and occupation by the Governor-General as a residence subject to the terms and conditions hereinafter appearing.

2. The Commonwealth agrees that it will, during the continuance of this tenancy, and at its own cost, maintain the premises and all new fixtures and additions thereto in good and substantial repair, and will at the like cost keep and maintain the gardens and pleasure-grounds in proper order and condition.

3. No alterations and additions shall be made in or to the fabric of the building or to the services, appliances, or conveniences connected therewith without the previous consent of the proper officer of the State Government.

4. The Commonwealth agrees that it will replace with articles of a similar kind and of equal value such parts of the furniture and other effects as may be, or may have been, destroyed or damaged during the occupancy of the premises by the Governor-General of the Commonwealth.

5. The Commonwealth will not, without the previous license of the proper officer of the State Government, permit any of the furniture or other effects to be removed from the premises.

6. Any officers whom the State Government may designate to the Commonwealth for the purpose shall, at all reasonable times, be permitted to visit and inspect every part of the buildings and their appurtenances, for the purpose of viewing and inspecting their state of repair and condition.

7. That the State Government shall, during the continuance of this agreement, keep the buildings, fittings, and furniture insured against fire in some company or companies, in the name of the State Treasurer, in the sums following—that is to say, the messuage, stables, coach house, lodges, and other buildings and erections, in the sum of £92,750, and the furniture and other effects specified in the Schedule, or substituted for them, in the sum of £12,500; and the State Government shall lay out all moneys received under, or by virtue of any insurance so effected in rebuilding, reinstating, replacing, or repairing the premises, furniture, or other effects which may be destroyed by fire. The Commonwealth shall pay to the State Government the amount of the premiums paid by it for keeping the buildings, fittings, and furniture insured as above provided; and shall not be liable to the State Government for any damage by fire to the said buildings, fittings, furniture beyond the repayment of such premiums as aforesaid.

8. At the expiration or other sooner determination of this tenancy, the Commonwealth will cause to be delivered up to the proper officer of the State Government the premises (including the furniture and effects specified in the Schedule, or substituted for the same), and all new fixtures and additions thereto, together with the gardens and pleasure-grounds in the like good and substantial repair, condition, and order and as they respectively were when taken over by the Commonwealth.

9. This tenancy shall be determinable at any time after the expiration of the said term of five years by not less than twelve months' notice in writing given by either party to the other of the intention of such party to determine the same.

In witness whereof His Excellency the Honourable Sir Reginald Arthur James Talbot, Knight Commander of the Most Honourable Order of the Bath, Governor of the State of Victoria, hath hereunto set his hand and the Seal of the said State, and the Attorney-General of the Commonwealth of Australia, for and on behalf of the said Commonwealth his hand and Seal the day and year first above written.

The Schedule referred to.

Signed, Sealed, and Delivered by the Hon. Isaac Alfred Isaacs, Attorney-General of the Commonwealth of Australia, for and on behalf of the said Commonwealth, in the presence of,—

The Chief Clerk, The Treasury, Sydney, to The Secretary to the Department of External Affairs, Melbourne.

The Treasury, Sydney, 5 January, 1906.

Dear Sir,

Mr. Carruthers left last evening for the country, and, the Under Secretary being absent, he requested me to write to you with regard to the proposal to lease the State Government House to the Commonwealth Government as a residence for His Excellency the Governor-General when visiting Sydney.

Since his return, Sir Harry Rawson has informed Mr. Carruthers that Lord and Lady Northcote are apparently desirous that he should enter into occupation of State Government House. In view of the proposals made by the Federal Government for a fresh lease of Government House, Mr. Carruthers will be glad to know, before taking any steps in the direction of giving effect to these proposals, whether the desire expressed by Lord and Lady Northcote is in accord with the views of the Commonwealth Government in respect of the disposition of State Government House.

A complete understanding of the matter is desirable at as early a date as possible, as the lease of "Cranbrook," the residence of Sir Harry Rawson, terminates on the 30th September next, and the lessors have intimated that they are not prepared to renew the lease.

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Whatever may be finally decided upon, Mr. Carruthers hopes there will be no disturbance of existing arrangements with regard to the Governor-General's occupation of Government House before July next.

You might show this note to Mr. Deakin, as Mr. Carruthers would be pleased to know whether it is intended to make any modification of the proposals contained in the Prime Minister's letter of 6th December, with regard to the accommodation of the Governor-General when visiting Sydney.

Yours, &c.,

J. BURT,
Chief Clerk. 10

The Secretary to the Department of External Affairs, Melbourne, to The Chief Clerk, Treasury Department, Sydney.

Melbourne, 11 January, 1906.

Dear Sir,

As suggested, I have shown your unofficial letter of the 5th to Mr. Deakin, who asks me to inform you that in any event the Government does not contemplate an alteration in the existing arrangements before the end of June next.

So far as Mr. Deakin is aware, Mr. Carruthers does not appear to have quite correctly expressed the desires of their Excellencies the Governor-General and Lady Northcote. He understands that they do not desire to be, or even to appear to be, the means of preventing Sir Henry Rawson from occupying the State Government House in the Domain at any time he wishes to reside there.

So far as the Commonwealth Government may express an opinion, Mr. Deakin appreciates their Excellencies' anxiety to study your Governor's wishes in every way; but, in the event of Sir Harry Rawson preferring not to reside in the Domain State Government House, he hopes that it may still be made available for the Governor-General on the same terms as Government House, Melbourne. 30

The situation has not been altered since Mr. Deakin's letter of the 6th December, except that the Government have promised Parliament that the vote for the necessary expenses of upkeep will not be again submitted in the Appropriation Bill. It will be the subject of a special measure to be brought before Parliament as soon as possible after its next meeting. An important element in framing such a measure will be a knowledge of the intentions of the Government of New South Wales in respect to this Government House, and, therefore, Mr. Deakin would esteem an early reply to his former letter.

Yours, &c.,

ATLEE HUNT. 40

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 13 January, 1906.

Dear Mr. Deakin,

In connection with your letter of the 6th December, and with reference to the negotiations which have been entered upon in relation to the continued occupancy by the Governor-General of Government House, Sydney, I wish to emphasise the fact that the situation is one that necessitates the furnishing of some information of a more definite character with regard to the intentions of the Federal Government in this particular matter than I have hitherto been able to obtain.

It is a matter of general public knowledge that the State Government, in order to make adequate provision for the housing of the State Governor, in 1900, entered into a lease of the property known as "Cranbrook," at Double Bay. That lease will expire on the 30th September next, and information which I have received is to the effect that occupation of the premises after that expiration cannot be relied upon,—it being the intention of the owners to subdivide the property and sell.

Recent happenings and expressions of opinion in the Senate are not calculated to settle one's mind to a conclusion that arrangements are likely to be continued for any lengthened period for the upkeep of Government House, Sydney, and you can doubtless well realise that if this State negotiates a new tenancy of other premises than "Cranbrook" for the State Governor, and subsequently finds the Federal control unwilling or unable to continue the Sydney residence of the Governor-General, those responsible for the State action will be in a somewhat invidious position.

The draft lease which accompanied your communication of the 6th ultimo, and which you ask me to sign, seeks the granting of occupancy of the Sydney Government House upon terms whereby the agreement can be terminated by giving twelve months' notice at any time on and after the first of January of this year, and in that point would much uncertainty lie.

It is admittedly a difficult matter to lease premises suitable for Vice-Regal purposes, and a short tenancy of this class of residence is out of the question. If I could have an assurance that it is the desire of the Federal Government to continue the arrangements at present in existence of a period of five years from say, the 1st July next, then I should feel warranted in endeavouring to enter into a new lease of premises for the housing of our Governor; but in the absence of such an undertaking I am naturally diffident about the whole matter, for under existing proposals, I may enter into a new lease of State Governor's quarters for, say three or five years from the 1st of October next, and a few months afterwards find that you no longer need the Government House proper. That is a possible case under the agreement you have forwarded, and a set of circumstances which I wish to avoid.

You will realise that this matter is an awkward one to settle by means of correspondence, and I would prefer that we decide to let present arrangements remain as they are until 30th June next, with the intention that you

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and I shall meet—either in Melbourne or in Sydney—in the interval, for the purpose of arriving at a decision suitable to the convenience and requirements of both Commonwealth and State.

Believe me, &c.,

J. H. CARRUTHERS.

P.S.—I do not wish a special meeting arranged, but am prepared to trust to luck when you are in Sydney, or I in Melbourne, on other business.

The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Dear Mr. Carruthers,

Melbourne, 20 January, 1906. 10

Absence from town has prevented me from replying earlier to your letter of the 13th, with relation to Government House, Sydney. I recognise your difficulty in fulfilling the double obligation of arranging for the residence of your Governor and also of providing accommodation for the Governor-General on his visits to Sydney.

Despite the expressions used during the recent discussion in the Senate, I have hopes that Parliament will adopt the view of the Government, but, of course, I cannot fail to perceive that the necessity of negotiating for a new State Government House before the expiry of the lease of "Cranbrook" makes it important that you should be fully seized of the Federal position as soon as possible. 20

You suggest an agreement for five years, but the mention of that or any other specific period might imply that the Federal Capital would not be ready for occupation within the period named, an inference that this Government would be reluctant to draw. However, it is perhaps hardly worth while now discussing the matter in all of its aspects, as I cordially agree to your suggestion to let present arrangements remain until the 30th June, and in the meantime to take an opportunity of talking the matter over personally during the recess. If you happen to be coming to Melbourne soon, I shall be very glad if you will let me know, so that I may be in town to meet you. 30

I am, &c.,

ALFRED DEAKIN.

The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Sir,

Melbourne, 5 April, 1906.

With reference to former correspondence on the subject of the occupancy of Government House, Sydney, I have the honour to inform you that this Government is prepared to make an agreement with the Government of your State for the lease by the Commonwealth of Government House for a period of five years, from the 1st July next; such agreement to be subject to ratification by the Parliament of the Commonwealth. I understand that this is in accordance with your desires. 40

I have, &c.,

ALFRED DEAKIN.

The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Melbourne, 11 May, 1906.

Sir,

I have the honour to invite your attention to my letter of the 5th ultimo, No. 06/1222, intimating that this Government is prepared to enter into an agreement with the Government of your State for the lease by the Commonwealth of Government House, Sydney, for a period of five years from 1st July next—such agreement to be subject to ratification by the Commonwealth Parliament—and to ask that I may be favoured with a reply thereto.

2. As you are aware that intimation was made in accordance with the following minute, which was agreed to at the interview which took place between you and my colleague, the Minister for Home Affairs, when the question as to the future occupancy of Government House was discussed :—

“ As the tenancy expires on November 1st, and will not be renewed
“ by the owner, who has determined to sell, the Premier of New South
“ Wales states that they are willing to negotiate for the purchase of
“ the present house occupied by the State Governor, but feel that they
“ are not justified in purchasing until they get an assurance from the
20 “ Government of the Commonwealth of their willingness to make an
“ agreement with the State of New South Wales for the occupation of
“ Government House for a further period of five years, subject to
“ ratification by Parliament.”

I have, &c.,

ALFRED DEAKIN.

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 16 May, 1906.

Sir,

30 Adverting to your communication of the 11th instant, No. P.M. 06/1856, asking for a reply to your letter of 5th ultimo, in which it was stated that your Government was prepared to enter into an agreement with the Government of this State for the lease by the Commonwealth Government of Government House, Sydney, for a period of five years from 1st of July next, I have the honour to inform you that negotiations are still proceeding for “ Cranbrook,” and I hope to be able to conclude them one way or another in a few days, when I will further communicate with you.

I have, &c.,

J. H. CARRUTHERS.

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RECORD. The Premier of New South Wales to The Prime Minister of The Commonwealth of Australia.

Premier's Office, Sydney, 5 June, 1906.

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Sir,

From your communications dated respectively 5th April last and 11th ultimo, I note that your Government is willing to enter into an agreement for the lease of Government House, Sydney, for a period of five years from 1st July next, subject to ratification by Parliament, such intimation having been made in accordance with the terms of the following Minute which was agreed to at an interview between your Colleague, the Honorable the Minister of State for Home Affairs and myself:—

“As the tenancy expires on November 1st, and will not be renewed by the owner, who has determined to sell, the Premier of New South Wales states that they are willing to negotiate for the purchase of the present house (‘Cranbrook’) occupied by the State Governor, but feel they are not justified in purchasing until they get an assurance from the Government of the Commonwealth of their willingness to make an agreement with the State of New South Wales for the occupation of Government House for a further period of five years subject to ratification by Parliament.”

20

With reference to the above, I now beg to confirm the arrangement made, provided that a definite intimation of the decision of the Commonwealth Parliament be received from you prior to August next. This proviso is rendered necessary owing to the fact that this Government has only succeeded in having ‘Cranbrook’ placed under offer until the date mentioned, and it will be very obvious to you that the negotiations for the purchase of a residence for the State Governor must be wholly contingent on the Commonwealth policy with regard to the residence in Sydney—permanently or otherwise—of the Governor-General.

I have, &c.,
J. H. CARRUTHERS.

30

Telegram from The Prime Minister of the Commonwealth of Australia to
The Premier of New South Wales.

6 June, 1906.

Shall be glad to be favoured with the decision respecting lease by this Government of Government House, Sydney.

ALFRED DEAKIN.

Telegram from The Prime Minister of the Commonwealth of Australia to
The Premier of New South Wales.

31 July, 1906. 40

Referring your letter 5th June respecting Sydney Government House, have pleasure in informing you that Parliament has passed Bill authorising Government to make arrangement with your Government for occupation Sydney Government House.

ALFRED DEAKIN.

The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Melbourne, 8 August, 1906.

Sir,

I have the honour, at the instance of my colleague, the Minister for Home Affairs, to invite you to be good enough to intimate your acceptance of the terms of the draft agreement for the occupation of Government House, Sydney, by the Governor-General, forwarded to you under cover of my letter of the 6th December, 1905, No. 054815.

10

I have, &c.,
ALFRED DEAKIN.

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The Premier of New South Wales to The Prime Minister of the Common-
wealth of Australia.

Premier's Office, Sydney, 17 August, 1906.

Sir,

In compliance with the request contained in your letter of 8th instant, 06/3432, I have the honour to intimate the acceptance by this Government of the terms of the draft agreement for the occupation of Government House, Sydney, by the Governor-General, forwarded under cover of your
20 letter of 6th December, 1905, No. 05/4815.

I have, &c.,
J. H. CARRUTHERS.

The Premier of New South Wales to The Prime Minister of the Common-
wealth of Australia.

Premier's Office, Sydney, 1 April, 1909.

Sir,

I have the honour to transmit, herewith, Agreement (in duplicate) signed by His Excellency the Governor of New South Wales, for the occupation of Government House (Domain) Sydney by His Excellency the Governor-
30 General of the Commonwealth, and to request that the necessary steps may be taken, with a view to one of the Agreements being signed by His Excellency the Governor-General, and returned to me.

A plan of the buildings and grounds (Annexure "A") and an inventory of the furniture, &c. (Annexure "B") also signed by the State Governor are forwarded, under separate cover, for the information of your Government.

I have, &c.,
C. G. WADE.

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The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Melbourne, 23 April, 1909.

Sir,

Adverting to your letter of the 1st April, No. P.O. 09/1353, on the subject of the occupation of Government House (Domain), Sydney, by His Excellency the Governor-General of the Commonwealth, I have the honour to point out that the plan forwarded with that communication does not particularly refer to the land occupied in connection with Government House.

2. I have, therefore, to return the plan to you under separate cover, and to invite you to be so good as to indicate by tint the actual land mentioned in the lease.

I have, &c.,

W. M. HUGHES,

(for the Prime Minister).

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 7 May, 1909.

Sir,

Referring to your letter of the 23rd ultimo, No. 09/1616, I have the honor to return to you, under separate cover, the plan of Government House Grounds, Sydney, indicating by tint, as desired, the actual lands mentioned in the lease.

I have, &c.,

C. G. WADE.

The Prime Minister of the Commonwealth of Australia to The Premier of
New South Wales.

Melbourne, 2 June, 1909.

Sir,

Adverting to your letter of the 7th May, No. P.O. 09/1772 and previous correspondence, on the subject of the occupation of Government House (Domain), Sydney by His Excellency the Governor-General, I have the honor to return to you herewith the Agreement (in duplicate) and Plan and Inventory, and to point out that, although the Agreement and Inventory have been executed by His Excellency the Governor of your State, the Plan has not.

2. It is stated by the Commonwealth Crown Solicitor that until the Plan has been so executed he is unable to certify that the Agreement is in order for completion by the Governor-General, and I have therefore to invite you to be so good as to obtain the necessary signature, and return the documents to this Government.

I have, &c.,

ANDREW FISHER.

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

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Premier's Office, Sydney, 16 June, 1909.

Sir,

With reference to your predecessor's letter of 2nd instant, 09/2476, pointing out that the plan of Government House grounds, forwarded under cover of my letter of 1st April, has not been executed by His Excellency the Governor of this State, I have the honour to state that the plan was not submitted to Sir Harry Rawson for signature at the same time as the agreement and inventory referred to, for the reason that it could not be obtained prior to his departure from the State on 24th March last.

It is regretted that His Excellency's signature cannot now be secured; and it would be ineffectual, for the purposes of the agreement, to obtain the signature of the present Governor of the State, inasmuch as Sir Harry Rawson is the lessor named in the agreement. In the circumstances, I trust that you will be so good as to waive this objection, and obtain the signature of His Excellency the Governor-General to the agreement which (in duplicate), together with inventory and plan, is returned herewith.

I have, &c.,

C. G. WADE.

20

The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Melbourne, 24 August, 1909.

Sir,

With reference to previous correspondence on the subject of the occupation of Government House, Sydney, by the Governor-General of the Commonwealth, I have the honor to forward herewith the Document of Agreement in the matter, duly completed.

I have, &c.,

ALFRED DEAKIN.

30

The Acting Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 23 March, 1911.

Sir,

My attention has been drawn to the circumstance that the lease entered into between our respective Governments in regard to Government House, Sydney, is drawing to a close, and will, as a matter of fact, terminate on the 7th August next. The present time, therefore, seems to be appropriate for the bestowal of consideration upon the question of the future disposition of the property.

40

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I have been given to understand that the Federal Government would be pleased to be relieved of the occupancy of the premises, and, if I am correctly informed in this respect, I wish to place before you the fact that, notwithstanding that the tenancy is determinable at any time after the expiration by not less than twelve months' notice in writing by either party, my Government would be very glad to come to some understanding, without desiring strict adherence to the terms of the agreement in this regard.

Perhaps you will not mind favouring me by furnishing, for the information of this Government, a statement of the Federal Government's views and intentions in regard to the future in this matter. 10

I have, &c.,
W. A. HOLMAN,
Acting Premier.

The Acting Premier of New South Wales to The Acting Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 21 April, 1911.

Sir,

I have the honor to invite your attention to my letter of 23rd ultimo, on the subject of the lease entered into between our respective Governments 20 in relation to Government House, Sydney, and wish to say that I shall be favoured if the matter of a reply to the inquiries therein made can be expedited as much as possible.

I have, &c.,
W. A. HOLMAN,
Acting Premier.

The Acting Prime Minister of the Commonwealth of Australia to The Acting Premier of New South Wales.

Melbourne, 8 May, 1911.

Sir,

With reference to your letter of the 23rd March, on the subject of the 30 occupation by the Commonwealth of the Government House property, Sydney, I have the honor to invite you to be so good as to concur with the renewal of the lease of such premises from the 8th August next.

I have, &c.,
W. M. HUGHES,
Acting Prime Minister.

The Acting Premier of New South Wales to The Acting Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 23 May, 1911.

Sir,

With reference to my letter to you of date 23rd March last, and to your reply thereto of the 8th instant (11/2188), in which you extend an invitation to the Government of New South Wales to grant, on the expiry of the current agreement on 8th August next, a renewal of the lease to the Commonwealth of Government House, Sydney, I have the honor to inform you that, as my colleagues and I propose to utilise the subject property for public purposes at an early date, it is regretted that we cannot see our way to sanction renewal of the agreement as desired.

I have, &c.,

W. A. HOLMAN,
Acting Premier.

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The Acting Premier of New South Wales to The Acting Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 6 June, 1911.

Sir,

Following upon the correspondence which has recently passed between us, and in connection with our interview of the 2nd instant, I have now the honor to intimate that, as the result of consideration of the question in Cabinet to-day, it is felt by my colleagues and myself that, in view of the impending arrival of the new Governor-General of the Commonwealth, Lord Denman, coupled with our own anxiety not to be a cause of embarrassment to the Commonwealth Government, we should meet the necessities of the moment by arranging to allow your Government to continue in the occupancy of Government House, Sydney, for some months beyond the date upon which the current agreement will expire (August next), in order to afford time to enable inquiries to be made as to the most convenient arrangements for a vice-regal residence elsewhere.

My colleagues and I have, therefore, resolved not to renew the lease of the premises under notice, but we shall be very happy to put the house and grounds at your disposal for the purposes of the new Governor-General, if desired, until 31st December next, or any earlier date convenient to the Commonwealth, upon the understanding that all the terms and conditions governing the current occupancy shall be observed.

I have, &c.,

W. A. HOLMAN,
Acting Premier.

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The Acting Prime Minister of the Commonwealth of Australia to The Acting Premier of New South Wales.

Melbourne, 8 June, 1911.

Sir,

I have the honor to acknowledge the receipt of your letter of the 6th instant, from which I note with regret that your Government is unable to renew the lease to the Commonwealth of the Government House, Sydney.

2. The offer contained in the second paragraph of your communication, to place the house and grounds at the disposal of this Government for the purposes of the new Governor-General until 31st December next, will receive 10 consideration.

I have, &c.,

W. M. HUGHES,
Acting Prime Minister.

The Acting Prime Minister of the Commonwealth of Australia to The Acting Premier of New South Wales.

Melbourne, 28 June, 1911.

Sir,

Adverting to your letter of the 6th instant, with regard to Government House, Sydney, I have the honor to inform you that subject to the concurrence of Lord Denman, who will be consulted in the matter as early as practicable, this Government accepts the offer contained in the second paragraph of your communication now under reference to place the house and grounds at its disposal from the date of the expiration of the present agreement until the 31st December next, under the terms and conditions governing the current occupancy of the property.

I desire, however, to state that the Commonwealth Government regrets the decision of your Government not to renew the lease of these premises.

I have, &c.,

W. M. HUGHES,
Acting Prime Minister. 30

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 28 November, 1911.

Sir,

As you are aware, it was arranged by my colleagues (*vide* letter of 6th June last) during my absence in England, that possession of Federal Government House, Sydney, should be relinquished on 31st December proximo, in order that the property might be available for other purposes.

The question was reopened at a Cabinet meeting held to-day, when, 40 with a view to according further consideration to it, it was decided that I

should seek from you information whether or not His Excellency the Governor-General proposes to go into residence at Government House during the approaching Christmas season. If this be so, I shall be glad to know the date of Lord Denman's probable vacation after such a visit, if made.

As the date of termination of the present arrangement is rapidly approaching, I shall be favoured if you can supply me with information on the above lines as a matter of urgency, in order that my colleagues and I will have the benefit of it in devoting further consideration to the question, as desired by you.

10

I have, &c.,
JAS. S. MCGOWEN.

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The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Melbourne, 7 December, 1911.

Sir,

I am in receipt of your favour of the 28th ultimo, desiring to be informed of the probable date of His Excellency Lord Denman's next visit to Sydney, and drawing attention to the termination of the present arrangement between this and your own Government in regard to Government House,
20 Sydney.

2. In reply I desire to say that so far as I am aware His Excellency does not intend to spend the Christmas vacation at Sydney.

3. I shall be glad to hear at your convenience if you intend to make other arrangements in regard to Sydney Government House.

I have, &c.,
ANDREW FISHER.

The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Melbourne, 18 March, 1912.

30 Sir,

With further reference to the occupancy by the Commonwealth Government of the Government House, Sydney, I shall be glad if you will be good enough to reconsider this question with a view to extending the lease for a term of twelve months from the 30th June next, when the present tenure expires.

2. If you and your colleagues are able to see your way to grant this extension, the courtesy will be greatly appreciated by this Government.

I have, &c.,
ANDREW FISHER.

RECORD. The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

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Premier's Office, Sydney, 1 May, 1912.

Sir,

In connection with the inquiry contained in your letter dated 18th March, whether or not Government House, Sydney, can be made available for purposes of His Excellency the Governor-General for a term of twelve months from 30th June, proximo, I have the honor to state that my Colleagues and I are prepared to sanction the premises being continued in the present occupancy until the conclusion of the period for which Lord Denman proposes to make Sydney his head-quarters during the current year. 10

Ministers have been given to understand that His Excellency, after visiting South Australia in July, is desirous of returning to Sydney for the months of August and September. The above decision, as will be seen, will render this possible.

I have, &c.,

JAS. S. MCGOWEN.

The Minister for External Affairs of the Commonwealth of Australia to
The Premier of New South Wales.

Commonwealth Offices, Sydney, 8 July, 1912. 20

My dear Mr. Premier,

If it were at all possible for your Government to meet the Federal Government *re* the continued residency of His Excellency the Governor-General in Sydney, it would be a matter of very great gratification to the Federal Government.

I am empowered to suggest to you that any land now connected with Federal Government House, Sydney, which you desire to take for public purposes should be taken, leaving only an amount that might be deemed fair and reasonable to be associated with the house. Any land so left, the Federal Government to keep in order, and that we shall also pay for the maintenance and repair, etc., of Government House. 30

The understanding would be that should your Government be prepared to meet the Federal Government to this extent, His Excellency the Governor-General should spend a certain portion of each year in residence in Sydney.

I remain, &c.,

JOSIAH THOMAS,

Minister for External Affairs.

The Minister for External Affairs of the Commonwealth of Australia to
The Premier of New South Wales.

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General in
New South
Wales,
printed 17th
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—continued.

Commonwealth Offices, Sydney, 9 July, 1912.

My dear Mr. Premier,

Since seeing you this morning I have telephoned to Mr. Fisher, the Prime Minister, asking him if he would be good enough to let me know what was the proposal of the Federal Government in regard to a Governor-General's House at Yass-Canberra, &c.

I may say that, when I telephoned, Cabinet was sitting, and Mr. Fisher was enabled at once to see the members of his Cabinet, and I am authorised to state that it is the intention of the Federal Government to build a residence for the Governor-General at Yass-Canberra with all reasonable expedition, and when the house is finished it is not the intention of the Government to ask for any residency of the Governor-General in the city of Sydney.

I trust that this is the information that your Cabinet desire to obtain. If with this information you can now agree to the request as submitted to you in my previous letter, adding, if so desired, that the present Government House is granted only to the present occupant, and that the Federal Government must notify the Imperial authorities that it will not be available for the incoming Governor-General, I shall be glad.

I am leaving Sydney to-night, and if it be possible to obtain any definite reply from your Government before I leave I shall appreciate it very much.

I remain, &c.,

JOSIAH THOMAS.

The Premier of New South Wales to The Minister for External Affairs of
the Commonwealth of Australia.

Premier's Office, Sydney, 17 July, 1912.

My dear Thomas,

I am directed by the Cabinet to send you the result of their consideration of the proposal contained in your recent letter, and amplified by certain verbal communications which were afterwards made to me. My Colleagues feel that, the finances of the Governments being now entirely separated, the State Government is bound to refrain from the expenditure of its funds upon, or the allocation of its assets to, purely Federal purposes, and that where State assets are used for such purposes the arrangement should be upon a satisfactory business footing. It has been their desire, as you are aware, to devote the house and grounds at present constituting Federal Government House to purposes within the scope of the power of this Government at as early a date as possible. They have learnt that it is the desire of your Government to postpone the point at which the house and portion of the grounds shall cease to be used as a residence for the Governor-General for a further period of years, and we are anxious to, as far as possible, meet the wishes of your Government. They understand, however, that the

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—continued.

postponement is desired, not because you have in contemplation the permanent establishment of a residence for the Governor-General in Sydney, but because your Colleagues feel under some obligation to make this arrangement during Lord Denman's term of office, the Sydney residence being in its present use at the moment of his appointment, and he not having been advised of the possibility of any change. My Colleagues, while disclaiming any responsibility for any misunderstanding which may have arisen on the part of Lord Denman, feel that they can yet meet the difficulty which presses upon your Government, and at the same time maintain the principle by which they have been guided by an arrangement of the following character :—

My Colleagues would be willing to resume control at once, or in October next as may be found convenient, of only a portion of the area to be agreed upon (approximately about 25 acres), and place the rest of the area and the house at the disposal of the Federal Government at an annual rental equivalent to $3\frac{1}{2}$ per cent. upon the capital value of this portion, on condition that the period of its retention by the Federal authorities shall terminate definitely with the departure of the present Governor-General, and that the Imperial authorities shall be at once advised of the arrangement, and of the fact that the house and the portion of the grounds now let will not be available for residential purposes after His Excellency's departure. By the adoption of such an arrangement the principle of State proprietorship, to which we are committed, would be maintained, while your Government would be free from any reproach of a failure in any obligations which it might feel itself under in connection with the Governor-General's residence in New South Wales.

Yours, &c.,
JAS. S. MCGOWEN.

(Private and Confidential.)

The Premier of New South Wales to The Prime Minister of the Commonwealth. 30

Premier's Office, Sydney, 13 August, 1912.

My Dear Fisher,

At a Cabinet meeting held to-day, I submitted to my colleagues a verbal report of our conversation yesterday upon the subject of Government House, Sydney. Ministers, however, are disinclined to recede from the position set forth in my letter to your colleague the Minister of State for External Affairs, under date 17th ultimo, the main point of which is that, as the finances of our respective Governments are now entirely separated, the Commonwealth should pay rent for the property if it occupies the same during the remainder of the term of Lord Denman's stay in the Federation. 40

Ministers are pressing for an answer to my letter referred to, and I must say that this is essential before we can definitely decide the question.

My reason for focussing your attention on this is that the question is rapidly reaching a state of urgency, if Lord Denman's occupancy is to conclude with the termination of the present arrangement, viz. :—That he shall not be disturbed during his current visit (which it is understood will come to an end in October).

If we fail to arrive at an agreement satisfactory to our respective Governments for the retention of the property in its present use until the end of the present Governor-General's service in the Commonwealth, and if Lord Denman thereby vacates the premises in October next, then it is, as I think will be obvious to you, necessary that the State should know as early as possible in order that plans may be matured for the utilisation of the property for State purposes.

Yours truly,

J. S. MCGOWEN.

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The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

Melbourne, 22 August, 1912.

Sir,

I have the honour to acknowledge the receipt of your letters of the 17th July and 18th August [*] in which you state that your Government is unable to entertain the proposal made by my Government to undertake the maintenance of Government House, Sydney, as a residence for the Governor-General, and ask that an early reply be given to a proposal put forward by your Government that the Commonwealth should pay a rental based upon 3½ per cent. of the value of Government House, Sydney, and that portion of the grounds thereof which it is proposed to include as part of the Vice-regal residence; this arrangement to terminate at the expiry of Lord Denman's term of office. In reply I desire to say that my Government, after careful review of the present circumstances, and those in which the existing arrangement was made, is unable to accept the proposal of your Government.

*Personal letter.

The arrangement under which the Governor-General has resided in Sydney during the recess was made at the direct request of the Government of New South Wales.

On September 25th, 1899, Mr. Lyne, Premier of New South Wales, forwarded a minute to the Governor containing the following paragraph :—

“ It is therefore suggested that the Governor-General be received
“ in the first instance in New South Wales, and during the session of the
“ Federal Parliament, reside mainly in Melbourne. This Government
“ will make ample provision for his residence in Sydney at other times.”

A despatch in the above terms was forwarded to the Secretary of State for the Colonies on 27th September.

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—continued.

On 28th March, 1900, Mr. Lyne asked the Governor to forward a message to the Secretary of State containing the following passage :—

“ Referring to the question of a permanent residence for the Governor-General of Federated Australia, this Government offers present Government House for such purpose, and is now arranging for another residence for a future State Governor.”

This was despatched to the Secretary of State on 29th March.

On 12th May, 1900, the Premier of Victoria telegraphed to the Premier of New South Wales as follows :—

“ Referring to your telegram of 8th May . . . majority (of 10 Premiers) agree to residence of Governor-General in New South Wales during recess, but consider that he should visit other Colonies.”

As it now appears that your Government is not desirous that His Excellency the Governor-General should reside in Sydney during the recess, the arrangement originally contemplated must be reverted to. In the circumstances therefore it will be for your Government to make such arrangements for the use of Sydney Government House as they think fit.

I have, &c.,

ANDREW FISHER.

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

Premier's Office, Sydney, 28 August, 1912.

Sir,

In reply to your letter of the 22nd instant, I have the honour to inform you that this Government learns, with regret, of the inability which you and your colleagues feel to accept the settlement of this question suggested in my communication of 17th July last.

My colleagues have noted the review of the history of this matter contained in your last letter. They would point out, however, that when Sir William Lyne and the New South Wales Government made the arrangement referred to of thirteen years ago, the circumstances were unlike those of to-day in at least two important particulars. There then prevailed a very general expectation that the Governor-General, before the year 1912 had been reached, would have been housed at the permanent seat of government, or that that event would be, at the time named, in early prospect. Guided by this expectation, the offer to which you refer was made and accepted in the belief that it would be an entirely temporary one, and the terms of the Federal Act of 1906 empowering the acceptance of the offer, which was renewed in that year, specifically limit such acceptance to a period not exceeding five years, a period it is unnecessary to point out, which has now expired.

Further, when the original arrangement was made, the finances of the Commonwealth and State were so interwoven that the use of the State

assets for Commonwealth purposes was a matter of no importance. The subsequent entire separation of the finances of the two Governments has obviously altered this aspect of the situation, and, in the opinion of my Government which I have previously communicated to you, has made it essential that in future the State Government should refrain from the expenditure of its funds upon, or the allocation of its assets to, purely Federal purposes without some satisfactory business arrangement.

In view of these two important alterations in conditions, it is thought there is comparatively little advantage in traversing the retrospect of the case which your communication affords. At the same time my Colleagues are unaware of any grounds for the concluding observation of your letter to the effect that it would appear that they are not desirous that His Excellency should reside in Sydney during the recess. They join with me in assuring you that they entertain the hope that His Excellency the Governor-General may in future honor Sydney with his presence both in recess and on all occasions which his duties will permit. but they think that, since the separation of the finances, previously referred to the Federal and not the State, Treasury is clearly indicated as the source from which the necessary accommodation for His Excellency should be provided.

20

I have, &c.,

JAS. S. MCGOWEN.

The Prime Minister of the Commonwealth of Australia to The Premier of New South Wales.

[Confidential.]

Melbourne, 9 September, 1912.

Sir,

Your letter of the 28th August, in reply to mine of the 22nd, is in my hands, and my colleagues join with me in expressing very sincere regret that your Government has been unable to accept the proposal in regard to the residence of His Excellency the Governor-General in Sydney made by my Government.

But as in your observations upon the review of the history of this matter, which I had the honour to submit to you in my last letter, I have been unable to find anything which affects the position as there set forth, I still venture to hope for a more favourable decision.

The concluding sentence of your letter, in which you state that your Government thinks "that since the separation of the finances previously referred to the Federal, and not the State, Treasury is clearly indicated as the source from which the necessary accommodation for His Excellency should be provided" strengthens me in the opinion I have formed that your Government has failed to appreciate the position outlined in the correspondence between Sir William Lyne, the State Premier's Conference, and the Home Authorities.

Your reference to the passage from your letter quoted above to "the source from which, since the separation of the finances, the necessary accom-

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“modation for His Excellency should be provided” can only refer to such accommodation as the performance of the Vice-regal functions under the Constitution, and originally contemplated by its framers, and confirmed by the State Premier's Conference renders necessary. I need hardly remind you that no special provision for a residence for His Excellency in Sydney during recess was originally contemplated. It was, and it is, quite obvious that in the performance of the Vice-regal duties there are no constitutional obligations upon the Federal Government to provide permanent accommodation anywhere save in the Seat of Government.

The temporary accommodation of His Excellency in the various States 10 during recess is an obligation which the Federal Government recognises as a legitimate claim upon the moneys of the taxpayers of the whole Commonwealth. But the present arrangement, which is quite extra-constitutional, and was entered into at the very strongly expressed desire of the New South Wales Government, which offered the necessary accommodation, is of a quite different nature; and my Government is unable to see how the Federal Treasury can properly be charged with the cost of accommodation of His Excellency in any one State, which necessarily involves his absence from others.

If your Government then, desires His Excellency to spend the recess in 20 Sydney, it is only proper that arrangements for his accommodation should be made upon the lines set forth in the proposals which I had the honour to submit to you. If, on the other hand, your Government is no longer desirous that His Excellency should make Sydney his headquarters during recess, but merely include it in the Vice-regal itinerary, the Federal Government will, of course, make all arrangements from time to time for His Excellency's accommodation in Sydney.

I have, &c.,
ANDREW FISHER.

Telegram from the Prime Minister of the Commonwealth of Australia to 30
The Premier of New South Wales.

11 September, 1912.

Have you any further reply *re* Government House; if not, could lay papers on table of House to-day, including confidential letters referred to.
FISHER.

Telegram from The Premier of New South Wales to The Prime Minister of
the Commonwealth of Australia.

11 September, 1912.

Your telegram to-day. Am replying further *re* Government House.
McGOWEN. 40

The Premier of New South Wales to The Prime Minister of the Commonwealth of Australia.

RECORD.

Premier's Office, Sydney, 14 September, 1912.

Sir,

Your confidential letter of the 9th September, 1912, further in reference to the question of the continued occupancy by the Commonwealth of Government House, Sydney, is now before me.

My Colleagues, while entering with interest into the historical considerations therein contained, are unable to see how the present position is affected by arrangements made when other conditions—financial and political—admittedly prevailed.

Apart from these considerations, the only point in your letter which would appear to call for observation is the reference in its concluding paragraph to the attitude of this Cabinet towards the possible future residence of His Excellency the Governor-General in Sydney. In this connection my colleagues, while repeating their previously respectfully expressed hope that His Excellency will frequently so honour Sydney are unaware that they have expressed any desire on the matter, and do not regard themselves as entitled to do so.

20 The movements of His Excellency, are, perhaps, to some extent guided by the views of his advisors, whose desires in that connection can, on due occasions, be properly expressed, and are no doubt duly regarded. My colleagues, however, do not regard themselves as standing in any relationship to His Excellency which would make any such impression of desires either a matter of propriety for them or of consequence for him. They accordingly wish me to make it clear that they do not express and have not expressed any desires as to His Excellency's periods of residence in Sydney. To do so would be, they feel, to trespass upon functions which they recognise as properly belonging to your Government. They have not ventured further
30 than to express the hope which concluded my letter of 28th August, a hope which they now unite in re-expressing.

I have, &c.,

JAS. S. MCGOWEN.

Telegram from The Premier of New South Wales to The Prime Minister of the Commonwealth.

Sydney, 17 September, 1912.

If you concur, I propose tabling in Assembly this afternoon Government House correspondence, including confidential letters from Thomas, 8th July, from yourself 22nd August and 9th instant, excluding my private
40 letter to you 18th August. Please reply early.

MCGOWEN.

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RECORD. Telegram from The Prime Minister of the Commonwealth to The Premier of New South Wales.

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—continued.

Public Offices, Melbourne, 17 September, 1912.

Cannot see any good reason for excluding your confidential letter, 13th August. It is referred to in subsequent correspondence, and I really do not see anything in it that warrants its omission.

ANDREW FISHER.

Informants' Exhibit G.

No. 13.
Informant's
Exhibit G.
Volume of
Notes and
Proceedings
of the
Legislative
Council con-
taining copy
report of the
Committee
of the
Legislative
Council,
printed 12th
August, 1836.

Volume of Notes and Proceedings of the Legislative Council of New South Wales, 1824 to 1837, containing copy report of the Committee of the 10 Legislative Council of the 12th August, 1836, with appendix and sketch (the said report appears also as Exhibit C. to the affidavit of Sir William McMillan at p. 11.)

1836.

New South Wales.

Report from the Committee on the proposed New Government House, with the Minutes of Evidence.

Ordered by the Council to be printed, 12 August, 1836.

Committee appointed to examine and report upon the Plan and Estimate for a new Government House. 20

	The Chief Justice,
The Colonial Secretary,	Mr. Berry,
The Auditor-General,	Mr. McArthur.

The Committee of the Legislative Council of New South Wales, appointed to examine and report upon the plan and estimate for a New Government House at Sydney, having assembled and sat for several days successively, from the 28th July, 1836, and having had before them an extract from the Secretary of State's Despatch to His Excellency the Governor, of date the 25th March, 1835, No. 33, together with the plan and specification transmitted from England; and having examined Captain Barney, Commanding 30 the Royal Engineers, and Mr. Lewis, the Colonial Architect, (whose evidence will be found in the Appendix to this Report) touching and concerning the same and having considered the most suitable site for erecting the proposed New Government House, have the honor to report for the information of His Excellency the Governor, and the Honorable the Legislative Council,—

First.—That the plan and elevation of the proposed New House transmitted from England, is suitable for an official residence for the Governor with

the addition of a dining room for private accommodation, and of suitable out-offices, for which last no provision has been made in the plan and specification submitted to their consideration.

Secondly.—That the estimate made out in England, of the expense of erecting a Government House, agreeably to the said plan, is wholly inadequate, and that such a House, together with an additional dining room and suitable out-offices, cannot be erected in this Colony for less than £25,000 sterling.

10 Thirdly.—That taking all circumstances into consideration, and after a personal inspection of the spot, and taking the opinion of the scientific witnesses examined, they have further to report, that the most suitable site, in their judgment, for the said House, is an elevated spot of land near Bennelong's Point, equidistant between the present Government Stables and Fort Macquarie.

Before your Committee resolved upon recommending this site, they had under consideration the expediency of selecting a spot for this purpose, either to the southward or to the northward of the Government Stables, in the immediate vicinity thereof, but finding that such a selection would be attended with many disadvantages, without any compensating advantages, they
20 deemed it expedient to direct their attention to the site now proposed.

The other sites at first contemplated, possess few of the advantages, which they take leave to point out, as recommendatory of that now suggested.

The site now proposed possesses the advantages of an extensive view of the Harbour of Port Jackson, and the adjacent scenery; it will present an imposing aspect from the Harbour and highest parts of the town of Sydney; it is healthy in every respect, and will be sheltered from the effects of obnoxious winds in the seasons of summer and winter; it is well adapted for adequate drainage, and an abundant supply of fresh water; it will have the advantage of about 50 acres of surrounding pleasure grounds, the natural
30 shrubberies now growing thereon, recommending it for retirement, without interfering with a just proximity to the town for the purposes of public convenience, as an official residence of the Governor. The existing stables will be at a convenient distance, and taken together with Macquarie Fort, will harmonise admirably with the character of the proposed House, and the latter, together with the contemplated improvements in Sydney Cove, and parts adjacent, will present an attractive appearance to strangers visiting the Port.

The plan of the House, transmitted from England, will, in the opinion of your Committee, require recasting, or some modifications, not, however,
40 inconsistent with the general arrangement. Amongst these alterations, your Committee would recommend detached accommodations for the Governor's Staff and Suite, together with suitable out-offices in connection with the House.

Although the estimate of £25,000 far exceeds the expense contemplated by the Right Honorable the Secretary of State, yet in recommending so large an outlay of Public Money, for such a purpose, your Committee beg leave to state, that they have had in view the probable proceeds of the sale of Government land, which will be thrown into the town of Sydney, by selecting the

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proposed site of the New Government House. By this arrangement, about 20 acres of land may be separated from the present inner domain (without inconveniently abridging the comfort of the Government House), and may be dedicated to the improvement of that part of the town which will abut upon the proposed new Wharves in Sydney Cove. By this arrangement Macquarie-street, Phillip-street, Elizabeth-street, Castlereagh-street, and Pitt-street, respectively, may be prolonged in a northerly line, so as to open on the said Wharves, leaving abundant space for the erection of Public Offices, a Commercial Exchange and a Public Library, on eligible sites. At the lowest estimate, the street frontages, thus thrown into the market, will yield funds 10 more than sufficient to cover the expense of erecting the New Government House, the Government Offices herein proposed, and the Circular Quay. In this estimate your Committee do not include the value of the allotments on the proposed new Quay, nor of the present public offices and the ground they respectively stand upon, which will doubtless yield a large return when sold.

The proposed site for the New Government House will not abridge, nor interfere with the allotments on the proposed new Quay, whilst at the same time, the proximity of the Quay will not interfere with the retirement of the proposed House, a point which the Committee deemed it necessary to keep in view, as it is intended, they understand, to restrict the Governor to one 20 official residence as soon as the New Government House shall be erected.

In recommending the proposed site, your Committee beg leave to state to the Council, that the communication with the outer Domain for foot passengers, as heretofore open, is to be still reserved for public recreation, by way of Fort Macquarie, but in a direction nearer to the water's edge, which will add to its length, salubrity, and beauty.

In the immediate vicinity of Fort Macquarie there is a large quantity of stone, well adapted for building, which it is desirable should be removed. This may be used in erecting the New House, and when removed, the spot may be converted in to a promenade for gala days, or other public occasions, 30 to which there will be an easy access by the line of Macquarie-street.

The Committee do not at present recommend as necessary, but they would suggest, that hereafter, the edge of the shore, leading from Fort Macquarie to the outer Domain, may be converted into a carriage drive, for public recreation.

In recommending this site, your Committee have had in view, not merely the suitability of the spot for an official residence, combining style, health, convenience, and eligible locality, but have also contemplated public convenience, both for business and pleasure, and have had an anxious regard to an economical expenditure of the Colonial funds, whilst at the same time they 40 have not been unmindful of the growing prosperity and importance of the town of Sydney, as the seat of Government.

For further information on this matter, your Committee beg leave to refer to the Appendix to this Report, in which will be found a sketch of the site which they propose to your Excellency and Honorable Council for adoption.

JAMES DOWLING,
Chairman.

12 August, 1836.

List of Witnesses.

Thursday, 28 July, 1836.
Mortimer William Lewis, Esq.

Friday, 29 July, 1836.
Mortimer William Lewis, Esq.
Captain George Barney

Saturday, 30 July, 1836.
Captain George Barney

Wednesday, 3 August, 1836.
Captain George Barney

Saturday, 6 August, 1836.
Captain George Barney
Mortimer William Lewis, Esq.

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—continued.

10

Minutes of Evidence.

Thursday, 28 July, 1836.

His Honor The Chief Justice in the Chair.

Mortimer William Lewis, Esquire, called in, and examined :—

I am the Colonial Architect. I have seen and considered the plan and estimate for the proposed New Government House at Sydney, transmitted from England. I am of opinion that the building proposed to be erected agreeably to that plan cannot be executed for less than £16,000, without including the kitchen and other necessary out-offices. The Plumber's work in the English estimate is valued at £16 per ton, whereas, that part of the work in this Colony cannot be performed for less than £45 per ton. The excess over and above the English estimate arises from the high rate which must be paid here for competent skill in workmanship. The ironmongery work necessary has been estimated in England at £97 10s. 10d. ; in this Colony it would come to six or seven times more. The painting work is set down at £178 8s. 0d. ; and it would come to four times that amount here. I think that £16,000 would cover the expense of the House ; but that it would cost £3,000 in addition for kitchen and offices suitable for such an establishment. I think, that with the out-offices and items which cannot be foreseen, the work cannot be completed for less than £20,000. Good Joiners cannot be obtained under 7s. per diem. Stone-masons, competent to execute the cornices and ornamental work required for this building will not work under from 8s. to 10s. per day. There are but few Masons in the Colony who could undertake the work. Painters that can execute graining and ornamental work, get from 5s. to 9s. per day according to their skill. Plumbers and Glaziers get 5s. ; Plasterers, 6s. ; Quarrymen, from 5s. to 8s. ; Stone-cutters the same ; Stone-setters the same. The chimney-pieces are proposed to be partly of stone and carved wood. Marble is to be procured here, but that would be more expensive. I have been in the Colony six years. The plan of the House does not exceed in style and accommodation what this Colony requires for a Government House. I think, prospectively speaking, it is sufficient

M. W. Lewis,
Esq.,
28 July, 1836.

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—continued.

M. W. Lewis,
Esq.,
28 July, 1836

for any period as a Government House. If the reception room were made two feet wider, which would make the dining-room two feet longer, it would be an improvement. There is no provision made in the plan for sewerage and drainage, the expense of which might be covered by the £20,000. The water closets are ill placed, in the plan, for this climate. I do not think a Government House with less accommodation is adapted to this Country. I would not answer for the Old Government House standing a twelvemonth from this time. To perform the work proposed, first-rate hands must be employed; and I see no prospect of any reduction in the price of that species of labor. In this climate a verandah or colonnade is necessary for such a 10 building; I think an arcade, supported by slight iron pillars or rods, so as not to interfere with the style of the building, but afford shade for the windows might be added with advantage; and it would be absolutely necessary on the north side, if the principal front is so placed. To import the materials from Home, the expense would be covered by one guinea per foot, including the pillars. This plan is made with reference to the style of the present stables, but I am of opinion it is not necessary that the house be built on this plan, on account of the stables, as they are so much out of repair, that to repair them substantially would cost nearly as much as to build new stables. The castellated style in which this House is planned, I think the least adapted 20 to this climate. The Venetian or Italian style is the best adapted, and the cheapest. I approve of the Venetian, because of its affording the greater shade. A Government House in that style, affording equal accommodation, would cost one-fourth less than the present estimate; but it would not be equally grand in appearance. It would be equally durable. All suitable timber, stone, and lime, can be procured in this country. The ironmongery, lead, glass, paint, plaster of Paris, and slates must be imported. Native marble can be procured. I think slates for roofing are adapted for this climate; I think shingles, let them be ever so well made, will not answer so well as slates. Shingles require renewing about every ten years; slates will last 30 as long as the building. If a house in the Venetian style were built on this scale, it would appear too paltry for a Government House. The proposed house is sufficient for a Governor and his ordinary suite, but not for a married Governor with a family. In this plan there is only one dining room, and that a public one. There is no private dining room, no parlour for domestic convenience. A house in the Grecian style, with the like accommodations, would be somewhat less expensive; but the sculpturing of architraves, cornices, pillars, &c., would be nearly equal to the octagonal towers and the Gothic heads of the windows. If the Governor is to have one house only, this house is not sufficient for his public and private residence. The utmost 40 this is calculated for is an official house, without reference to the Governor's domestic accommodation. To render this fit for a residence combining both purposes, it is necessary to make considerable additions, such as private living-rooms. If not a library, there should be a private dining-room, a breakfast-room or parlour, and a private drawing-room. Perhaps, some of the rooms called in the plan the bedrooms might be appropriated to these purposes, as the approach to them by the noble staircase is good. Here, there is only one entrance, a public one, and there ought to be one for the,

family. The plan has certainly a most imposing appearance, and, as an official residence, is suitable to the Colony. No style can have a grander effect; any other style is not so imposing. To employ as many men as we could put upon it, the building might be completed in three years. I was brought up in the Ordnance Department in England, and have had twenty-five years' experience of public buildings.

Friday, 29 July, 1836.

Mortimer William Lewis, Esquire, re-called, and examined :—

I have inspected with Captain Barney, this morning, the proposed
10 site for the New Government House. The highest elevation of the ground, as far as the stables are concerned, would be the most suitable for the building. The aspect of the principal front might be north-eastward; that is, the sea view looking down the harbour. That is considered the best aspect for any house in this part of the Colony, because the most healthy; the coolest in summer, and the warmest in winter. By placing the house to the south-east of the stables, some advantage will be gained by that building forming a mask to the westward, and protecting the house from the hot winds. The approach to the house would be improved. I think the space between the house and the stables might be advantageously appropriated to out-
20 offices, without interfering with the unity and harmony of the plan. The originally proposed site being lower than the stables, the effect of the main building would be lost in some measure. I think some of the rooms upstairs, called bedrooms in the plan, might be appropriated to living rooms for the Governor and his family. A drawing-room and parlour might thus be gained without adding any rooms to the ground floor. A private dining-room might be added on the ground floor without materially interfering with the plan. The best way will be to reverse the plan, so as to have the public rooms looking towards the north-east, and the public entrance to the south-east, unless this position is adopted, the whole of the rooms in the upper part of
30 the building will be sacrificed in point of aspect and comfort; without this, every bedroom window would look towards the Town. The objectionable water closets might be placed in the space between the house and the stables, if the latter, which stand in the way of the only good site for the building, are not to be removed.

Friday, 29 July, 1836.

Captain George Barney, Royal Engineer Commanding, called in, and examined :—

I have been in the Colony six months. I have been preparing estimates for work to be done in this country, and to be submitted to the Home Govern-
40 ment. The English estimate for the New Government House is quite inadequate to cover the expense of the building, which forms only part of the

RECORD.

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printed 12th
August, 1836
—continued.

M. W. Lewis,
Esq.,
23 July, 1836.

M. W. Lewis,
Esq.,
29 July, 1836.

Capt. George
Barney,
29 July, 1836.

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—continued.

Capt. George
Barney,
29 July, 1836.

plan. There is no provision made for out-offices. This plan is confined to the main building. I think such a house could not be built for £12,000 in this country. There is a great deal of very expensive work in the building. I think it could be built for £18,000, without including the out-offices— including out-offices, it would not be less than £25,000. This building would be always cool from the thickness of the walls, and the interior construction. A verandah could not be added without destroying the character of the building. The accommodations upstairs are very good; downstairs they might be improved. There are no distinct retiring apartments for a Governor's family; as a mere official residence it is well adapted for the purpose. It is a better Government House than there is in any of the Colonies I have been in; I have been in Jamaica, and in all the West India Islands. It would require two more rooms below, a sitting-room, and a dining-room, or a private drawing-room. There is no provision made for the Governor's suite for living and lodging, which are usually provided for. I think those additions might be included in the sum of £25,000 I have mentioned. A house in the Grecian style of architecture I do not think would make any great difference in point of expense; the columns and pilasters would make up the difference. A private entrance is indispensable. With the additions proposed, I think it is well adapted for a public as well as a private residence. These additions might be introduced without injuring the plan. There need be no alteration in the plan except for the particular objects proposed. It would only derange one angle of the plan. In my opinion, the house, out-offices, and alterations could not be completed for less than £25,000. The stables already built are out of repair, but not dilapidated. I think the stables would answer the house very well. I think the best course would be to revise the plan, and adapt it to the proposed site; which would not interfere with any interior arrangements of the plan, or the amount of estimate; if the house were built on the proposed site, following the points of the compass as laid down, it would be a most uncomfortable residence, with reference to the prevailing winds in winter and summer, in this climate.

Saturday, 30 July, 1836.

Captain Barney, re-called, and again examined :—

Capt. George
Barney,
30 July, 1836.

I have been this morning viewing the ground, with some Members of the Committee, in the neighbourhood of the stables, for the purpose of forming an opinion as to the most eligible site for the New Government House. In my opinion, the most eligible spot, with reference to the proposed plan, and the stables, is to the southward of the stables, with the principal frontage to the north-east; whereby in summer, the inhabitants will have the advantage of the sea-breezes; and on the west, the house would be in some measure screened by the stables from the westerly hot winds, the most disagreeable in the Colony. The space which would be left between the house and the stables might be conveniently applied to the erection of the necessary out-offices. The present plan would chime in with this site; nor would it

interfere with the line of access from either side ; it would be also more elevated and better capable of drainage, than that at first proposed. The house must be completed before it could be made fit to receive the Governor. There is good stone on Goat Island, suitable for the building. It would be as cheap to carry stone from Goat Island as from any quarry on shore. The workmen, supposing them to be convicts, would be more easy of control on Goat Island, than on shore. The conveyance might be performed by contract ; the distance would be no consequence as soon as the stone was embarked. I do not think a basement story to the building is necessary.

10 The expense of sewerage and drainage enters into my calculation of £25,000. I think it is possible that the house may be affected by the effluvia arising from the beach at Farm Cove, in hot weather, during the efflux of the tide. That, however, could be guarded against by piling across the Bay, at low-water mark ; and the intervening space would fill up of itself, or might be made an useful addition to the Botanical Garden. That would not be expensive ; a continuous row of piles would be sufficient. The great inconvenience of the originally proposed site is, that the frontage, in which are the public rooms, would be north north-east ; and then the private accommodations would be exposed to the south-west, which is always to be avoided if practicable. The entrance front of the building will now be to the south-east,

20 instead of the north-west ; by which means the objection, stated yesterday, as to the original site will be overcome, as being exposed to the hot winds. I propose the private entrance to be made to the north-west. That portion of the stables which faces to the eastward might be appropriated to out-offices, and still leave sufficient accommodation for the stabling. This might be easily accomplished. By this arrangement the stables come remarkably well in, in connexion with the proposed site. It appears to me, that the ground in question, will be wanted for the purpose of the Town in the course of a few years. I see no advantage (looking to a few years hence)

30 in having the seat of Government near the centre of the Town. I think it would be desirable to send for slates from England. I have used them in the West Indies, and they bear the heat well. I have recommended to the Government at Home, the use of slates for Government Buildings in this Country ; eventually they will be cheaper than shingles. The Welsh slates are the best ; they may be imported and landed at £11 a thousand. If commenced at once, the work might be completed by contract in three years.

Wednesday, 3 August, 1836.

Captain Barney, re-called and again examined :—

40 Two sites for the proposed New Government House, in the neighbourhood of the stables, have been pegged out for the inspection of the Committee—one to the right, and the other to the left of the stables ; on the whole, I think that pegged out on the south side of the stables is the most eligible,

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Capt. George
Barney,
30 July, 1836

Capt. George
Barney,
3 Aug., 1836.

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Capt. George
Barney,
3 Aug., 1836.

being the higher ground. The objection to the left or lower side is, that, in an architectural point of view, it will be overpowered by the stables, which show a frontage of nearly two hundred and twenty feet, and the proposed house is only one hundred and forty feet. If it should be deemed advisable to build on that spot, it will be necessary to raise the foundation eight or ten feet; which would not be necessary on the other site. It would also be close to the proposed line of Quay and Street, which will become the noisiest part of the Town; it would not, in that aspect, be much affected by the hot winds, as regards the principal entrance. The other site, being so much above the stables, gives it a command of view, as well as a showy appearance from the Harbour, and a better and more extensive view altogether of Port Jackson. The lower side will afford a better lawn immediately fronting the sea; but it will have a much more limited view of the water than the other. I don't think the locality of the stables would affect the house, with reference to effluvia, on either site; though the lower one would be more likely to be affected in that way than the upper one. The main view of the house will be towards the sea, and the other views might be confined or extended, by planting in any way which might be thought most desirable. The building will be then north and south, and the principal front will be exactly east; the public entrance will be on the south. The neighbourhood of the higher site, is susceptible of being converted into ornamental shrubberies. I think, decidedly, that the upper site is the most eligible in every point of view; the lower site will be always more susceptible of moisture than the upper. During the late rains, the flooring of the stables was under water. It is not practicable to convert the present stables into a Government House. The stables interfere with the best adapted site for a house in that neighbourhood. New stables, suitable to this house, could not be built under £3,000, including all accommodations; the present stables cannot be put into sufficient repair for less than £1,500. If pulled down, the materials would be available for re-building them, which, in my mind, would be the best arrangement. Under all present circumstances, I would rather build on the higher site. I should, however, propose to pull down the stables, and select a better site than either of those proposed. I have not examined the foundations of the stables with a view to ascertain whether they are worthy of repair. Pulling down the stables, and building others instead, would be cheaper in the end. Being stuccoed, they would not require constant repair. I think when the house is built, the stables must come down. The present stables will overpower the house; the view of the house will be merged in the stables; they are of too great magnitude for the proposed house. The great advantage of building on the higher ground is in remedying this, for then the house will look over the stables. I do not approve of a basement story; I would raise the foundation about three feet for ventilation under the floors. The best foundation is small brick arches, one brick in thickness. When the plan is revised, these will appear. It would be no great expense, and insure perfect dryness, and prevent mischief from rats and insects. The bricks should be made on purpose. There is as good brick earth here as in any part of the world.

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Saturday, 6 August, 1836.

RECORD.

Captain George Barney, re-called and further examined :—

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Capt. George
Barney,
6 Aug., 1836.

I have seen another site for the house, near Bennelong's Point, which I think better, in every point of view, than either of those before described. I would fix the house about 1,000 feet to the northward of the stables, with a frontage looking north-east. There would be an area of 200 yards in front, and 150 yards to the rear, about 400 yards from Macquarie's Fort. It will be about equi-distant between the Fort and the stables. I would connect the out-offices to the southward of the building. The advantages
 10 of this site over the others are, first, it does away with all objections in reference to the stables; it is more private, and affords a better view of the Harbour; it also does away with the objection with reference to the mud-bank at Farm Cove; it is susceptible of adequate drainage; it will not require higher foundations than the former site; I think it will not be subject to so much inconvenience from the noise which may be produced by extending the Quays in Sydney Cove; it is equally capable of improvement as an ornamental site, and with as good an access; it is equally well situated for public business, and will be more so when the public offices come to be erected, the site for which may be fixed on the vacant ground near the
 20 Old Mill, in continuation of Bent and Macquarie streets. This site does away with the strongest objection I had to the other sites, inasmuch as it affords a considerable portion of ground, which may be thrown into the Town, and that in a most essential position, still leaving about 60 acres for the home park. There will, by this position of the house, be a saving of about £5,000 in respect of the enclosing wall; and the additional frontage afforded to the Town, will realise upwards of £60,000, at the rate of only £10 a foot—that is the lowest valuation; but in all probability, being the most valuable part of the Town, it will raise £30. This is independent of the Quay frontage in Sydney Cove. It will admit of Castlereagh-street,
 30 Phillip-street, and Macquarie-street being opened directly upon the Quay. None of the land proposed for water frontage need be withdrawn by choosing this site, judging by the ground as it now appears on paper; but I would recommend a more accurate survey of the ground, and the line of Macquarie-street to be picketed out on the spot. I am not aware of any disadvantages likely to arise from this site. It may be readily supplied with water. By placing the house in the spot I mention, it would harmonize with Macquarie Fort and the stables. The view from the sea will be greatly improved. It will be a better object in approaching the Harbour. In every respect, I think it is a better site than either of those proposed before. By the con-
 40 tinuation of the line of Macquarie-street, it will terminate at the landing place near Fort Macquarie, and the eastern line of that street will form the western boundary of the Inner Domain. I would stop all communication with the Outward Government Domain from the Town in that direction by Fort Macquarie, for, by reason of its privacy, it has become the resort of disorderly people, and in the proposed site would be highly objectionable. Probably a road could be formed for foot passengers by scarping the rock

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Capt. George
Barney,
6 Aug., 1836.

upon the water's edge, by which means the road would not be so great a nuisance to Government House; or, with a view to the more ready access to the Outer Domain, an ornamental road might be made to open near the principal entrance, and pass to the Botanic Garden by the south of the stables. The other entrances will not be interfered with; they will remain as at present. The whole of the Outward Domain is, I understand, to be reserved for public recreation. An eligible site might be chosen on the ground surrendered to the Town for the erection of a Commercial Exchange. I think the present site of the house lately occupied by Chief Justice Forbes would probably be the best for that purpose, and which the proposed arrange-¹⁰ment for new streets would facilitate. As a general proposition, I think the proceeds of the sale of the land given up to the Town by this arrangement will more than cover the expense of the new Quays in Sydney Cove, the building of the new Government House, and the building of new Public Offices. The sites of some of the present Public Offices, and the buildings already thereon may also be thrown into the market, and will realise a large sum. Great advantage will be derived by concentrating the public offices, in every point of view. The ground reclaimed for the new Quay at the head of Sydney Cove will be most eligible as a site for a Custom House, and be easy of access from the other public offices. The present Bathing²⁰ House is well situated with reference to the site, and a private landing place may be made there. The principal entrance should be to the north of the building. The House from the lower part of the Town would be invisible; but from all the higher parts of the Town it would be a beautiful object as seen through the trees.

Saturday, 6 August, 1836.

Mortimer William Lewis, Esquire, re-called and further examined:—

M. W. Lewis,
Esq.,
6 Aug., 1836.

I have seen and examined the ground at Bennelong's Point, with a view to fixing another site for the new Government House. I think it is more eligible than either of those I have already mentioned, if the present stables³⁰ are to remain standing. The new site possesses all the advantages of the building being seen from the Harbour and higher parts of the Town, and is free from all the annoyances the other sites would be subject to. The ground is complete in itself as a domain. I think it is more private than the other sites, but sufficiently public with reference to access to any Government House need be. It is quite as healthy as the others. The approaches by land and water will be good. The approach by water will be by the present steps at Fort Macquarie. The nature of the ground is such as to admit of every improvement being made consistent with a building of that character. The elevation is suited to the proposed new site, and would harmonise with⁴⁰ Fort Macquarie and the stables. The level of the house would be such as to admit of a supply of water from the new aqueduct to the highest story in the building. The situation would be still sufficiently commanding, with reference to the adjoining ground and the Harbour. The site is capable of being well drained, and affords an excellent foundation. I know of no

disadvantages. To enclose the ground round the house it would not cost one-fifth of what was originally proposed. It will leave about 50 acres for the Domain or pleasure grounds. A considerable quantity of land can be given up by choosing this site, without any injury to the new building. The quantity will be about 20 acres. This will admit of the northern prolongation of Macquarie-street, of Phillip-street, and of Castlereagh-street, all terminating on the New Quay in Sydney Cove. It would also admit of the eastern prolongation of Bridge-street, intersecting the beforementioned streets, and extending with a sweep to the entrance of the Outer Domain, or road in rear of the Council Chambers. The north-east corner of Macquarie-street and Bent-street would form a good site for a range of public offices, and sufficiently capacious to embrace all that is required, and to concentrate the whole on that spot. The estimate of the frontage on the streets named that would be available to public sale is about 6,800 feet, which at £10 a foot, being the least value that could be put upon it, would realise £68,000. This is exclusively of the frontage on the Quays. The cross-streets may be taken at the same rate of valuation. I should say that the proceeds of the land so given up to the Town, would pay the expense of building the New Government House and Offices, the New Quay in Sydney Cove, and the New Government Offices for public business, provided the present public offices, and the ground they stand on, were thrown into the market as part of the same fund. This plan will not interfere with the new Quay, but on the contrary will render the frontages to it much more valuable, by bringing so many leading thoroughfares to it, and throwing sufficient space open for merchants to build their dwellings and warehouses upon, which otherwise could not be procured nearer than one mile from the spot. By this change of site nearly treble the quantity of land will be given up to the Town, than what was proposed with reference to the former sites of the Government House. The eastern side of the line in prolongation of Macquarie-street will form the western boundary of the Inner Domain. Several good sites might be chosen for a Commercial Exchange in the ground given up. About Macquarie-place is the best spot. There would be a good position afforded for the proposed Library and Museum, affording good access for the public. The Government stables will be well situated for the new site, and the House will be free from the nuisances arising from the stables. For the privacy of the building it would be necessary to exclude the public from entrance into the Domain by Fort Macquarie. There cannot be a more healthy place for a site than the one now selected. The ground possesses every advantage of comfort and ornament. There need be no sacrifice of the Allotments on the original plan for the Quay in Sydney Cove.

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--continued.

M. W. Lewis,
Esq.,
6 Aug., 1836.

Informant's Exhibit H.

Map dated 1894, showing the then present state of land with red line showing subsequent diversion of Botanical Gardens.

(Copy sent herewith.)

Informant's
Exhibit H.,
Map, dated
1894.

RECORD.

Informants' Exhibit J.

No. 13.
Informant's
Exhibit J.,
Letter from
Crown
Solicitor to
Messrs
Cope & Co.,
dated 12th
Feb., 1913.

Letter from Crown Solicitor of the State of New South Wales to Messrs. Cope & Co., showing total cost of the Government House Building at about £25,000.

Crown Solicitor's Office,
Sydney,
12 February 1913.

Dear Sir,

Williams (nominal Defendant) ats Attorney General (on relation).

In reply to your letter of the 11th instant herein I am prepared to admit— 10
(1) That Plan No. 370, Old Roll, dated 31st October 1807, was prepared by James Meehan Assistant Surveyor of Lands by order of Governor Bligh. I have asked the Under Secretary for Lands to supply you with a helio thereof for your use in connection with the Case.

(2) That the amount of the cost of building the present Government House was approximately £25,000 ; that this sum was supplied by the sale of portion of the land originally set apart by Governor Phillip for public purposes and by a Grant of £10,000 voted by the Legislative Council.

I am instructed to make any admissions which the Crown can properly make with a view to shortening the case and to save the Relators the trouble 20 of formal proof.

Yours truly,
(Signed) JNO. V. TILLET,
Crown Solicitor.

Messrs. Cope & Co.,
Solicitors, City.

Defendant's Exhibit I.

Sample of Grant of Class mentioned.

Victoria, by the Grace of God of the United Kingdom of Great Britain
and Ireland, Queen, Defender of the Faith and so forth. 30

To all to whom these presents shall come,
Greeting

Know ye that in pursuance and conformity with an Act of the Governor and Council of Our Territory of New South Wales, made and passed in the Fourth Year of Our Reign (No. 2) intituled " An Act for enabling the Principal

No. 13.
Defendant's
Exhibit I,
Sample of
Grant of
class
mentioned.

"Officers of Her Majesty's Ordnance to hold Estates and Property in the
 "Colony of New South Wales for Military Purposes and for Granting certain
 "other powers to the said Principal Officers and Respective Officers resident
 "in the said Colony" We of Our Special Grace have granted and for Us
 Our Heirs and Successors do hereby Grant unto the Principal Officers of Our
 Ordnance in Great Britain for the time being and their Successors in the said
 Office all that piece or parcel of Land in Our said Territory containing by
 Admeasurement Seven Acres Two Roods and Eleven Perches be the same
 more or less situated in the City of Sydney Parish of Saint Philip and County
 10 of Cumberland—Bounded on part of the South West by the North Eastern
 boundary line, of William Walker and Company's land being a line bearing
 South fifty degrees twenty minutes East two hundred and thirty five links
 commencing on the shore of Port Jackson, at the North corner of Walker's
 land, on part of the West by three links of the Eastern boundary of
 Walker's land, bearing South four degrees West, on part of the South by a
 line bearing East two degrees South forty five links, again on the West by a
 line bearing South four degrees west three hundred and forty links; again
 on the South West by a line bearing South fifty two degrees ten minutes
 East, ninety four links; again on the West by lines bearing South
 20 twenty three degrees twenty minutes West fifty five links; South
 thirteen degrees thirty minutes West fifty links; South nine degrees twenty
 minutes West sixty links; and South six degrees fifteen minutes West
 one hundred links to the North West corner of R. D. Cunynghame's land;
 on the South East by the Northern boundary of Cunynghame's land, being
 lines bearing North fifty two degrees fifteen minutes East three hundred
 and ten links and North sixty six degrees East twenty five links to the
 High Water mark of Port Jackson; on the remainder of the South East,
 on the East, North East and North West by the Waters of Port Jackson
 to the North corner of Walker's land aforesaid—Excluding from the above
 30 described land the Public Road, which is Bounded on part of the South by
 a line bearing East thirteen degrees South forty seven links commencing on
 the shore of Port Jackson, at a point bearing West thirteen degrees
 thirty minutes North, distant forty seven links from an Iron Pillar marked
 Gipp's Ward; on the West by lines bearing South, two degrees East five
 hundred and twenty eight links; and South four degrees West three links;
 on the South by a line bearing East two degrees South forty five links;
 on the East by lines bearing North four degrees East fifty six links;
 and North two degrees West six hundred and sixty four links to the
 shore of Port Jackson; on the North and North West by the Waters of
 40 Port Jackson to the point bearing West thurteen degrees thirty minutes
 North distant forty seven links from the Pillar aforesaid (Being the land
 on which Dawe's Battery is crected and Granted for the purpose of Defence for
 the Harbour of Port Jackson; and Advertised as No. 9 in the Government
 Notice dated 19th June, 1844) with all the rights and appurtenances thereto
 belonging To Hold unto the said Principal Officers of Our Ordnance in
 Great Britain for the time being and their Successors in Office for ever for
 the Use and Service of the said Ordnance Department or for such other
 Service or Services as the said Principal Officers or their Successors in the said

RECORD.

No. 13.
 Defendant's
 Exhibit 1,
 Sample of
 Grant of
 class
 mentioned
 —continued.

RECORD.

No. 13.
Defendant's
Exhibit 1,
Sample of
Grant of
class
mentioned
—continued.

Office shall from time to time order and direct. In Testimony whereof We have caused this Our Grant to be Sealed with the Seal of Our said Territory.

Witness Our Trusty and Well-beloved Sir George Gipps, Knight, Our Captain General and Governor-in-chief of Our said Territory and its Dependencies at Government House Sydney in New South Wales aforesaid this Thirty first day of July—in the Eighth Year of Our Reign ; and in the Year of Our Lord One Thousand eight hundred and forty four.

(Seal.) (Signed) GEO. GIPPS.

Entered on Record by me in the Registry of Grants No. 80 Pages 353 to 356 inclusive this Twenty third day of August One thousand eight hundred 10 and forty four.

(Signed) E. DEAS. THOMPSON,
Colonial Secretary and Registrar.

Enrolled in the Registrar General's Office at Sydney in the Register of Grants G. No. 2 pages 277 to 279 inclusive this Twenty sixth day of November 1844.

(Signed) WILLM. CARTER.
Registrar General.

Entered in the Register No. 2 of Sydney Town Grants, Folios 210 and 211, No. 547, in the Surveyor General's Office, 29th January 1845. 20

(Signed) HENRY HALLORAN.

No. 13.
Defendant's
Exhibit 2.
Imperial
Order in
Council,
dated 26th
Oct., 1899.

Defendant's Exhibit 2.

Imperial Order in Council.

At the Court of Balmoral, the 26th day of October, 1899.

Present :

The Queen's Most Excellent Majesty.
Duke of Fife. Mr. Akers-Douglas.
Sir Fleetwood Edwards.

Whereas under and pursuant to the provisions of an Act of the Legislative Council of New South Wales passed in the 4th year of Her Majesty's reign 30 intituled "An Act for enabling the Principal Officers of Her Majesty's " Ordnance to hold Estates and property in the Colony of New South Wales " for Military purposes and for granting certain other powers to the said Princi- " pal Officers and respective Officers resident in the said Colony " the several pieces or parcels of land described in the First Schedule hereunder written

including the areas excepted out of the pieces or parcels of land sixthly and ninthly described in the said Schedule were by divers Deeds Poll or Grants granted by Her Majesty unto the said Principal Officers of Her Majesty's Ordnance in Great Britain for the time being and their successors in the said Office to Hold unto the said Principal Officers of Her Majesty's Ordnance in Great Britain for the time being and their successors in Office for ever for the use and service of the said Ordnance Department or for such other service or services as the said Principal Officers or their successors in the said Office should from time to time order and direct :

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10 And whereas at the date of the passing of the Imperial Act 18 and 19 Vict. cap. 54 certain lands situated in the City of Sydney and then known respectively as "The Commissariat Stores" and "Fort Phillip or Flagstaff Hill" of which the pieces or parcels of land firstly and secondly described in the Second Schedule hereunder written form part and the piece or parcel of land thirdly described in the said Second Schedule with the Fort thereon erected known as "Fort Macquarie" were reserved appropriated or used for Military or Naval purposes but have never been granted for Ordnance purposes :

20 And whereas under the provisions of the "Crown Lands Alienation Act of 1861" the piece or parcel of land described in the Third Schedule hereunder written was duly dedicated by the Governor with the advice of the Executive Council for the purposes of a Naval Depôt by two several Notices of Dedication published in the New South Wales Government Gazette bearing date respectively the 10th day of January 1865 and the 5th day of June 1866 the one comprising portion of the said piece or parcel of land described in the said 3rd Schedule hereunder written and the other comprising the remaining portion thereof :

30 And whereas negotiations have for some time past been pending between the Colonial and Imperial Governments with regard to Sydney being the head Naval Depôt of Her Majesty's Ships on the Australian Station and an arrangement respecting the Naval Depôt was finally agreed upon between the said Governments on the following terms as embodied in the Colonial Secretary's Minute of the 16th day of April 1883 that is to say:—

(1) That immediately on getting the Commodore's formal approval the Colonial Government would proceed to make the necessary reclamations and wharves and to erect the necessary buildings upon Garden Island according to plans to be approved of by the Commodore.

40 (2) That the said Colonial Government would provide by purchase or building on the mainland a suitable residence for the representative of the Navy in these seas and to the satisfaction of the Commodore.

(3) That to make more effectual provision for the working of the Naval Station, a convenient office or depôt with small receiving store would be erected on the mainland and connected by telegraph or telephone with the Garden Island Depôt and with the Commodore's residence so as to give every facility of intercommunication.

(4) That as soon as these works were carried out to the satisfaction of the Commodore and the sites of the receiving depôt and of the said residence should be conveyed granted or dedicated in perpetuity for the

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use of Her Majesty's Navy in the same way as Garden Island had been the Imperial Government would surrender all the lands known as the Ordnance Reserves and all other lands or buildings in the Colony to which it might have any claim or title.

And whereas the receiving depôt referred to in paragraph 3 of the hereinbefore recited agreement has at the request of the Lords Commissioners of the Admiralty been erected on Garden Island :

And whereas the terms of the said Agreement as to the erection of buildings and carrying out of other works by the Colonial Government have been fulfilled to the satisfaction of the Admiral and the site of the aforesaid residence has been purchased by the Colonial Government and duly transferred to and is now vested in Her Majesty subject to the condition that the Colonial Government shall maintain the said residence and the lands thereto appurtenant and belonging in proper condition :

And whereas by an Act of the Imperial Parliament passed in the 40th and 41st years of Her Majesty's reign intituled " An Act to make better provision " respecting fortifications works buildings and lands situate in a Colony and " held for the defence of the Colony " it was amongst other things enacted that it should be lawful for Her Majesty on the representation of one of Her Majesty's Principal Secretaries of State and of the Commissioners of Her Majesty's Treasury that it was expedient so to do by Order in Council to vest any fortifications works buildings or land in any Colony held in trust for the defence of that Colony (whether vested in Her Majesty or in one of Her Majesty's Principal Secretaries of State or in the Principal Officers of the Board of Ordnance or in the Commanding Royal Engineer or other Officer) and the care and disposal of such fortifications works buildings or land in the Governor of the Colony for such estate and interest and upon such terms and conditions and subject to such reservations exceptions and restrictions as were specified in the Order. And the Governor for the time being of the Colony should by virtue of that Act and the Order take and hold (subject to the provisions of the Order) the premises transferred to and vested in him accordingly and that every representation to Her Majesty proposed to be made in pursuance of that Act should be laid before both Houses of Parliament and should lie for not less than 40 days on the table of both Houses before it was submitted to Her Majesty :

And whereas it has been represented to Her Majesty by one of Her Majesty's Principal Secretaries of State and the Commissioners of Her Majesty's Treasury that it is expedient to vest in the Governor of the Colony of New South Wales the lands described in the 1st and 2nd Schedules hereunder written with the buildings and works thereon to be taken and held by the Governor for the time being of the said Colony upon the trusts and for the purposes hereinafter declared on condition that if at any future period troops are sent to New South Wales at the request of the local Government or in furtherance of the interests of New South Wales the Government of New South Wales shall provide for such troops free of all charge to Her Majesty's Government barracks or lodging to the satisfaction of Her Majesty's Government :

And whereas the representation so made to Her Majesty as aforesaid was laid before both Houses of Parliament and lay for not less than 40 days on the table of both Houses before it was submitted to Her Majesty and it is expedient that such Order should be made by Her Majesty in respect of the lands described in the First and Second Schedules hereunder written and the buildings and works thereon as is hereinafter contained :

Now Therefore Her Majesty by and with the advice of Her Privy Council in pursuance of the said lastly recited Act and of all other powers enabling Her Majesty in this behalf and on consideration of the premises is pleased to order and it is hereby ordered as follows :

(1) The Lands described in the First and Second Schedules hereunder written with the buildings and works thereon shall subject to the before mentioned condition henceforth be and the same are hereby vested in Our Right Trusty and Right Well-Beloved Cousin William Earl Beauchamp Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George the Governor and Commander-in-Chief of the Colony of New South Wales and its Dependencies to the intent that the Governor for the time being of the Colony of New South Wales shall by virtue of the lastly recited Act and this Order take and hold the said lands and the buildings and works thereon upon the trusts and for the purposes hereinafter declared.

(2) The Governor for the time being of the said Colony shall take and hold the said lands and the buildings and works thereon upon such trusts and for such purposes and shall deal with the same in such manner as the Governor with the advice of the Executive Council of the said Colony shall by Order in Council direct appoint and determine.

(3) For the purpose of giving effect to any Order which shall be made by the Governor with the advice of the Executive Council of the said Colony in respect of the said lands and the buildings and works thereon the Governor for the time being of the said Colony is hereby empowered to make and execute all such Deeds of Grant surrenders or other assurances as the Governor with the advice of the said Executive Council may direct.

(4) This Order may be cited as the New South Wales Military Lands Order in Council 1899.

A. W. FITZROY.

The First Schedule Before Referred to.

Firstly.—All that piece or parcel of land in Our said territory containing by admeasurement 16 acres 1 rood and 15 perches be the same more or less situated in the County of Northumberland Parish of Newcastle Town of Newcastle commencing on the eastern extreme of the South boundary line at the sea beach and bounded on the South by a West line of 12 chains on part of the West by a line bearing North seven degrees East 9 chains and 40 links on part of the North by a line bearing East seven degrees South dividing it from the parsonage ground 2 chains and 45 links on the residue of the West

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by a line dividing it from the Parsonage Allotment bearing North 10 degrees East 2 chains and 65 links to the South side of Church Street on the residue of the North by the South side of Church Street being a line bearing East 7 degrees South 16 chains and 85 links to the Sea Beach and on the East by the Sea Beach Southerly to the Eastern extreme of the South boundary line aforesaid being the land authorised as the site of the Military Barracks.

Secondly.—All that piece or parcel of land in Our said territory containing by admeasurement 14 acres 3 roods and 24 perches be the same more or less situated in the County of Bathurst Parish of Bathurst Town of Bathurst commencing at the North-East corner at the South-West intersection of 10 George and Stanley Streets and bounded Northerly by a line bearing South $41\frac{1}{2}$ degrees West 16 chains 15 links dividing it from George Street Westerly by a line bearing South $48\frac{1}{2}$ degrees East 10 chains dividing it from Durham Street part Southerly by a line bearing North $41\frac{1}{2}$ degrees East 8 chains 50 links dividing it from William Street part Easterly by a line bearing North $48\frac{1}{2}$ degrees West 2 chains dividing it from Correy's Allotment again Southerly by a line bearing North $41\frac{1}{2}$ degrees East 8 chains dividing it from the same allotment and Government land and again Westerly by a line bearing North $48\frac{1}{2}$ degrees West 8 chains dividing it from Stanley Street to the North-East Corner as aforesaid being granted for Military purposes and advertised as 20 No. 10 in the Government Notice dated 6th November 1844.

Thirdly.—All that allotment or parcel of land in Our said territory containing by admeasurement 1 rood and 9 perches be the same more or less situated in the Town of Liverpool Parish of Saint Luke and County of Cumberland bounded on the North by the present wall that divides it from Moore Street being 1 chain and 53 links on the East by the present wall that divides it from the Goal being 1 chain 99 $\frac{1}{2}$ links on the South by the present wall that divides it from the old Court House Allotment being 1 chain 55 links and on the West by the present wall dividing it from Blacket's land being 1 chain 99 $\frac{1}{2}$ links being the site of the Military Barracks and advertised 30 as No. 2 in the Government Notice dated 2nd August 1843.

Fourthly.—All that allotment or parcel of land in Our said territory containing by admeasurement 3 roods and 39 perches be the same more or less situated in the Town of Windsor Parish of St. Matthew and County of Cumberland bounded on the South-West by the present wall dividing it from Bridge Street being 3 chains 13 links on the South East by the present wall dividing it from Court Street being a line 3 chains 4 $\frac{1}{2}$ links on the North-East by the present wall dividing it from Crown land being 3 chains 34 links and on the North-West by the present wall dividing it from the School Allotment being 3 chains 13 links to Bridge Street being the site of the 40 Military Barracks and advertised as No. 5 in the Government Notice dated 2nd August 1843.

Fifthly.—All that allotment or parcel of land in Our said territory containing by admeasurement 1 acre and 13 perches be the same more or less situated in the Town of Parramatta Parish of St. John and County of Cumberland bounded on the North by the present wall and the outside wall of the Barrack building which divide it from George Street being a frontage of 5 chains 81 links on the East by the present wall being line bearing South

4 degrees 30 minutes East 2 chains 58 links on the South by the present wall being first a line bearing West 4 degrees 41 minutes North $58\frac{1}{2}$ links and then a line West 21 degrees 37 minutes North 5 chains 89 links being the site of the Military Barracks and advertised as No. 3 in the Government Notice dated 2nd August 1843 as described in the Deed of Grant but now more correctly described as follows that is to say:—All that piece or parcel of land containing by admeasurement 1 acre and 13 perches be the same more or less situate in the County of Cumberland Parish of St. John Town of Parramatta commencing at the North-Eastern corner of the wall enclosing the Military Barracks being a point bearing South 12 degrees 49 minutes East 2 chains 47 links from the North-Eastern corner of Queen's Wharf and bounded thence on the North by the said wall and the walls of the Barrack buildings being lines bearing North 84 degrees 5 minutes West 1 chain 3 links North 6 degrees 36 minutes East 28 links North 83 degrees 53 minutes West 57 links South 6 degrees 36 minutes West 28 links North 83 degrees 24 minutes West 70 links South 6 degrees 6 minutes West $5\frac{1}{2}$ links and North 83 degrees 54 minutes West 3 chains 50 links thence on the West by the wall bearing South 6 degrees 5 minutes West 89 links thence on the South-West by the wall bearing South 68 degrees 10 minutes East 5 chains 90 links and South 84 degrees 12 minutes East $58\frac{1}{2}$ links and thence on the East by the wall bearing North 4 degrees 12 minutes West 2 chains 58 links to the point of commencement as shown upon plan catalogued Ms. 142 Sy. in the Department of Lands.

Sixthly.—All that piece or parcel of land in Our said territory containing by admeasurement 7 acres 1 rood and 18 perches be the same more or less situated in the County of Cumberland Parish of St. John Town of Parramatta bounded on the North by the present wall on Macquarie Street bearing East 5 degrees 10 minutes South 7 chains 68 links on the East by a line bearing South 9 degrees East 8 chains 71 links on the South by a line South 67 degrees 12 minutes West 6 chains $86\frac{1}{2}$ links and on the West by a line bearing North 12 degrees 30 minutes West 12 chains 25 links to Macquarie Street aforesaid authorised as the site for the Military Barracks and advertised as No. 12 in the Government Notice dated 31st December 1845 excepting thereout all that piece or parcel of land containing 1 acre 2 roods 1 perch be the same more or less situate in the County of Cumberland Parish of St. John Town of Parramatta commencing on the South-Western side of Macquarie Street at the North-Western corner of an area of 7 acres 1 rood 18 perches granted to the Principal Officers of Her Majesty's Ordnance 30th January 1846 and bounded thence on the West by the Western boundary of the Grant Southerly to its South-Western corner thence on the South by part of the Southern boundary of the said Grant being a line bearing North 67 degrees 12 minutes East 2 chains 60 links to the North-Western corner of John Harris' Grant of 110 acres thence on the North-East by a line bearing about North 53 degrees 45 minutes West about 2 chains 43 links thence on the East by a line bearing North 12 degrees 30 minutes West about 7 chains 50 links to the South-Western corner of an area of $87\frac{3}{4}$ perches resumed for Public School purposes 19th May 1882 thence again on the South by the Southern boundary of that land Easterly to the South-Eastern corner thereof thence again on the

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East by the Eastern boundary of that land Northerly to Macquarie Street before-mentioned and thence on the North by Macquarie Street aforesaid bearing Westerly to the point of commencement as shown on plan catalogued Ms. 1188 Sy. in the Department of Lands.

Seventhly.—All that allotment or parcel of land in Our said territory containing by admeasurement 1 rood $31\frac{1}{2}$ perches be the same more or less situated in the Town of Parramatta Parish of St. John and County of Cumberland bounded by the present wall dividing it from Macquarie Street being 3 chains 70 links On the East by a line along the East wall of the Surgeon's quarters being 1 chain 21 links On the North by a line bearing West $4^{\circ} 10'$ degrees 45 minutes North 3 chains 70 links to a lane on the West side of the Lumber yard and on the West by the present wall dividing it from that lane being 1 chain 21 links to Macquarie Street being the site of the Military Hospital and advertised as No. 4 in the Government Notice dated 2nd August 1843.

Eighthly.—All that piece or parcel of land in Our said territory containing by admeasurement 7 acres 2 roods and 11 perches be the same more or less situated in the City of Sydney Parish of St. Philip and County of Cumberland bounded on part of the South-West by the North-Eastern boundary line of William Walker & Co.'s land being a line bearing South $20^{\circ} 50'$ degrees 20 minutes East 235 links commencing on the shore of Port Jackson at the North corner of Walker's land on part of the West by 3 links of the Eastern boundary of Walker's land bearing South 4° degrees West. On part of the South by a line bearing East two degrees South 45 links again on the West by a line bearing South 4° degrees West 340 links Again on the South-West by a line bearing South $52^{\circ} 10'$ degrees 10 minutes East 94 links again on the West by lines bearing South $23^{\circ} 20'$ degrees 20 minutes West 55 links South $13^{\circ} 30'$ degrees 30 minutes West 50 links South $9^{\circ} 20'$ degrees 20 minutes West 60 links And South $6^{\circ} 15'$ degrees 15 minutes West 100 links to the North-West corner of R. D. Cunynghame's land on the South-East by the Northern 30° boundary of Cunynghame's land being lines bearing North $52^{\circ} 15'$ minutes East 310 links and North 66° degrees East 25 links to the high water mark of Port Jackson On the remainder of the South-East on the East North-East and North-West by the waters of Port Jackson to the North corner of Walker's land aforesaid Excluding from the above described land the Public Road which is bounded on part of the South by a line bearing East 13° degrees South 47 links Commencing on the shore of Port Jackson at a point bearing West $13^{\circ} 30'$ degrees 30 minutes North distant 47 links from an iron pillar marked Gipps Ward on the West by lines bearing South 2° degrees East 528 links and South 4° degrees West 3 links On the South by a line 40° bearing East 2° degrees South 45 links on the East by lines bearing North 4° degrees East 56 links and North 2° degrees West 664 links to the Shore of Port Jackson On the North and North-West by the Waters of Port Jackson to the point bearing West $13^{\circ} 30'$ degrees 30 minutes North distant 47 links from the Pillar aforesaid: being the land on which Dawe's Battery is erected and granted for the purpose of Defence for the Harbour of Port Jackson and advertised as No. 9 in the Government Notice dated 19th June 1844.

Ninthly.—All that piece or parcel of land in Our said territory containing by admeasurement 29 acres 2 roods and 17 perches be the same more or less situated in the County of Cumberland and Parish of Alexandria on the Old South Head Road near the City of Sydney Commencing at the North-West corner of the boundary wall distant 2 chains 58 links and bearing South 10 degrees 45 minutes East from the Southernmost corner of the boundary line of Hill and West's properties and thence bounded on the West side by lines along the external sides of the said wall bearing South 9 degrees 15 minutes East 2 chains 83 links East 1 degree 15 minutes South 19 links South 10 minutes East 2 chains 2 links West 9 degrees 15 minutes South 19 links South 1 degree 15 minutes West 2 chains 83 links South 7 degrees 44 minutes East 2 chains 68½ links East 2 degrees 40 minutes South 19 links South 2 degrees 35 minutes East 2 chains 7 links West 7 degrees 44 minutes South 19 links and South 2 degrees 40 minutes West 2 chains 67½ links to the South-West corner of the boundary wall on the South side by lines along the external sides of the said wall bearing East 2 degrees 20 minutes North 2 chains 77 links North 7 degrees 36 minutes East 19 links East 2 degrees 42 minutes South 2 chains 13 links South 2 degrees 20 minutes East 19 links East 7 degrees 36 minutes South 2 chains 70½ links East 26 minutes South 2 chains 20 71½ links North 10 degrees 32 minutes East 19 links East 5 degrees 35 minutes South 2 chains 12 links South 26 minutes West 19 links East 10 degrees 32 minutes South 2 chains 71½ links East 8 degrees 42 minutes North 2 chains 74½ links North 1 degree 15 minutes East 19 links East 4 degrees 4 minutes South 2 chains 14 links South 8 degrees 42 minutes East 19 links and East 1 degree 15 minutes South 2 chains 75½ links to the South-East corner of the boundary wall on the East side by lines along the external sides of the said wall bearing North 3 degrees 36 minutes East 5 chains East 3 degrees 36 minutes South 19 links North 3 degrees 11 minutes East 65½ links West 10 degrees 4 minutes North 19 links North 6 degrees 55 minutes East 3 chains 30 24 links east 3 degrees 11 minutes South 19 links and North 10 degrees 4 minutes East 1 chain 69½ links to the North-East corner of the boundary wall distant 2 chains 60 links from the South-West corner of Cooper Underwood and Forbes' Grant of 100 acres on the North side by lines along the external sides of the said wall and dividing the same from the Old South Head Road bearing West 6 degrees 58 minutes North 3 chains 39½ links South 16 degrees 40 minutes West 19 links West 11 degrees 46 minutes North 2 chains 19½ links North 6 degrees 58 minutes East 19 links West 16 degrees 40 minutes North 3 chains 2½ links West 6 degrees 54 minutes North 3 chains 4 links South 16 degrees 43 minutes West 19 links West 11 degrees 45 minutes 40 North 2 chains 17 links North 6 degrees 54 minutes East 19 links West 16 degrees 43 minutes North 3 chains 3½ links West 6 degrees 38 minutes North 3 chains 3 links South 17 degrees 5 minutes West 19 links West 11 degrees 32 minutes North 2 chains 18 links North 6 degrees 38 minutes East 19 links and West 17 degrees 5 minutes North 3 chains 33½ links to the commencing corner: Being the site of the Victoria Barracks being also the land advertised as No. 40 in the Government Notice dated 28th June 1850 excepting thereout All that piece or parcel of land containing 1 rood 4 perches taken for Green's Road situate at Paddington in the County of Cumberland Parish of Alexandria

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commencing at the South-Western corner of an area of 29 acres 2 roods 17 perches granted to the Principal Officers of Ordnance 31st July 1850 being the site of the Victoria Barracks and bounded thence generally on the West by part of the Western boundary of the said Grant being lines bearing North 2 degrees 40 minutes East 2 chains 67½ links North 82 degrees 16 minutes East 19 links North 2 degrees 35 minutes West 2 chains 7 links North 87 degrees 20 minutes West 19 links North 7 degrees 44 minutes West 2 chains 68½ links North 1 degree 15 minutes East 2 chains 83 links and North 80 degrees 45 minutes East 19 links thence on the East by a line bearing South 3 degrees 24 minutes East 10 chains 29 links to the Southern boundary of 10 the aforesaid Grant; and thence on the South by part of the last mentioned boundary bearing South 87 degrees 40 minutes West 2 chains 23 links to the point of commencement as shewn on Plan catalogued S. 175,858 Department of Lands.

Tenthly.—All that piece or parcel of land in Our said territory known as Pinchgut Island situated in the County of Cumberland and Parish of Alexandria bounded on all sides by the waters of Port Jackson being granted for the purpose of defence for the Harbour of Port Jackson and advertised as No. 7 in the Government Notice dated 19th October 1843.

Eleventhly.—All that piece or parcel of land in Our said territory being 20 part of Goat Island situated in the County of Cumberland and Parish of Petersham bounded on the North South and West by waters of Port Jackson, and on the East by the Cut dividing it from the Water Police Station being granted for magazines and ordnance stores and advertised as No. 8 in the Government Notice dated 19th October 1843.

The Second Schedule before referred to.

Firstly—All that piece or parcel of land containing 1 acre 1 rood 30 perches be the same more or less situate in the County of Cumberland Parish of St. Phillip City of Sydney commencing at the intersection of the Southern side of Argyle Street with the Eastern side of Lower George Street and 30 bounded thence on the North by Argyle Street Easterly to a former high water mark of Sydney Cove thence on the North East by the said high water mark South-Easterly to the Eastern corner of an area resumed for wharfage and other public purposes under the Circular Quay Land Act of 1890 (54 Victoria No. 24) thence on the South by the Northern boundary of the said land Westerly to the original alignment of Lower George Street thence on part of the West and South by that alignment being lines bearing North 3 degrees East 3 chains 44 links and South 87 degrees West about 22 links to the present alignment of Lower George Street and thence again on the West by that Street Northerly to the point of commencement as shown on plan catalogued 40 Ms. 1186 Sy. in the Department of Lands.

Also all that piece or parcel of land situate as aforesaid containing one rood be the same more or less commencing on the Eastern building line of Lower George Street at the North-Western corner of A. R. Huntley and J. Le G. Brereton's $5\frac{1}{2}$ perches allotment 4 of Section 83 and bounded thence on the West by Lower George Street Northerly to its intersection with Bethel Street thence on the North-west by the latter Street North-Easterly to its intersection with the Northern boundary of the Reserve for Naval and Military purposes thence on the North by part of the Northern boundary of the said Reserve Easterly to a former high water mark of Sydney Cove
 10 thence on the East and North-East by that high water mark Southerly and South-Easterly to the North-Eastern corner of John Solomon's 6 perches allotment 7 of Section 83 and thence on the South-West by the North-Eastern boundaries of that allotment and of allotment 4 before-mentioned North-Westerly to the point of commencement as shown on plan catalogued Ms. 1186 Sy. in the Department of Lands.

Also all that piece or parcel of land containing 15 perches be the same more or less situate as aforesaid commencing at the North-Eastern corner of an area of land resumed for wharfage and other public purposes under the Circular Quay Land Act of 1890 (54 Victoria No. 24) and bounded thence on
 20 the West by the Eastern boundary of that land Southerly to the Southern boundary of the Reserve for Naval and Military purposes thence and on the South by part of that boundary Easterly to a former high water mark of Sydney Cove and thence on the East and North by that high water mark Northerly and Westerly to the point of commencement as shown on plan catalogued Ms. 1186 Sy. in the Department of Lands.

Secondly. —All that piece or parcel of land containing 10 acres be the same more or less situate in the County of Cumberland Parish of St. Phillip City of Sydney commencing on the Eastern side of Kent Street at the South-Western corner of Allotment 11 of Section 95 John Terry Hughes' 20 perches
 30 and bounded thence on part of the West by Kent Street Southerly to Agar's Street thence on parts of the South-East South-West and West by that Street Easterly Northerly South-Easterly and Southerly to the North-Eastern corner of E. Flood's Special purchase of 6 perches thence again on the West by the Eastern boundaries of that land and of allotments 16 and 17 of Section 66 Southerly to the Northern boundary of Allotment 10 thence again on the South by part of the Northern boundary of that Allotment and by a Northern boundary of Allotment 12 Easterly to the Western boundary of Allotment 13 thence on the East by part of the Western boundary of that allotment and by the Western boundary of Allotment 14 Northerly to the
 40 North-West corner of the latter allotment : thence by a line Northerly to the intersection of the South-Western side of Essex Street with the Western side of Upper Fort Street and thence by the latter street Northerly to Watson Road thence on the North-East by Watson Road North-Westerly to its intersection with Argyle Street and by the latter street Westerly to the North-Eastern corner of an allotment of $6\frac{3}{4}$ perches occupied for Police purposes thence again on the West by the Eastern boundaries of that land and of Allotments 1 to 5 of Section 95 Southerly by part of the Southern boundary of Allotment 5 Westerly the Eastern boundary of Allotment 6 Southerly the

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Northern boundary of William Higstrim's Special purchase of 1 perch Easterly the Eastern boundaries of the said Special purchase and of Allotments 14 and 15 Southerly part of the Southern boundary of Allotment 15 Westerly the Eastern boundaries of Allotments 16 and 17 Southerly part of the Northern boundary of Allotment 18 Easterly the Eastern boundaries of Allotments 18 and 19 Southerly the Southern boundary of the last mentioned allotment Westerly to Kent Street before mentioned thence by that street Southerly to the North-Western corner of Allotment 10 thence by the Northern boundary of that allotment Easterly the Eastern boundaries of Allotments 10 and 11 Southerly and by the Southern boundary of the latter allotment Westerly to the point of commencement as shown on plan catalogued Ms. 1187 Sy. in the Department of Lands.

Also all that piece or parcel of land containing 1 rood be the same more or less situate as aforesaid commencing at the intersection of the Western side of Upper Fort Street with the Southern side of Argyle Street and bounded thence on the North by the latter street Westerly to its intersection with Watson Road thence on the South-West South and South-East by that road South-Easterly Easterly and North-Easterly to the Western side of Upper Fort Street before mentioned and thence on the East by the latter street Northerly to the point of commencement as shown on plan catalogued Ms. 1187 Sy. in the Department of Lands.

Thirdly.—All that piece or parcel of land situate in the County of Cumberland Parish of St. James City of Sydney at Bennelong Point area about 3 acres and 20 perches commencing on the high water mark of Sydney Cove at a point bearing approximately South $46\frac{1}{2}$ degrees West and distant about 4 chains 70 links from the centre of Fort Macquarie and bounded thence on the South-West by a line bearing about South 17 degrees East 4 chains 80 links thence on the South-East by a line bearing about North 42 degrees East 64 links thence again on the South-West by a line bearing about South 70 degrees East 70 links to the Waters of Farm Cove and thence on the East North and West by those Waters and the Waters of Sydney Cove Northerly Westerly and Southerly to the point of commencement as shown on plan catalogued O 3. 1208.

The Third Schedule before referred to.

All that piece or parcel of land known as Garden Island containing an area of 15 acres 1 rood be the same more or less situate in the Harbour of Port Jackson County of Cumberland and lying about 30 chains Easterly from Mrs. Macquaries Point as surveyed and shewn on plan catalogued Ms. 1152 Sy in the Department of Lands.

Defendant's Exhibit 3.

Copy Proclamation by Governor Macquarie of 7th September 1811,
bringing Garden Island within the domain.
Historical Records of N. S. W.
Vol. VII.
Page 585.

Government and General Notice,
Secretary's Office, Sydney,
7th September 1811.

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Defendant's
Exhibit 3.
Copy
Proclamation
by Governor
Macquarie,
dated 7th
Sept.,
1811.

10 It being deemed expedient that the island situated in the harbour of Port Jackson, and near to Farm Cove, called "Garden Island," should be comprised in and considered in future as forming a part of the Government Domain, notice is hereby given that all the growth and produce of said island, whether timber or grass, is to be appropriated in future to the exclusive use of His Excellency's establishment; and all persons are cautioned not to cut grass or timber there, as any persons detected in so doing after this public notice will be prosecuted and severely punished. Persons detected or convicted of having set fire to any wood or grass in Garden Island will be most severely punished for such wanton mischief.

20

No. 14.

Decree of the High Court of Australia.

Thursday the 19th June 1913.

Whereas by an information dated the 9th January, 1913 the Respondent commenced a Suit in the Supreme Court of New South Wales in its Equitable Jurisdiction against the Appellant a Nominal Defendant And Whereas upon motion for injunction made in the said suit on behalf of the Respondent on the 20th March last it was by consent ordered by the said Supreme Court that the said motion be turned into a Motion for decree And Whereas the said suit came on to be heard accordingly upon motion for decree before the Honorable
30 William Portus Cullen, K.C.M.G., Chief Justice, The Honorable Archibald Henry Simpson, Chief Judge in Equity and the Honorable Philip Whistler Street, Judge in Equity on the 24th, 25th and 26th February last And Whereas on the date last mentioned it was ordered by the said Supreme Court that the said Suit should stand for Judgment And Whereas the said Suit standing for Judgment accordingly on the 20th March last the said Supreme Court did adjudge and declare that the House and Grounds in the said Information referred to

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were vested in His Majesty the King, dedicated to the public purpose of a residence of His Majesty's representative in New South Wales: and that the action or concurrence of His Majesty's Imperial Government was necessary to divert the same from such purpose and did order that the Appellant as Nominal Defendant for and on behalf of the Government of New South Wales and the officers and servants of the said Government be restrained by the Order and Injunction of the said Supreme Court from any unauthorised interference with that purpose and did further order that the Appellant should pay the Respondent's taxed costs of the said suit as in the said Decree mentioned. And Whereas on the 2nd April last the Appellant filed a Notice of Appeal in this Court against the whole of the said Decree. And the said Appeal coming on to be heard before this Court on the 5th, 6th, 7th, 8th and 9th May last. Whereupon and upon reading the certified copy of the documents transmitted by the Master in Equity of the said Supreme Court to the New South Wales Registry of this Court. And upon hearing what was alleged by The Honorable David Robert Hall, His Majesty's Solicitor General for the State of New South Wales with whom was Mr. Blacket of King's Counsel and Mr. J. A. Browne of Counsel for the Appellant and by Mr. Knox of King's Counsel with whom was Mr. Bethune of Counsel for the Respondent. This Court did order that this Appeal should stand for judgment. And the same standing for judgment this day accordingly in the presence of Counsel for the Appellant and the Respondent. This Court doth order that this Appeal be and the same is hereby allowed and that the Decree of the said Supreme Court of the 20th March last be and the same is hereby discharged and that the said Suit be dismissed out of the said Supreme Court of New South Wales with costs. And this Court doth further order that it be referred to the proper officer of this Court to tax and certify the costs of and incidental to this Appeal and to the proper officer of the Supreme Court of New South Wales to tax and certify the costs in the said Supreme Court of the said Suit and that the costs of this Appeal and of the said Suit when so taxed and certified respectively be paid by the Respondent to the Appellant or to Mr. John Varnell Tillett, his Solicitor within fourteen days after service upon the Respondent of an office copy of the respective certificates of such Taxations. And all parties are at liberty to apply as they may be advised.

By the Court,

C. R. WALSH, (L.S.)

District Registrar.

Reasons of the Judges of the High Court of Australia.

No. 15.
Reasons of
the Judges
of the High
Court of
Australia,
dated 19th
June, 1913.
Barton,
A. C. J.

Barton A.C.J.:

This case comes before us as an appeal from a decree of the Supreme Court of New South Wales, by which, on 20th March last, it was declared that the house and grounds mentioned in the Respondent's information are vested in the King and dedicated to the public purpose of a residence for His Majesty's representative in New South Wales, and that the concurrence of the Imperial Government is necessary to divert them
10 from that purpose, and it was ordered that the nominal Defendant on behalf of the Government of New South Wales, and the officers and servants of that Government, be restrained from any unauthorised interference with that purpose.

The Respondent's information was filed on the relation of three citizens. The object of the Suit is to preserve the house and grounds in question, usually called the Inner Domain, for the purpose of a residence for the King's representative in this State.

It was first objected on the part of the Nominal Defendant that the Crown represented by the Attorney General cannot proceed against the
20 Crown represented by the Nominal Defendant, and that, in effect, the King is in this case suing himself. This objection, however, seems to me to fail. The rights represented by the Attorney General and those represented by the Nominal Defendant are distinct rights, and in such a case it cannot be said that the Courts give no remedy for the invasion of one such right by the wrongful assertion of another; see *Attorney General v. Dean and Canons of Windsor* 24 Beav., 679 at pp. 694, 703; *Attorney General v. Mayor of Bristol* 2 Jac. & W., 294 at pp. 309-311; *Attorney General v. Duke of Richmond, Gordon and Lennox* (No. 2) (1907) 2 K.B., 940 at p. 971. In the present case the Attorney General sues as representative of the King as
30 *parens patriæ*, claiming redress for an alleged grievance of some of his subjects and the Nominal Defendant opposes as representative of the Executive Government. These are different rights, and I think the Courts are open to the assertion of them respectively in such a suit as this, nor do I think that there is anything in the Claims against the Government and Crown Suits Act which prevents the Courts from entertaining such a suit. It is said that the relators have no interest. But the Attorney General can proceed on information, even though it appears in the cause of the case that the relators have no interest in the subject matter of the suit: *Attorney General v. Vivian* 1 Russ, 226; see also *Attorney General v. Logan per Vaughan Williams*
40 *J.* (1891) 2 Q.B., 100 at p. 106. Beyond doubt, also, the Attorney General can, either on relation or by himself, maintain an action to restrain an illegal act which in its nature tends to the injury of the public, and an injunction will be granted in his favour in such a case, though no evidence of actual injury be given; *Attorney General v. Shrewsbury (Kingsland) Bridge Co.* 21 Ch. D., 752, and cases there cited; see also *Attorney General for New*

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South Wales *v.* Brewery Employees Union of New South Wales 6 C.L.R. 469 at p. 499. Whether the act complained of is illegal in the present case, is another matter. It is for the Attorney General alone to decide in what cases he ought to sue on behalf of relators, though it is for the Court to say whether his action is maintainable, see *London County Council v. Attorney General* (1902) A.C., 165.

But with regard to the competency of the suit there is a far more substantial question which requires close consideration. It is the informant's case that the house and grounds in question are vested in the King in right of the Crown of the United Kingdom—that is to say, that they are not subject to the executive action of the Crown as the Government of New South Wales. That is equally the informant's case, whether the Crown of Great Britain and Ireland is regarded as owner or as trustee, and the decree appealed from recognises that the case is in that position. Are, then, the rights of the Crown of the United Kingdom to be determined in the Courts of New South Wales in a suit to which it is not a party? Since, in launching his action the Attorney General recognises the Crown as a proper Plaintiff and a proper Defendant in the same case according to its several rights, it becomes more apparent that when his information discloses rights of the Crown in respect of the sovereignty of Great Britain and Ireland, those rights are ignored unless it is made a party to the suit. The Attorney General of New South Wales as informant represents only rights of the Crown as *parens patriae* in New South Wales. The nominal Defendant asserts opposing rights of the Crown in this State. It is inherent in the case made by the informant that the rights alleged to have been invaded are rights of the Crown of the United Kingdom, and, to quote the information, "that it is not within the powers of the Government of New South Wales or the Governor-in-Council to interfere with or alter" the purpose for which the house and grounds are alleged to have been set apart. The Attorney General of New South Wales cannot usurp either the ownership or the trust of the Crown in respect of an Imperial right, and, for the reasons stated, it is my opinion that it is a fatal defect in the suit as launched, that the Crown of the United Kingdom is not represented either as Plaintiff or as Defendant, and I prefer the view that it is in the first of these capacities that it should have been represented.

Although the defect pointed out is a matter of substance, I do not think that such a suit as this should be disposed of on that ground alone. The merits disclose other grounds for dismissing it. It is reasonable to suppose that it may be carried beyond this Court, and I propose therefore, to state my views on a question which goes to the root of the matter, and which was the principal subject of argument. The information submits that Government House and Grounds had long before the matters complained of become "permanently dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales," a public purpose from which it denies the right of the Government of this State to divert them. The decree appealed from declares that the house and grounds are dedicated to this public purpose. On the argument before us Counsel for the informant repudiated altogether any intention to rely on dedication in its technical

sense, as applied, for instance, to the creation of a highway, and he pointed out that on the hearing he had not put the case on that ground. What he contended was that the land had been dedicated in the sense of a setting apart for a public purpose, an appropriation permanent as to all parties but the owner, but revocable by him. I shall consider the case as if that were the ground of the informant's claim.

In Governor Phillip's Commission, bearing date 2nd April 1787 the following passage occurs:—

“ And We do hereby likewise give and grant unto you full power and
10 “ authority to agree for such lands tenements and hereditaments as shall be
“ in Our power to dispose of and grant to any person or persons upon such
“ terms and under such moderate quit rents services and acknowledgments
“ to be thereupon reserved into Us according to such instructions as shall
“ be given to you under Our Sign Manual which said grants are to pass
“ and be sealed by Our Seal of Our said Territory and its dependencies and
“ being entered upon record by such officer or officers as you shall appoint
“ thereunto shall be good and effectual in law against Us Our heirs and
“ successors.”

The instructions first issued are silent on the matters now involved, but
20 the Additional Instructions issued in 1789 contain this paragraph:—

“ You are also to cause a proper place in the most convenient part of each
“ township to be marked out for the building a town sufficient to contain such
“ a number of families as you shall judge proper to settle there, with Town
“ and pasture lots convenient to each tenement, taking care that the said
“ Town be laid out upon or as near as conveniently may be to some navi-
“ gable river or the sea coast; and You are also to reserve to Us proper
“ quantities of land in each township, for the following purposes, viz., for
“ erecting fortifications and barracks, or for other military or naval
“ purposes, and more particularly for the building a Town Hall and such
30 “ other public edifices as You shall deem necessary, and also for the growth
“ and production of naval timbers, if there are any woodlands fit for that
“ purpose.”

There is not in either document any specific power given to reserve land for a Government residence and grounds, but it seems difficult to resist the implication of such authority; and for the purposes of this case I will assume it to have existed.

Counsel for the informant relied on three acts as evidencing an actual setting apart of lands, including provision for the Governor's place of residence. The first was an indorsement by Governor Phillip in 1792 upon a plan of the
40 settlement which he had caused to be prepared. On the plan there had been traced a line running from the head of what is now known as Darling Harbour to the head of Woolloomooloo Bay, then called Garden Cove, along this line, partly above it and partly below it, are these words: “ the boundary line of
“ Sydney Common, within which (as all the ground is retained for the use
“ of the Crown, and is common land for the inhabitants of Sydney) no land
“ can be granted.” Immediately below that indorsement is the following in the handwriting of Governor Phillip:—“ This line, which is the boundary line,
“ is intended to run from the head of the cove which is to the west of Sydney

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“Cove to the head of Garden Cove—Garden Cove is the second cove to the Eastward, Farm Cove being between the two—of this the Lieutenant Governor was informed before I left the country, and the boundary line was traced by the surveyor when the map was made. A. Phillip, Sydney, 2nd December 1792.” Captain Phillip sailed for England on 11th December, and on 23rd July in the following year he resigned the Governorship Settlement, which had begun in the neighbourhood of Sydney Cove, was extending Southward, and by 1807 the town, as appears by a map, presently to be mentioned, contained numerous buildings of which the original Government House and Garden, and various official residences and stores, were in an area of no great extent due south of the cove; and west and south of these were the residences and places of business of the people, which had obviously been placed on land granted or leased by the Crown, with the exception of a few intrusions. 10

The second setting apart was, as the informant contends, made by Governor Bligh on 26th July 1807 by proclamation or “general order” in the Government Gazette, which recited that Governor Phillip had by instructions from His Majesty’s Ministers drawn two lines of demarcation in the vicinity of Sydney, within which no leases or grants of land or buildings were to be given, the said land being the property of the Crown. This proclamation extended to the 5th of the ensuing November a notice to the occupiers of a number of houses adjacent to Government House, “which had been built on land particularly marked out as making part of the Domain of the Governor’s Residence,” to quit possession of the houses and remove the materials, “the said ground being wanted for Government purposes.” A tracing, made by James Meehan, assistant surveyor of land, by order of Governor Bligh, and dated 31st October 1807, was also put in evidence. It purported to be made from a Government plan of Sydney. On it are two lines which the informant maintains are those referred to in the proclamation, and this does not seem to be disputed. The outer or southernmost one of these corresponds, and is, I think, identical, with the outer boundary line already referred to as appearing on Governor Phillip’s plan. Along the upper side of this line are the following words:—“Boundary line within which all the ground is reserved for the Crown and for the use of the Town of Sydney,” and below the line are the following words:—“N.B.—It is the orders of Government that no ground within the boundary line is ever granted or let on lease, and all houses built within the boundary line are and are to remain the property of the Crown. 20 30

“December 2nd 1792,

“Sydney.

(Signed) A. PHILLIP.” 40

Having regard to the descriptions of this line as found on the plan of Phillip and the tracing prepared by Meehan, it seems that the land north of the line not occupied by roads, houses and other buildings, and lands already granted or leased, was originally intended as a common for the townspeople with the exception, as will be seen, of the land used or reserved for the purposes of Government House.

The other or inner line begins at the top of a street running south of east, which intersects the ends of two other streets. Evidently these latter are O'Connell Street and Bligh Street, and the first mentioned street is Bent Street. This line pursues for most of its length the direction still held by the path which intersects what is now the Domain Cricket Ground, and passes down towards Woolloomooloo Bay. Along its course are the following words:—"Ditch marked out by Governor Phillip and now made by Governor Bligh." Across the land to the north of this, which extends to the west side of Garden Cove or Woolloomooloo Bay, and embraces the shores of the
 10 Harbour round to and including the east side of Sydney Cove, are the words "Ground absolutely necessary for the use of Government House, but leases improperly granted on it, it is now improving."

The tracing shows upon the area thus described several rectilinear numbered portions, no doubt representing the "leases improperly granted on it," and buildings are indicated on a few of them. Probably these buildings are some of those referred to in Governor Phillip's proclamation of 26th July 1807, and which were to be removed by the 5th of the ensuing November. The area is to the back or east of that then occupied by the first Government House, garden and shrubbery. There were no buildings
 20 east of the western end of the ditch marked out by Phillip and made by Bligh.

In the course of a despatch of 31st October 1807 to the then Secretary of State for the Colonies, Governor Bligh said:—"When Governor Phillip
 "quitted this Colony he left a memorandum as may be seen in the plan of
 "the town sent herewith, that no part of Sydney should be leased away,
 "but the whole to be considered the property of the Government. In June
 "1801 Governor King issued a General Order that leases might be granted
 "for five years. After his departure and I had begun to make my remarks
 "as circumstances arose—I found several leases given and renewed in January
 30 "1806, for fourteen years, which were liable and wanted for Government
 "purposes."

Mr. Knox urged the facts of 1807 as constituting a second setting apart, relating both to an outer and to an inner and more restricted area, which inner area was to be reserved for the purpose of a Governor's residence and grounds.

The demarcation of 1792 included, but of course greatly exceeded in area, the land now in question, and, as pointed out it is evident from the plan of 1807 that the land intended for the use of Government House lay to the north of the ditch marked thereon.

40 On 25th May 1825 Governor Brisbane drew the attention of Earl Bathurst, the Secretary of State, to the necessity for the erection of a suitable residence for the Governor in Sydney, the then Government House being dilapidated and unfit for its purpose. He pointed out that one-half of Sydney Cove had been reserved by the Government, and suggested that it was desirable to sell or let on building leases the whole of the water side of the Domain along the Cove as far as Fort Macquarie, the revenue from the sale of this part of the Domain being applied towards the erection of a suitable Government House. Earl Bathurst, before he could have received this despatch, gave

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to Governor Darling, who was then on the point of departure to the Colony as Governor Brisbane's successor, an authority by despatch of 30th June 1825 to construct a new Government House, or to convert into a permanent residence the Gothic building which had been erected by Governor Macquarie for stables. It may be mentioned that this building, which has ever since been used as the stables belonging to the house, is the structure which it is now proposed to convert into a conservatorium of music. On 19th February 1826 Lord Bathurst sent to Governor Darling a copy of Sir Thomas Brisbane's despatch, and expressed the opinion that the views entertained by that Governor on the subject were judicious. No action was, however, 10 taken on the authority contained in the despatch of the previous June.

On 8th June 1829 Governor Darling notified in the Gazette a list of "certain parcels in the town of Sydney which have been heretofore reserved for certain public purposes." This list contains, as paragraph 43, a description of part of the lands marked off upon Governor Phillip's plan and by a corresponding line on Meehan's plan, the remainder, being roughly the portion west of Elizabeth Street, having apparently been cut out of the public reservation.

Another portion of the Government Domain was soon afterwards devoted to public recreation, for in the Gazette of 13th September 1831 appears the notification of Governor Bourke dated 9th September, stating that the grounds in the Government Domain near Anson's Point (now known as Mrs. Macquarie's Chair) have been laid out in walks for the recreation of the public, and "the Domain will be open for carriages on Tuesday next the 13th instant." Carriages and horsemen, it was notified, might enter the Domain near the School of Industry (that is, by the present gate at the top of Bent Street) or at the Woolloomooloo gate at the southern boundary of the Domain. It thus appeared that the portion of the Domain reserved for Government House and Grounds was exclusive of all the grounds mentioned in this notice. 30

On 2nd November 1832 Governor Bourke, in a despatch to Lord Goderich, had recommended the erection of a new Government House and the enclosure therewith of an area of about 47 acres, and the reply of the Earl of Aberdeen, dated on 25th March 1835, nearly 2½ years later, conveys the consent of His Majesty's Government to the proposal. Governor Bourke was accordingly authorised to dispose of the land of which Governor Brisbane had in 1825 recommended the sale, and to apply the proceeds towards the erection of a new Government House, and the fencing in of the portions of the Domain immediately adjoining it.

It is the transactions from 1835 to 1845, however, on which the 40 informant mainly relies.

On 12th August 1836 a Committee of the Legislative Council, consisting of the Chief Justice, the Colonial Secretary, the Auditor-General, and two other members, reported to the Governor and the Legislative Council on the plan and estimate for a new Government House. They recommended the site on which the present Government House has since been built, and pointed out that it would have, among other advantages, "about 50 acres of surrounding pleasure grounds." This estimate of the area of the grounds

to be allotted to the new residence did not include the land on the east side of the Cove, which was about 20 acres in extent. Action was taken on the report. Building was commenced on the new site, and the 20 acres including the site of the old Government House, was sub-divided and sold as sites for business premises.

Two other alterations had been made since 1807 in the area of the Government reservation. In 1810 part of the area had been taken by Governor Macquarie for the erection of a general hospital; and about 1816 another portion had been taken by the same Governor for the establishment
 10 of Botanical Gardens. (It is still used for that purpose, with the addition of about 5 acres of the grounds of Government House, thrown into the area of the Botanical Gardens in 1900 by the Government of the Colony.)

The new Government House having been completed, Governor Gipps appears to have occupied it in 1845; for a despatch of his to Lord Stanley, written on the point of moving into it, is dated 15 June in that year. Governor Gipps and succeeding representatives of royalty appear to have occupied with the house an area of 47 acres. The occupancy now in question is shown on a Government Lands Office plan of 1894, put in evidence, as about 35 acres,
 20 portion of the Inner Domain having been taken in 1879 for an exhibition building and grounds. Mr. Knox contends that the appropriation of the 47 acres, which included the site of the new Government House, was a third setting apart, this time by itself, of this area, which had been included in the two reservations of 1792 and 1807, and even irrespective of these earlier acts, he says, that which was done after the Report of the Select Committee, together with the uninterrupted user up to 1912 of the house and grounds for the public purpose stated in the information, is sufficient to establish the right in respect of which the information has been filed.

On the part of the State Government it is maintained that the lands in question never lost their character of Crown lands, or, as they were termed in
 30 the early days of the Colony, "waste lands of the Crown." What Counsel for the Informant calls the setting apart for a particular public purpose, permanent save for the Crown's right of revocation, is called by the Defendant's Counsel a mere application of Crown land to a particular use of the Crown for its own purposes, lasting merely so long as the Crown did not choose to alter the use of it or to sell or lease it. It is altogether denied that there was any purpose for the benefit of the public as distinguished from what is commonly called a public purpose, such as the purpose of building a Government office. For the Informant it is said that the setting apart for the particular public
 40 purpose asserted by him was tantamount to a trust in favor of the aggregation of people resident in New South Wales. Indeed, he likened it to a charitable trust, for it was created, he says, for such a public purpose as falls within the fourth class of Lord MacNaughten's category of such trusts: see Commissioners for Special Purposes of Income Tax v. Pemsel (1891) A.C. 531 at p. 583. If the Informant's view is correct and the lands are not Crown lands in right of New South Wales, the Government of this State may not have any right to divert them from the purpose for which they were set apart. That is a separate question, and I will consider it at a later stage in this opinion. If, on the other hand the Defendant's contention is the right one,

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the land, on the passing of the Constitution Act in 1855, passed out of the control of the Crown of the United Kingdom and may be used by the Executive Government of this State for any purpose which is not in contravention of the Crown Lands Acts.

Up to the passing of the New South Wales Constitution Act in 1855 (18 & 19 Vict. c. 54) the successive grants of legislative power to the Colony carefully reserved to the Crown of the United Kingdom, subject of course to any Imperial Statute, the lands belonging to the Crown within the Colony, and their entire control and management. In 1855 there were enforced two Acts of the Imperial Parliament relating to the waste lands of the Crown in the Australian Colonies. The first of these, 5 & 6 Vict. C. 36 (1842) restricted the disposing authority of the Crown to "conveyance or alienation by way of sale," under regulations to be prescribed and it made various provisions for the disposal and management of such waste lands. It also enacted that the gross proceeds of sale, less the expenses of carrying the provisions of the Act into effect should be applied to the public service of the respective Colonies in such manner as Her Majesty or the Commissioners of her Treasury should direct, with proviso that half of such proceeds was thereby appropriated towards defraying the expense of bringing immigrants to the respective Colonies. But even such funds were to be expended by the Lords Commis-¹⁰ sioners of the Treasury or persons authorised by them. Thus it was incompetent to the Legislature of the Colony or any person authorised by it to appropriate any part of the money arising from the sale of Crown lands. Sec. 3 reserved the right to Her Majesty, or any persons acting under her authority, to except from sale and either reserve to her or dispose of in the public interests such lands as might be required for any of the specified purposes, which did not include a residence for the Governor. Sec. 20 provided that nothing in the Act should affect any contract promise or engagement made by or on behalf of Her Majesty with respect to any lands before the time at which the Act should take effect. This section was not altered or referred to by the Amending Act of 1846. Sec. 23 provides that "by the words 'waste lands' of the Crown,' as used in the present Act, are intended and described "any lands situate therein, and which now are or shall hereafter be vested in "Her Majesty . . . and which have not been already granted or "lawfully contracted to be granted . . . in fee simple, or for an estate "of freehold, or for a term of years, and which have not been dedicated "and set apart for some public use."²⁰

This Act was amended by 9 & 10 Vict. C. 104 (1846), which empowered the Queen to demise any waste lands of the Crown in New South Wales, South Australia, or Western Australia, for fourteen years or less, or to grant for⁴⁰ like periods licences to occupy waste lands for rents or services and upon conditions to be authorised, but subject to rules and regulations to be prescribed. This Act made various provisions regarding the occupation of waste lands, the ejection of intruders, the protection of officers, etc., and empowered the Queen, to delegate to the Governor of any of the Colonies named all or any of the powers thereby vested in Her Majesty, with necessary exceptions. The Governor, therefore, could not exercise any control over Crown Lands under the authority of local legislature. This Act by Sec. 9

provided:—"The words 'waste lands of the Crown,' as employed in this "Act, are intended to describe any lands in the said Colonies
 "which now are or hereafter shall be vested in Her Majesty and
 "which have not been already granted or lawfully contracted to be granted
 " in fee simple, and which have not been dedicated or set apart
 "for some public use."

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It will be seen that these two Acts differ in the meaning they give to the term "waste lands of the Crown." The difference most material to this case is in the use in the Act of 1842 of the words "dedicated and set apart,"
 10 and in the Act of 1846, of the words "dedicated or set apart"; but there is another difference. In the earlier Statute lands granted or contracted to be granted for an estate of freehold less than the fee, or for years are included in the meaning of waste lands. It is to be especially noted that the definition is in each case only for the purposes of the Act. Coming now to the Constitution Act of 1855 we find a marked change in the attitude of the Imperial Parliament to the People of the Colony. They were no longer to be held in tutelage as to the use or disposal of the lands of the territory which they had colonized. They had themselves, through their legislature, framed a Constitution (17 Vic. No. 41) giving themselves ample powers of self
 20 government. They were to have two Houses of Parliament, one of them elective, with power to make laws "for the peace, welfare, and good government of the said Colony in all cases whatsoever." And they were no longer to be excluded from dealing with the lands of the Colony. Sec. 43 empowered the legislature of the Colony "to make laws for regulating the sale, letting, disposal, and occupation of the waste lands of the Crown within the "said Colony." And Sec. 58 provided that the Act should have no force or effect until certain enactments relating to the Colony and repugnant to "this Act" should have been repealed, "and the entire management
 30 "and control of the waste lands belonging to the Crown in the said Colony . . . "and also the appropriation of the gross proceeds of the sales of such lands, and "of all other proceeds and revenues of the same, from whatever source arising," should have been vested in the legislature of the Colony. The Bill was reserved for the Royal assent, and it was found that it was not competent to Her Majesty to assent to it without the authority of Parliament for that purpose. Accordingly the Act 1819 Vic. C. 54, giving the Queen the necessary authority, was passed by the Parliament and the reserved Bill was appended to it as a schedule. Sec. 2 made certain repeals, and vested in the Legislature of New South Wales the entire management and control of the waste lands in the terms of Sec. 58 of the reserved Bill. But Section 2 concludes with this proviso:—"Nothing herein contained shall affect or be construed to
 40 "affect any contract or to prevent the fulfilment of any promise or engagement made by or on behalf of Her Majesty, with respect to any lands situate "in the said Colony, in cases where such contracts, promises, or engagements "shall have been lawfully made before the time at which this Act shall take "effect within the said Colony to nor disturb or in any way interfere with or "prejudice any vested or other rights which have accrued or belong to the "licensed occupants or lessees of any Crown lands within or without the Settled "Districts," etc. The Acts of which the local Legislative Council had required the repeal were repealed accordingly, with the temporary exception of the

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two Waste Lands Acts already cited. At this time the lands of the Colony were being administered under Imperial Authority by virtue of Orders in Council made under these two Acts. The Acts were, in view of Sec. 2, no longer operative to withhold the management or control, or the disposal of the proceeds of Crown lands from the local legislature, or to prevent it from making laws on the subject. But the Acts themselves were specifically repealed before the Constitution came into force, in terms of 17 Vict. Number 41 Sec. 58; and the Orders in Council ceased to have effect in 1861, upon the passing of two local Statutes of that year—the Crown Lands Alienation Act and the Crown Lands Occupation Act—see the second section of each Act. 10

I have already pointed out that the definitions of "waste lands of the Crown" found in the Acts of 1842 and 1846 were given for the purposes of those Acts alone. Those purposes differed. The first Act was to authorise sales, the second to authorise leases and licences to occupy. Both the 18 & 19 Vict. C. 54 and the 17 Vict. No. 41 are destitute of any definition of the term, and although the high authority of two eminent law officers of the Crown in England is adduced for the position that the term "waste lands" as used in the New South Wales Constitution and the covering Act, is to be interpreted by the definitions in the Imperial Acts of 1842 and 1846, we have to construe this legislation for ourselves, and, in doing so, we cannot regard 20 any such opinion as a binding authority. If the term "waste lands of the Crown" were in any way a cryptic expression as applied, in a territory which the Crown has acquired by possession, to lands with which the Crown has not parted, there might be some need of a definition. The reason for which the term was defined, though differently, in the two Imperial Acts dealing with waste lands was evidently that it was considered necessary to limit the meaning of the term in each case for the immediate purposes of the legislation. Similarly, Crown lands have been defined in the Colonial Acts dealing with them as a subject matter. But in this legislation as to the Constitution the definition was not of 30 such primary necessity. The definitions in the Acts 1842 and 1846 were restrictive, for the purpose of preventing lands from being dealt with as waste which had been made the subject, to put it broadly, of disposal or contract for a freehold or chattel interest or had been dedicated or set apart for some public use. But the proviso to Sec. II of the Act of 1855 covers all the cases in which lands of any kind, including waste lands, are not to be dealt with by the Colonial Legislature by way of disposal, contract or otherwise. It is a provision similar to that of Sec. 20 of the Waste Lands Act of 1842, and in view of it, the absence of the restrictions imposed by the definition in the latter Act is the more significant. It is the sole limitation 40 upon the power of the Colonial legislature to deal with "any lands . . . situate in the said Colony." If in the result the term "waste lands" has been used in the law of the Constitution in a less restricted sense than in the Acts of 1842 and 1846, that is only what might have been expected. It must be remembered that the Grant made in Sec. 2 of 18 & 19 Vict. C. 54, was in the terms of the demands of the colonists made in Secs. 43 and 58 of the Bill they had presented for the Royal Assent, and it was natural that they should formulate them more amply so far as the Crown lands were concerned than

would have been the case had they been ready to accept the restrictions imposed by the definitions in the Acts of 1842 and 1846. They were prepared to honor the contracts and engagements of the previous régime, but no reason seems to exist why they should have been content to leave the management of lands set apart for public purposes in any other hands than those of the new Government to which they were entrusting the execution of public purposes generally. Waste lands of the Crown, where not otherwise defined, are simply, I think, such of the lands of which the Crown became the absolute owner on taking possession of this country, as "the Crown had not made
 10 the subject of any proprietary right on the part of any citizen. It has not been, nor can it be, contended, that the land in question has been made the subject of any such proprietary right, and as it does not come within the proviso to Sec. 2 of the 18 & 19 Vict., it seems to me that it passed under the control of the Legislature of New South Wales on the institution of responsible Government.

But if I am wrong in my view of the meaning of "waste lands of the Crown," and if the term is to be interpreted as including lands "dedicated or set apart for public purposes," and assuming also that these lands have been set apart for public purposes in the sense contended for by the informant,
 20 I am of opinion that in that case also they passed under the control of the Legislature of New South Wales. In the first place, it does not seem to me that the argument of Mr. Knox establishes any right enforceable by the Attorney General as representative of the *parens patriae*. I cannot think that in respect of this particular area as a place of residence for the King's representative in New South Wales the people of New South Wales can look upon themselves as entitled to some beneficial right or interest. It is of course not asserted that they have any proprietary interest. How then is their interest defined? If it is not proprietary, how can it be a
 30 right to have the Governor's residence located there and nowhere else; and, if it is not proprietary, under what head does it fall? It seems to me both undefined and undefinable, and I cannot see that it is the subject of any trust, the position for which *Attorney General v. Eagar* 3 S.C.R. (N.S.W.) 234 was cited. The case resembles that of *Dominion of Canada v. Province of Ontario* (1910) A.C. 637, in this respect—that the informant here, like the Appellants there, fail to bring the claim within some recognised legal principle." See per Lord Loreburn L.C. (1910) A.C., 637, at p. 645. It may be that a wrong is threatened, or has even been begun. On that it is not for this Court to pronounce an opinion unless it is an invasion of some right recognised by the law, for we can deal only with legal rights and wrongs.
 40 Throughout the case for the informant it seems to me that insufficient weight has been given to the first section of the Constitution, which prescribes that within New South Wales "Her Majesty shall have power, by and with the advice and consent of the "Legislative" Council and Assembly to make laws for the peace, welfare, and good government of the said Colony in all cases whatsoever." There is no restriction. True, it was thought necessary, because of the previous exclusion of the Legislature from the control of the Crown lands, to provide specially that such control should be given to the new Legislature to which for the first time the Executive Government was

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to be responsible. I question whether the first section would not have been amply sufficient in that behalf, if coupled with the repeal of the Imperial Waste Lands Acts which did take place. No one doubts that Sec. 1 has empowered the local legislature to deal with other lands held by the Crown for public purposes. And, acting under responsibility to the Legislature and subject to Statute, the Executive Government has managed, controlled, and used them. Yet, beyond Sec. 1, there is nothing in the Constitution which provides for the taking over of public departments, or of the lands held in connection with them, or for the taking over of any other lands still vested in the Crown but applied to public uses. The right to deal with all these properties was granted in the right to legislate "in all cases whatsoever." It is impossible to suppose that while the legislative power became vested in the Colonial Authority the executive control remained intact in Imperial hands. I fail to see how any distinction can be drawn between the land in question and the other land and buildings which at the time of the Constitution were used by the Crown for public purposes and which have ever since been administered by the Government responsible to the local legislature. That I believe to be the position in this case, and I am of opinion that the Executive Government of this State is entitled to put the house and grounds in question to any use not expressly or impliedly forbidden by the terms of the Crown Lands Acts or any other of its laws.

For these reasons I think that the appeal must be allowed and the suit dismissed.

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ISAACS, J :—

(A) Partics.

I entertain no doubt that it is competent to the Crown as representing the rights of one set of persons to sue the Crown as representing another set of persons. The Crown as guardian of charities may sue the Crown as claiming *Jure coronae* a right adverse to a charity. The principle on which the Crown sues as *parens patriae* is stated by Lord Cranworth L.C. and Lord Wensleydale in *St. Mary Magdalen College, Oxford v. Attorney General* 6 H.L.C. 189. It is that the objects of the charity are *cestui que trustent*, and the suit by information of the Attorney-General is, in truth, a suit by them, and he is only an instrument to enforce their rights. In that case the House of Lords held that the Attorney-General suing for the King as *parens patriae* was bound by the Statute of Limitations.

It simply means that in such case he sues on behalf of persons having their own distinct rights. A suit by the Crown on behalf of one portion of the King's Dominions, or of one aggregation of his subjects, against the Crown on behalf of another portion of the King's Dominions, or of a different aggregation of his subjects, is now familiar, and rests on the same principle. Not only is it more in accord with the theory of our law to regard the matter so, rather than appeal to the conception of separate juristic existences of the same Sovereign; but neglect to observe the principle may lead to obscurity and confusion both in the formal and the substantive branches of the present case.

The real foundation of the informant's claim is that the King in right of New South Wales has not and never had any property in, or right of disposal in respect of, the land upon which Government House stands, and the 47 acres round it; that the land belongs to his Majesty in his Imperial right only, that is, as King of the United Kingdom of Great Britain and Ireland; and that in that right His Majesty has long since devoted it as a residence for the Governor of New South Wales. Upon that foundation, the contention is based that any attempt by His Majesty, in right of his State of New South Wales, to apply the land to any other purpose is unlawful, and should be restrained. Strictly speaking, and here we must speak strictly, it means that the Crown as representing New South Wales has no right of ownership
10 whatever in respect of the property not even as a Governor's residence.

As a technical cause of action there is in that contention the allegation of a right, which entitles the King to sue the King—provided always the right claimed is properly represented. The proper representation of necessary parties is substance, not form: See and compare *Kharagmal v. Daim* (1905) L.R. 32 I.A., 315, *Chan Kit San v. Ho Tung Hang* (1905) A.C., 257, at p. 261, and *Ponnamma v. Arumogam* (1905) A.C. 383 at pp. 389, 391.

But to assert that the exclusive title and right of disposal rest in the
20 Imperial Government is to exclude any interest in the Colonial Government, and to deny its competency to complain of invasion of ownership.

Once assume the right is Imperial, and therefore beyond the sphere of power belonging to the King in his local character, I am unable to perceive any legal justification for the King in his local character, whether suing *jure coronae* or as *parens patriae* (that is, of the local *patria*), to pursue the right and claim its vindication. The passivity of the true owner, where wrong is being done to him, gives no warrant to a stranger to that right to interfere. The matter seems to me quite clear; but the contrary view entertained by the Supreme Court, and the earnestness and ability of the argument by
30 which that view was maintained in the appeal, require a close examination of the position.

The authorities cited at the bar, and referred to by the learned Judges of the Supreme Court, doubtless establish that in respect of differing rights the Crown may be on both sides of the record. Nevertheless, there always remains the fundamental requirement of a competent Plaintiff—a Plaintiff legally interested in the rights set up and the belief claimed.

To take a recent and interesting example:—Suppose while the Governor General of Australia resided in this Government House by arrangement between the Federal and State Governments, the latter acting *jure coronae*, the Attorney General of New South Wales suing, as here, on behalf
40 of the public of the State claimed a declaration of illegality, and an injunction, as he does now, what would the answer have been? Either that the State Government had the power it professed to exercise, or that the Imperial Government alone could validly complain. The illegality of the use for the Governor General, if the informant is right in his present contention, would be clear, for it is as much a diversion from the only lawful use as the contemplated use by the Defendant. It is nothing to the point to assume the Home Government assented—there may or may not be grounds for

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the assumption; but, to test the point of parties, we have to assume the contrary.

The only possible suggestion to support the presence of the informant was that advanced by Mr. Knox, namely, that the land was—say in 1835 or 1836—set apart and devoted by the Crown to the use of the Governor of the State for the benefit of the people of New South Wales and that this suit is maintained by the King, not *jure coronae*, but in right of the aggregation of the people called the public of New South Wales. But that suggestion only adds further complication. It at once destroys the notion of any “Imperial purpose,” because it excludes the public of the whole Empire,¹⁰ other than of New South Wales, from the trust it virtually asserts. The purpose so limited is one of a Colonial public nature.

And then one has to inquire what is the trust—how to reduce it to a recognisable legal form. The respondents—to use the words of Lord Loreburn L.C. for the Privy Council in *Dominion of Canada v. Province of Ontario* (1910) A.C. 637, at p. 645—“must bring their claim within some recognised legal principle.” I said substantially the same thing in *State of South Australia v. State of Victoria* 12 C.L.R., 667, at p. 715. What, then, is the supposed trust? It is not a right of property, for that, *ex hypothesi* remains intact in the Crown. It is not a right of enjoyment of the *res*,²⁰ because it implies exclusion of the public except by permission. It is not a right of usufruct. It is not the right of compelling the Governor to live there; nor is it a right to prevent the State Government from providing him with a residence elsewhere—otherwise his present occupation at Cranbrook is unlawful. It is, in fact, nothing but a supposed surrender by the Crown of the right to use its own public property, if used at all, in any but the one way—a surrender based on no consideration, accompanied with no easement or servitude, or grant of any fragment of ownership. I am utterly unable to classify the alleged right, or to identify its position in our system of law.³⁰

Nor, with great respect, am I able to accept the view presented by the learned Chief Justice of New South Wales. His Honour says 13 S.R. (N.S.W.) 295, at p. 309:—“In the case of a residence, provided for the King’s “representative, the public are only benefited in the same sort of way as “they are in the case of officers or residences provided for the carrying “on the ordinary executive Government of the State or Commonwealth, any “difference being only one of degree. . . . When such lands and “buildings have once been provided, I conceive that the public would “have an interest in seeing that they are not diverted from that purpose “without lawful authority.”⁴⁰

In a sense no doubt, the public are interested in seeing public property lawfully dealt with; but unless the interest is of a special nature, it is an interest the protection of which resides in the Crown as the representative of the whole community, and not in the Crown in its parental character, but in the Crown as Sovereign, and as the legal owner of the property, and the only owner whom the law can recognise. Indeed, the view of the learned Chief Justice passes by—I say it with all deference—the radical distinction underlying the subject. The public interests in Crown property may be

collectively national, as, for instance, in the Consolidated Revenue Fund or in Parliament House; or they may be of an individual though general character, as in the right of passage along a highway or in the entrance to a building or park, or in participation in a charitable fund. In the first class the public interests are identical with and indistinguishable from those of the Crown: no differentiation can possibly be imagined. In the second, the interests are diverse from and possibly in conflict with the claims of the Crown. It is only for the mutual ascertainment and protection of competing rights that the Crown is admitted to sue the Crown. It is obvious that to
 10 extend the doctrine of *parens patriae* to cover the whole field by including also the first class would obliterate a well established distinction founded on substance and reason, and would introduce aimless and indescribable confusion into the law. For individual injury by the Crown, for the individual injury to the Crown, the protection of rights which the public enjoy as against the Crown as well as against individuals, there are ample means of redress. But to provide redress for a supposed wrong done by the Crown to itself in the same right, for a violation by the Crown of its own *jura regia*, is an unprecedented and unthinkable proceeding.

Indeed His Honour's doctrine appears to me to prove too much. If it
 0 be a sound view that Crown property appropriated for the local residence of the Governor, or for a gaol or a railway station is *ipso facto* dedicated to the local public for that use and purpose, then equally is it true that Crown property appropriated for an Imperial purpose as distinguished from a local purpose, is dedicated to the Imperial public. It cannot be that the appropriation of territory in a Crown Colony for an Imperial purpose, as distinct from a local purpose, is thereby dedicated for that purpose to the local public. If dedicated at all, it must be to the public of Great Britain and Ireland. As this property is taken to have been dedicated to an Imperial
 30 purpose, in that distinctive sense, and retained in Imperial lands for that purpose, it follows from the doctrine enunciated that it is the public of Great Britain and Ireland who are the persons really interested. If they are not, then it must be because the basis of the litigation—the Imperial purpose—is a mistaken one.

The dedication is said by Mr. Knox to be in the nature of a public charity—to be really in law what in other words, I would term a trust. If it be so, then it is necessary to consider its full nature when constituted, say, in 1835 or 1836.

At that time, if dedicated or devoted or clothed with a trust, to hold the land as a Governor's residence, the trust must have been commensurate with
 40 the purpose; and as the purpose of sending Governors was and still is unlimited in point of time, so also must we consider the trust. It is, therefore, irrevocable even by the King regarded Imperially: it would be a breach of faith or a breach of the trust to depart from the purpose. And in that event the Imperial King, unless admitting the irrevocable trust must be, at least, a Defendant.

To condense, then, the informant's position as to parties, it is this:—The Crown of England has from 1835 or 1836 held, and it still holds, this land in trust for a purpose which is in the legal nature of a public charity,

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the objects being the public of New South Wales, and the purpose being the non-user of the premises unless by the State Governor. And, further, though the Imperial Government stands by observant, but inactive, and though the State Governor is contentedly, and perhaps preferably, occupying another residence, the local Government is, even in the absence, and without the consent, and perhaps against the will, of the real owner, charged with the parental duty of enforcing the rights of the objects of this novel and negative charity, because the property is impressed with the trust.

I can only say, with the deepest respect for the contrary opinion, that I am wholly unable to perceive any right of complaint resident in the present informant, even assuming the unlawfulness of the local Government's interference with the property as against the Imperial authorities. 10

Before passing from this branch it is not unimportant to inquire : (1) Is the Imperial Government, though absent from the suit regarding its own alleged property, to be now considered bound by the assumption of a public trust affecting it, which is necessarily involved in the decision of the Supreme Court ? and (2) Would the Imperial Government have been bound by a decision adverse to its proprietorship at all—an issue lying at the root of the whole proceedings ?

These are questions the palpable answers to which go far to show that the absence of the Imperial Government is of itself fatal to the respondent's cause. 20

The inquiry, therefore, as to the substantive right of the Executive Government of New South Wales to do the threatened act is, in my opinion, futile so far as the present action is concerned. But my opinion as to the informant's competency may be wrong, and for that and other obvious reasons it is desirable to express our opinions upon the main issue. Though an opinion adverse to the informant's assertion of Imperial title could not bind the Imperial Government in its absence, yet it would bind the informant in this action. 30

B. The Substantive Right.

(1) Formal Executive Act :—In view of some of the earlier arguments, and of some observations in the judgment of one of the learned Judges of the Supreme Court, it is necessary to clear the ground of one misconception. The absence of what has been called "executive authority" for the determination of Ministers to apply the land to the new purposes, has no relevance whatever. It might have been of importance had the suit been against individuals. But it is not. No individual is made Defendant. It is a suit against the Crown, whom, and whom alone, the nominal Defendant does or can represent ; and in the third paragraph of the prayer for relief, as well as in the formal decree, the intention to so regard him is placed beyond controversy. The distinction between an individual Defendant and the Crown Defendant is clear from *Nireaba Tamaki v. Baker* (1901) A. C., 561 at pp. 575, 576. 40

(2) The Decree :—The decree (1) declares that the house and grounds "are vested in His Majesty the King, dedicated to the public purpose of a

“residence for His Majesty’s representative in New South Wales;” (2) declares “that the action or concurrence of His Majesty’s Imperial Government is necessary to divert the same from such purpose;” and (3) orders an injunction against the Defendant as nominal Defendant for and on behalf of the Government of New South Wales and the officers and servants of the said Government,—in other words, against the King representing New South Wales and his servants in that character—against any unauthorised interference with that purpose. It is a decree denying the substantive right of the Crown on behalf of New South Wales to divert the land from
10 the stated purpose. But nothing turns on the question of executive authority.

The decree assumes the contemplated Act to be that of the Crown itself, so far as it can act locally. The Crown is in law the executive; the Governor is the administrator of the Government (Sec. IX of 18 and 19 Vict. C. 54.) He has a council to advise him in executive matters called the Executive Council, but, as it is assumed the contemplated Act will be done by him though advised by his Executive Council, we must either assume that a formal order is unnecessary or that it will be made. This case, then, cannot be determined on the absence of executive formalities. The real question is: Can the decree be substantially supported in law?

20 The first declaration consists of two parts: (a) That the house and grounds are vested in His Majesty the King—I take that to mean by virtue of his Imperial right; (b) that they are dedicated to the public for the purpose of a residence for the Governor of New South Wales—that, of course, means the public of New South Wales. The rest of the decree is consequential on those two findings. And the problem here is: Are those two findings correct?

(3) Grounds of the decree:—The conclusions of the learned Chief Justice and Street J. certainly, and perhaps of Simpson C.J. in Eq. also, were founded upon two considerations which, taken together, are thought to cover the whole ground.

30 One is—that when about 1835 or 1836, or at all events before 1842, the land in controversy—say 47 acres—was “dedicated or set apart” for the purpose of a Government House, the Imperial Government, which controlled the Colony, and the Governor, as its agent, dedicated or set apart the land for what was then and still is an Imperial purpose, and therefore—there is much virtue in the “therefore”—for the Imperial Government. That it is said, vests the land definitely in the Imperial Government to start with, and, unless it is divested from that Government either by Statute or grant or despatch, it remains vested in the Home authorities.

40 The second consideration is of a negative character. It is that, notwithstanding the Grant of responsible Government in 1855, the Colonial Government obtained no right to or control over this land. It is said that the Act 18 and 19 Vict. C. 54 did not by the General plenary Grant of legislative jurisdiction confer proprietary rights; so that those rights, if then granted, must be sought elsewhere: that the Act gave the Colony the entire management and control of “the waste lands belonging to the Crown in the said Colony,” preserving certain rights, but not of any other Crown lands; that the expression “waste lands” there used must be understood as it is defined in the Acts 5 and 6 Vict. C. 36 and 9 and 10 Vict. C. 104, and that,

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consequently, as this land was not within that definition, because dedicated or set apart for a public purpose, it was never placed under the proprietorship or management or control of the local Government and still remains Imperial property.

On these two considerations, the Executive "setting apart" of the land while New South Wales was still controlled from the Colonial Office, and the effect of the legislative grant of responsible Government—together with a third consideration, not adverted to in argument, viz. the present New South Wales Constitution—the matter depends.

In my opinion, it is quite impossible to arrive at a just appreciation¹⁰ of the position, whether of fact or of law, unless the circumstances are viewed as they occurred with the contemporary surroundings. Attorney General of British Columbia *v.* Attorney General of Canada, (1906) A.C. 552, which is much relied on by Cullen C.J. and by Mr. Knox, is a signal example of the necessity of following this course; and, for that and another important reason, that case is a valuable precedent for the present case.

Before summarizing the various events one or two introductory observations must be made, because they indicate, so to speak, the soil upon which the events themselves were to operate.

(4) The Crown's Title to Colonial Lands :—It has always been a fixed²⁰ principle of English law that the Crown is the proprietor of all land for which no subject can show a title. When Colonies were acquired this feudal principle extended to the lands oversea. The mere fact that men discovered and settled upon the new territory gave them no title to the soil. It belonged to the Crown until the Crown chose to grant it. Professor Jenks, in his *History of the Australasian Colonies*, at p. 59, observes that this purely technical and antiquarian fiction settled a question of the first magnitude.

There was, as he says, "no statute, no struggle, no heated debate. The Crown quietly assumed the ownership of Australian land." I should add, this doctrine received very practical application when the Crown, by Governor³⁰ Bourke's proclamation, approved by the Colonial Office, refused to recognise Batman's treaty with the native chiefs in 1835, and notified that persons found in possession of the lands would be treated as trespassers and intruders. So we start with the unquestionable position that, when Governor Phillip received his first Commission from King George III. on 12th October 1786, the whole of the lands of Australia were already in law the property of the King of England.

It follows that no act of appropriation, or reservation, or setting apart, was necessary to vest the land in the Crown.

The effect of any specific reservation or setting apart must depend⁴⁰ upon the purpose and object with which it was made. This receives illustration in the British Columbia case (1906) A.C. 552.

(5) Waste Lands of the Crown :—Then the expression "Waste Lands" of the Crown, apart from legislative definition, appears to have been understood long before Phillip's time down to 1842 to designate Colonial land not appropriated under any title from the Crown. It is found in a despatch in 1800 from Lieutenant Governor Milnes of Lower Canada to the Duke of Portland (Egerton and Grant's *Canadian Constitutional Development*

p. 115); in 1829 in the New South Wales Act 10 Geo. IV. No. 6. In 1836 Mr. Wakefield, in giving evidence to the House of Commons Committee, on whose report the Act 5 and 6 Vict. C. 36 was framed and passed, constantly referred to the "waste lands" of Australia as opposed to the land appropriated, that is, by settlers: See, for instance, questions 995 and 1006 (printed by order of the House of Commons, 1st August 1836). I need hardly say my reference to these and similar materials is not for the purpose of construing the Acts, but to ascertain the prior sense in which terms used in the Acts were used, and, particularly, in materials before
 10 Parliament when the Acts were passed. See also the term "waste lands" in question 1002 in relation to the public lands of the United States. In Mr. Merivale's lectures on "Colonization and Colonies," delivered in 1839, 1840 and 1841, a critical period so far as this case is concerned, the term is freely used in its full general sense—see, for instance, pp. 107 and 432, which will be referred to later in another connection.

Finally, the term is used in Earl Grey's despatch to Governor Fitzroy of 29th November 1846: See House of Commons Papers 1847, Vol. XXXVIII., p. 497.

(6) "Set apart," its meaning and effect:—Another expression found
 20 in the Act of 1842 requires reference. I mean the words "set apart" After full consideration, that term appears to me to denote merely a segregation in fact, a laying aside from the general mass. It does not necessarily involve the creation of a right in another, though in many cases it is the preliminary step to the creation of such a right.

But the setting apart is complete before and independently of the creation of any rights. The term as will be seen was used as early as 1763.

Before the Act of 1842 was passed, the term was freely used before the Select Committee referred to, in the sense of setting aside in fact: See, for instance, questions 1711 to 1724 in the evidence of Mr. Kelsey of the Colonial
 30 Office. Indeed, it is shown in that evidence that in some cases after reserves had been "set apart" for various purposes, as for villages or clergy, the reservations were abandoned, and the land fell, in the language of Sir George Grey (question 1720) "into the mass of general undisposed of land in the Colony"—which is only a comprehensive definition of "waste lands of the Crown." And the importance of that evidence is that it was material before Parliament in framing its enactments.

I have looked at various decisions, among which I may mention *In re Ponsford and Newport District School Board* (1894) 1 Ch. 454, the British Columbia Case (1906) A.C. 552, at p. 556, and the Attorney General for the
 40 Province of Quebec *v.* Attorney General for the Province of Ontario (1910) A.C. 627; and I feel quite convinced that to satisfy the words "set apart," as used in 1842 and since, no creation of an adverse right is necessary.

Turning now to Governor Phillip's Instructions of 25th April 1787, we find they directed him to reserve to the Crown proper quantities of land for named purposes, not including any mention of a Government residence. Those that were mentioned were not peculiar to Australia, except so far as they were necessary to a perfectly new country. Most of them find

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their counterpart in Secs. 46 and 54 of the Instructions of 7th December 1763 to Governor Murray of Quebec: Egerton and Grant pp. 15 and 16.

Phillip had also, by a clause towards the end of his additional Instructions of 20th August 1789 directions to "set apart" land for a Church (see Historical Records of New South Wales, Vol. 1 part 2, p. 259). This followed clause 47 of Murray's Instructions of over 25 years before.

There is no doubt that in 1792 Phillip set apart a large tract of land for public purposes generally; in 1807 Bligh enclosed a portion of this from the rest; and in about 1835 or 1836, or at all events before 1842, the 47 acres now in question were "set apart" in fact as a residence for the Governor 10 of New South Wales, and so they have remained until recently.

The first point made by the informant is that the 47 acres were reserved as Imperial property, and are still so; or, even if Colonial in title, were impressed with a trust in favour of the public for an Imperial purpose.

It is a mere truism to say that the title of the King to the lands of the Colony was in right of his Sovereignty of the Colony, in other words in right of the Colony. They were His Majesty's Colonial lands. To transfer land to him in right of the United Kingdom only must depend on some overt act, and the onus of proving this lies on the informant. The setting apart is said to be this overt act. But it is necessary to ask what object the 20 Crown had in view in so setting apart the land. Was it set apart from all other Colonial lands, and as the special property of the Mother Country, attached so to speak, specifically to the Colonial Office, in the same way as in the British Columbia Case (1906) A.C. 552, Deadman's Island, as the facts were held to show was specifically attached to the Home Government, the War Office, for the purpose of defending the Empire? The facts there were—that the reserve was for Military purposes; that the history of the country was one of conquest and of special solicitude from a military and naval standpoint; that an Imperial Officer, Colonel Moody R.E., was specially detailed to serve there with a party of Royal Engineers, though he 30 acted also as Commissioner of Lands; that, in selecting the site of a capital, he reported on the necessity of protecting it; that his plans were laid by the Home Government before the Admiralty and the War Office, and approved; that he was in direct communication with the War Office; and that the Colonial Office had to turn to the War Office for a schedule of the reserved Lands for transfer; and the Home Government shewed they regarded the lands as theirs specially by transferring them. In these circumstances—not merely because the reserve was of a military nature—the Judicial Committee concluded that the object of the original reservation was to secure the land to the Home Government for Military operations operated or directed by the 40 Imperial Government.

But, with great deference, it is a great fallacy to say that the local habitation of a Governor, which is as purely incidental to his official presence as is his daily sustenance, is an Imperial purpose in the same sense as the site of a naval base or fortification to defend a Colonial capital from foreign foes. On the latter, the safety of the national fleet or the defeat of an enemy may depend; the protection of a military station may involve the honour of the Empire or determine the fate of war.

Even between Military posts there is a difference. Had the Military reserve been one intended merely to guard against the Indians, there would have been no necessary conclusion that the title of the land was intended to be vested, so to speak, in the War Office. The Judicial Committee treated the question as a pure question of fact dependent on the special circumstances, and so I treat the present one.

(7) How Government House Lands were Set Apart :—I have carefully examined the evidence with a view of ascertaining (a) whether this reservation or setting apart of the 47 acres was in order to appropriate them to the Home Government as such or merely to allot them as part of the Colonial Domain to the Governor as an official residence ; and (b) whether there was any dedication or trust in favour of the public contemplated.

I have come, unhesitatingly, on both points to a conclusion adverse to the Informant. The salient features of the documents are all that are necessary to mention.

In 1792 Governor Phillip under special instructions from the Home Government—for no general instructions on this subject appear—reserved by marking on a plan a large tract for “Public purposes,” specially indicating a portion for the Governor’s residence.

In 1807 Governor Bligh issued a proclamation notifying persons who had built houses on what he termed “part of the Domain of the Governor’s Residence” to remove, “adding the said grounds being wanted for Government purposes.” I will only observe that there is so far nothing indicative of what one would have expected to find if the Informant’s case were correct, namely, a special appropriation to the Home Government ; but, on the contrary, the expression “Government purposes” would ordinarily suggest local Government purposes.

In 1811, 7th September, a public notice was issued stating that Garden Island should be comprised in and considered in future as “part of the Government Domain.”

In 1816 Governor Macquarie gave public warning against trespassing by injuring the trees, shrubs etc., on the “Government Domain,” but intimating there was no objection to innocent recreation. There is still no sign of specific appropriation to the Home Government, and no dedication for any purpose. The recreation appears to be permissive only.

On 25th May 1825, Governor Brisbane wrote to Lord Bathurst on “the very important subject of the Government Domain as it is called in Sydney,” and the want of a suitable “Government House and Public Offices.” Note the conjunction of the two sets of buildings. The writer states that “it will be perceived by referring to Captain King’s Chart of Port Jackson that one half of Sydney Cove in which Sydney Harbour is situated has been reserved by Government.” He manifestly means reserved from sale. He proceeds to say it affords a pleasing prospect ; but that the other half of the Cove is needed for commercial purposes. He then suggests disposing of the whole of the waterside of the Domain, and applying the revenue from the sales to erecting a suitable residence for the Governor in Sydney, instead of the then present Government House, which was very dilapidated and might be converted into public offices ; the suggestion in-

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cluded a proposal to convert the Gothic stables into a Government residence. He adds it would be a great gain to the public and to commerce, and a saving of expense to the Government.

Now, I attach much importance to this document. It betrays no suspicion of any differentiation of title between the site of the then Government House and the rest of the Domain; its suggestion to sell parts and to turn the then existing site of Government House into public offices, is inconsistent with any notion of dedication for Imperial purposes, or in any way to the public. The transfer to public offices does not appear to be any radical change of title or object—they are both “Government purposes”; and 10 the final words indicate that the arrangement, including the new Government House, will be of great local advantage.

It is obvious that if the original site of Government House was reserved for “an Imperial purpose” in the distinctive sense contended for, that fact would have been known and referred to by the Governor and, as it was not, it would be very unlikely that the new house would be treated differently from the first.

On 30th June 1825 Lord Bathurst authorises the construction of a new Government House, as he deemed it very “essential to the public service that His Majesty’s representative in that distant quarter of the world 20” should be accommodated with a convenient and suitable residence.” That is the strongest expression I can find in informant’s favour, but it is consistent with either view. Lord Bathurst there speaks not of land but of the condition of the building, wherever it may be, he is stating the reason operating in his mind, not for vesting land in the Home Government but entirely *alio intuito*, for authorising expense in building a new house.

On 8th June 1829, Governor Darling published for general information a list of land reserved for “public purposes,” and included this land.

On 2nd November 1832 Governor Bourke reports on the existing Government House, and suggests erecting a new house on a different site and “giving 30 up to the public” a portion then enclosed in Government gardens for quays, &c.

He says:—“I considered in what way a new house might be built with least expense to the public”—language extremely unlikely if he knew that the site had been or was intended to be taken away from the public, and specially vested in the Home authorities.

He says, further, that “the land about 47 acres to be enclosed as the Government grounds” are, with a small exception, not fertile, and that Grose Farm, containing about 200 acres, should be allotted also for the use of the Governor. So that the genesis of the enclosure of the 47 acres 40 is here found with no intimation of vesting in the Home Government, and with the mention of Grose Farm in such a connection that, if the 47 acres were intended to be so vested, Grose Farm was similarly intended, and if the public were to be *cestuis que trustent* of the 47 acres, they could hardly escape the same fate with respect to the 200. The Imperial purpose would be poorly served by providing a fine house for the Governor and leaving him to starve. But the Governor says of the farm:—“The expense of labour “and implements for the management of this farm should be borne by the

"Governor; that of supporting the new farm buildings now upon it should be charged to the public."—Again, the "public," not as the objects of a public charity but as persons paying for important services rendered locally by His Majesty's representative.

In August 1836, the Committee of the Legislative Council report favourably, and, *inter alia*, state that £25,000 will be required and may be provided by the sale of Government land, and 20 acres, part of the Inner Domain, may be "dedicated to the Improvement of part of Sydney for streets, etc." "Dedication" there first makes its appearance; and, as to 20 acres other than these, the Chief Justice would scarcely have signed a report in those terms had there already been a dedication of land for any other purpose, or if he had heard of any specific appropriation to the Home Government. The whole proceeding so far as "Colonial," with, of course, the necessity, in the then mode of Government, of the Home Authorities' approval.

The new house was finished in 1845, just as Governor Gipps was on the point of leaving for England, and in his parting despatch to Lord Stanley there appears no trace of Imperial ownership in the special sense, and no suggestion of a trust for the public excepting that, as is said in Calvert on Parties, p. 26, "according to the principles of our law the interest of the public is vested in the Crown."

(8) How the lands have been since treated by both Governments:—

From that time onwards to 1855 no indication is given that the position is altered as to title or trust. During all that time the property was treated as if it were Colonial property.

In the Appropriation Act 1832 (No. 17), among the ordinary Colonial purposes, appears an item of £500 for the furniture for the reception rooms of Government House, Sydney, in the Appropriation Act 1834 (No. 5), we find a significant item, "not exceeding £600 to defray the expense of furniture for Government House and the several public Offices." These buildings are thus classed together.

In the Appropriation Act 1835 (No. 5) the language is to my mind practically decisive. Under the General heading for "Miscellaneous Services for 1836" there is an item indicated by the marginal note "£1,500 for repairs to Public Buildings." The item is, "not exceeding £1,500 to defray the expense of casual repairs to Government Houses Courts of Justice and other Colonial Public Buildings." It is to be noted, too, that the Parramatta House was never considered, according to the argument, an Imperial property. Yet it was a Government Domain. See Appropriation Act 1836 (No. 5), in which a sum of £676 0s. 10d. was voted for it. In the same Act appears the vote of £10,000 to defray in part the expense of building a new Government House at Sydney. The item appears under the head of "Miscellaneous Services for 1837," and is included in Colonial purposes, being inserted between a vote for Sydney firemen and one for accommodation for Botanic Garden workmen. A noticeable item is the last, namely, £600 for the Royal Engineer Commanding "whilst employed upon Colonial Services." In the Act of 1837 (No. 4) the same important phraseology occurs as above italicized in the Act of 1835.

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In 1838, while the old Government House and the Parramatta House continued, the Appropriation Act of that year (No. 15) provided £500 "to defray the expense of furniture for Government Houses and Public Offices," drawing no distinction between them, and mingling them with other ordinary public buildings as Courts, lunatic asylums, &c. So in 1839 (Act No. 24), 1840 (Act No. 20) and 1841 (Act No. 7). In 1842 (Act No. 12) there is under the heading of "Department of Public Works and Buildings" and wedged between the "Colonial Architects' Department" and "New Gaol and Court House, Darlinghurst," the item £2,500 towards defraying the expense of building the new Government House, Sydney"; in 1843 (Act 10 No. 20) under "Public Works and Buildings," and inserted between "Colonial Architect" and "New Custom House," we find the "further sum of £1,000 towards defraying the expense of building the new Government House, Sydney"; in 1844 (Act No. 13) between the "Road over the Blue Mountains" and "Removing and repairing the Clock and Carters' Barracks," there is "the further sum of £500 towards completing the new Government House, Sydney"; in 1845 (Act No. 24) £450 for erecting a Guard-house at the new Government House, Sydney and £250 for providing iron entrance gates to the new Government House. That was the year when Sir George Gipps was to move in. Succeeding Appropriation Acts provided similarly for sums 20 for the enclosures, fences, and ornamental shields of arms down to 1853.

It is history that the Home Government ceased before 1850 to contribute to the expenses of the Colonial Government: See Jenk's History of the Australasian Colonies, at p. 229, and Earl Grey's Colonial Policy of Lord John Russell's Administration, Vol. 1. p. 43. It would be, indeed, a strange notion that the Home Government distrustfully insisted on remaining the owner of the property for the purpose of ensuring a proper home for its Imperial servant, and yet abandoned the cost and responsibility of the matter to the Colonial Government.

That is certainly not characteristic of the British Colonial Office, and is 30 not supported by anything the Home authorities ever did or ever said. It is noteworthy that, with reference to the present controversy, the Home Government has not—so far as we have heard—given the least sign of a claim to this property. If there had been any impression of title in the Colonial Office, one would have expected to have some direct evidence of it; in this regard the absence of such a claim is significant. It is notorious, and the Appropriation Acts of New South Wales show, that the Colonial Government have always maintained the premises as if they were their own: See for instance, the early Act of 1856-1857 (No. 42), the Supplementary Service; the Act of 1858, under Establishments of Secretary for Lands and Public 40 Works.

(9) Responsible Government:—In 1855 responsible Government was obtained by New South Wales. There had been a protracted and heated struggle between the Home authorities and the colonists as to the grant of full powers of self-government. By successive steps the local powers had widened—first direct Crown rule, and then in 1823 a limited legislature, in 1828 a further advance, in 1842 representative institutions, but a denial of any right to interfere with the land question, and in 1850 a further grant,

with a denial of the same right. The insistence of the public for complete powers, added to the revolutionary change on the subject of emigration, which took place on the discovery of gold, led to the final concession.

No one can read the despatch of Lord John Russell to Governor Denison of 20th July 1855 (printed by command 24th July 1856, and see New South Wales Parliamentary Handbook, 7th Ed., p. 195), transmitting the new Constitution of that year—and more especially the last paragraph of that despatch—without the deepest conviction of the confidence, the unrestricted confidence, which the mother country reposed in the people of her distant
10 possession. I say this because the suggestion was made throughout the argument that the Home Government took care to hold in its own hands the residence of its Imperial representative, for fear the local authorities should leave him without appropriate shelter. And it is said that this was so notwithstanding the change to responsible Government.

(10) The Land Sales Act, 5 & 6 Vict. c. 36:—Until 1855 the Home Government held these 47 acres, together with all its other Crown lands, jealously in its own power. This was not by reason of any mistrust, but as a matter of high policy. To briefly elucidate this, is to clear the way to a proper understanding of the Acts 5 & 6 Vict. c. 36 and 9 & 10 Vict. c. 104, which
20 have been strangely misunderstood. That would be trifling if it did not lead to a misconstruction of the Constitution of 1855.

As a matter of history the land of the Colony down to 1831 was entirely administered by the Governor at his discretion or according to directions received from the Colonial Office.

In that year Lord Ripon's regulations introduced the principle of public sale and certain principles of action. At that period, and for some years afterwards, a serious question of public policy was agitated in England and more and more strenuously contested in the Colony, namely, how far the Crown should pursue the notion prevalent among Imperial Statesmen of the
30 time that the Colonies should be developed, not merely with a view to their own advantage, but also, and largely, with a view to find a home for the surplus population of the United Kingdom and a market for its manufactures. The right of disposal of the public lands was most carefully preserved as an Imperial means of effecting the desired object. In 1836 a Select Committee of the House of Commons investigated the problem of how best to secure this composite purpose. Its report was followed by a principle formulated in 1840, namely, that "the Crown lands in the Colonies are held in trust not merely for the existing colonists, but for the people of the British Empire collectively." At the same time it was admitted that public local claims
40 should be the first charge, and emigration projects should come next.

These matters were before Parliament when it undertook the new legislation, and it is apparent that it was for the purpose of definitely laying down these principles that the Act of 5 & 6 Vict. c. 36 was passed in 1842. Sec. 19 appropriates the gross proceeds of the lands less certain expenses to "the public service of the . . . Colonies," provided one-half is applied to emigration from the United Kingdom to the Colony. This Act (see Sec. 2) was a Parliamentary fetter on the existing absolute power of the Crown. It fixed the policy by prescribing the method of sale and application of

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proceeds. But it strictly maintained the Home Government's control of the undisposed of lands, termed "waste lands" as against Colonial control.

Parliament defined "waste lands of the Crown" but expressly added "as used in the Present Act," and said that by those words so used were intended and described any lands situate therein then or thereafter vested in the Crown; which was not already granted or contracted to be granted, or "dedicated and set apart for some public use."

It is extremely material to bear in mind that the Act was a restriction on the power of the Home Government to dispose of the waste lands and apply the proceeds but it did not in any manner profess to confer any such power on the Colonial legislature. It was intended as a just and permanent settlement of a much vexed question which received at the time great public prominence. See, for instance, Merivale's *Colonization and Colonies* at p. 433 and Earl Grey's *Colonial Policy* of Lord John Russell's Administration Vol. 1 p. 303 letter VII.

The Colony obtained fixed rights with regard to the proceeds, but the exclusiveness of the Home Government's powers of disposal was maintained. At the same time provisions of mandatory character were inserted, requiring the Governor to convey and alienate in fee simple to the purchasers thereof "any waste lands of the Crown" in the Colony, subject to the prescribed regulations (Sec. 5)

So sweeping and compulsory a clause needed qualifications, and such were inserted in Sec. 3, which preserved the discretionary right of the Crown to except lands for public uses, and in Sec. 23, which was not discretionary, but binding, and which gave the definition of the expression "waste lands of the Crown" as used in that Act—so as to prevent inter alia any demand being possibly made as a statutory right, by a would be purchaser, for lands reserved or set apart for public purposes." It is to be remembered that there was no detraction in the Act from the power of the Crown to abandon the public purpose for which any waste lands were set apart—provided always no adverse rights had arisen. A tract of waste forest land marked out on a map, and formally set aside for a future township, or reservoir, or police station, was still waste land of the Crown in fact and in ordinary parlance, but it was reserved waste land. If, however, the reservations were formally revoked, and the purpose abandoned, the land naturally fell back into the general stock of Colonial waste lands. Instances of this have been already mentioned in connection with Mr. Kelsey's evidence in 1836. It was altogether in the discretion of the Crown to reserve, or to cancel a reserve, and thus throw the particular lands into the purchaseable mass. There was nothing in the Act 5 & 6 Viet. c. 36, so far as I can see, to prevent the Crown from abandoning its purpose in respect of the 47 acres, and then selling them as ordinary waste lands; though until abandonment no claim could be made to purchase them. See per Wise J. in *The Attorney-General v. Eagar* 3 S.C.R. (N.S.W.) 234, at p. 268, lines 8 to 11. Such a right has never been parted with, except under specific provisions in New South Wales Lands Acts. The prohibition to sell except under the statutory regulations and conditions extended only to waste lands within the definition; but while these lands were set apart they were outside the definition and were also

outside the prohibition, which latter was immaterial, but what was material was that they were outside a would-be purchaser's reach.

If the Crown chose to make them available by bringing them within the definition, just as private lands subsequently surrendered to the Crown would be, there was nothing to cut down the Royal right to sell subject to the Statute.

The all important consideration, in fine, with respect to the Act 5 & 6 Vict. C. 36, which it may be mentioned was passed in June of 1842, is that it represented a distinct line of policy—that of maintaining under regulation,
10 the exclusive Home right of disposing of waste lands.

This fact of exclusive right was emphasised in the following month of July when the Act 5 & 6 Vict. c. 76 was passed enlarging the constitutional power of the Colony. Sec. 29, enabling the legislature to enact laws for the peace, welfare and good government of the Colony, forbade any interference with the sale or other appropriation of the lands belonging to the Crown within the Colony or the revenue thence arising. Note, the prohibition is not merely as to "waste lands," as defined previously, but as to the lands belonging to the Crown, all of which might—in the opinion of Parliament—have otherwise come within its purview.

20 (11) The Act 9 & 10 Vict. c. 104. :—One well known result of the Land Sales Act (5 & 6 Vict. c. 36) was that squatters could not afford to buy, at the price, the necessary tracts of land for their runs. They simply occupied the land illegally. Difficulties arose, and these were met by the Act of 9 & 10 Vict. c. 104, which was the complement of the earlier statute and part of the same policy. See Earl Grey's statement in a despatch to Governor Fitzroy dated 29th November 1846 (House of Commons Papers, 1847 Vol. XXXVIII, pp. 499, 500), and Merivale's *Colonization and Colonies*, pp. 470, 471.

Observations similar to those addressed to the principal Act apply to this amending Act, and particularly may I refer to Sec. 1 which speaks
30 of "any waste lands of the Crown," and this necessitates the strict definition in Sec. 9 of the words, "waste lands of the Crown, as employed in this Act." When in 1850 the Act of 13 & 14 Vict. c. 59 was passed, the prohibition on the Colonial legislature was continued (Sec. 14) against interfering with the sale or appropriation of "the lands belonging to the Crown"—not the "waste lands as defined by the existing Acts." It will be seen, therefore, how revolutionary a change was effected by the Constitution of 1855.

40 (12) Constitution of 1855:—The long struggle for complete self-government had ended in the Colonial legislature itself framing a new Constitution and providing a civil list, but it was stipulated—as is recited in the preamble of the Imperial Act—that the new Constitution should not come into force until the Acts of 5 & 6 Vict. c. 36, and 9 & 10 Vict. c. 104 and 13 & 14 Vict. c. 59 and other Acts restricting the Colonial power over the Customs and otherwise affecting the Government of the Colony were repealed, and "the entire management and control of the waste lands belonging to the Crown
"in the said Colony . . . and also the appropriation of the gross proceeds
"of the sales of any such lands . . . shall be vested in the legislature
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Sec. II. did so vest the required powers with certain exceptions. I stop there, for a moment, to observe that there is no syllable in that recital or in Sec. II. to cut down the inherent meaning of the phrase "the waste lands belonging to the Crown in the Colony." It meant all the waste lands. The suggestion is that the definition contained in the two Acts 5 & 6 Vict. c. 36 and 9 & 10 Vict. c. 104 governed the words in the Act of 1855. With very great deference to such eminent men as Sir William Atherton and Sir Roundell Palmer, in their opinion dated 17th January 1862, I am forced to think otherwise. Their view that the definition did govern the later Act was not necessary to their opinion, and the history of the legislation and the 10 events surrounding it do not seem to have been drawn to their attention, but the Acts were apparently collocated as if the Statutes in the case laid before them were all successive steps in the same process.

On the contrary, the last was a complete reversal of policy; it was the deliberate and final abandonment of a system of political control with reference to which the Acts had been framed, and it was the adoption of an entirely new line of action, a complete transfer of political power, and all the local control of the subject matter which that political power required. Not only was there no repetition of the definition contained in the former Acts, but the Imperial legislature, when transferring all legislative power 20 over the waste lands of the Crown in New South Wales, was careful to state expressly what limitations it intended once and for all to place upon its grant of power. In Sec. II it set that out in the proviso in the words:—
"That nothing herein contained shall affect or be construed to affect any contract or to prevent the fulfilment of any promise or engagement made by or on behalf of Her Majesty with respect to any lands situate in the said Colony . . . nor to disturb or in any way interfere with or prejudice any vested or other rights which have accrued or belong to the licensed occupants or lessees" under the repealed Acts or any Order in Council—the latter referring to the squatters. 30

It is abundantly plain to me that, except for vested interests and the proceeds of lands already sold (see sec. 3 of 18 & 19 Vict. c. 56) the whole control and management of waste lands of New South Wales and their proceeds were parted with absolutely by the Crown as well as all other powers of local Government not expressly excluded as in sec. 45. The old Acts passed away with the policy of which they formed part, and the Colonial Government succeeded to control as if those Acts had never been passed.

In accordance with this plan, sec. 1 of the Constitution displayed a marked alteration. The power to make laws was now to be "in all cases whatsoever," and there was no longer any restriction as to Crown lands. 40 Sec. 43 of the Constitution says:—"Subject to the provisions herein contained it shall be lawful for the legislature of this Colony to make laws for regulating the sale, letting disposal, and occupation of the waste lands of the Crown within the said Colony."

The only limiting provisions material to this case are contained in the proviso to sec. 58, which are those in the proviso to sec. II of the covering Act. Those limiting provisions long ago became exhausted, and sec. 8 of the Constitution Act 1902 significantly contains no limitation whatever.

In *Attorney-General v. Eagar* 3 S.C.R. (N.S.W.) 234, the Supreme Court of New South Wales held the Crown bound on the ground that the land was dedicated to charity, and, therefore, was really not land belonging to the Crown: See per Stephen C.J. 3 S.C.R. (N.S.W.) 234 at p. 260, and Milford J. 3 S.C.R. (N.S.W.) 234 at p. 265. The proviso to sec. 58 of the Constitution of 1855 operated 3 S.C.R. (N.S.W.) 234 at p. 265, per Wise J. 3 S.C.R. (N.S.W.) 234 at p. 271. These were the real and substantial grounds. It was not argued that the lands in controversy were not waste lands within the meaning of the Constitution, except on the ground that
 10 they were affected by a trust, and therefore were not really the property of the Crown. This, said the learned Chief Justice 3 S.C.R. (N.S.W.) 234, at p. 254, was the real question. An *obiter dictum* of Wise J. 3 S.C.R. (N.S.W.) 234 at p. 271 lines 2 *et seq.* as to the meaning of "waste lands" in the Constitution, is not definite. That learned Judge, when Solicitor-General, did not, when giving his opinion in July 1857, think it necessary to refer to that. The reference by Stephen C.J. 3 S.C.R. (N.S.W.) 234 at p. 259, to the 20th section of the Act 5 & 6 Vict. c. 36 appears to rest on a misapprehension of the purview of that section. It was to enable the
 20 Crown, notwithstanding the prohibitive vigour of the enactment, to sell lands on other terms if so promised to settlers or intending settlers previously.

(13) Effect of New Constitution on Control of Lands.—Now, it is true that the grant of legislative power contained in sec. 1 of the Constitution does not confer proprietorship. If it did, it would make the State the owner of all private property and of all persons in the territory.

But the fact that carries importance is that the King always owned the Colonial land in right of his Colony, that even when the local legislature regulated public conduct in most things, there were reserved for Imperial control such departments of Colonial government as lands, and, to some
 30 extent, Customs, because trade was long considered an Imperial interest too (see Lewis's *Government of Dependencies*, pp. xliii. (n) and li., and Merivale's *Colonization and Colonies*, pp. 192—193), Merivale p. 107, refers to "the control exercised by the Mother State over the sale of all other waste lands" (that is, other than church reserves), as "perhaps the most important function of government in new countries."

The express Statutory control of the sale and other disposal of the waste lands (sec. 43 of the Constitution) was transferred to the Colony not as a matter of title—as has been tacitly assumed—but as a matter of governmental function. It was given, not to the King in his Executive capacity, but to
 40 the legislature, which doubly evinced that it was not as a matter of title or property. If, indeed, it were necessary to be considered as a gift of property, and if, according to Mr. Knox's arguments, the maxim *expressio unius exclusio alterius* is to apply, then, if he is right also as to the definition of 5 & 6 Vict. c. 36 still continuing, it follows that not a single piece of land set apart for public purposes ever passed to the Colonial Government. The Supreme Court buildings, the Post Offices, the Treasury buildings, the Gaols, &c., if that argument prevails, would all have remained Imperial property.

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(14) Nature of Governor's Office.—Pressed with that difficulty, Mr. Knox declared he was not bound to contest it, though he declined to admit it, because he relied also on the Imperial nature of the Governor's office. In the end, that is all that can distinguish the matter from any other case of land reservation. Said learned Counsel, the land was analogous to a military reserve, and, indeed the Governor was Captain-General of the forces, and so the reservation for his residence must have been to the exclusive use, and therefore as the exclusive property, of the Home authorities. I have already indicated to some extent the distinction between a local residence of a Governor and a military reserve, but the differences are 10 numerous and vital. First, let me observe that "though he may be styled "commander-in-chief, he is not thereby invested, without a special appointment from the Sovereign, with the command of the regular forces in the "Colony." Todd's Parliamentary Government in the British Colonies, 2nd ed. (1894) p. 41; see also p. 375; and Colonial Regulations, reg. 4. (Colonial Office List 1912 p. 646.)

It must be further borne in mind that the Commonwealth now has exclusive military power in Australia.

As to the general nature of a Governor's position: He is, of course, an Imperial officer in the sense that he receives his commission direct from the 20 Sovereign. But the Lieutenant-Governor—though a citizen of the Colony—is in the same position, and the Chief Justice or Senior Judge acting under a dormant commission is in no different situation.

Dr. Todd's work contains numerous and scattered references to the position of a constitutional Governor, as, for instance, at pp. 32, 33, 36, 52, 132, 626, 630, 679 and 819. From these, and from common knowledge and experience, it is undoubted that while the Governor is an Imperial officer of exalted rank and the local representative of the Sovereign, not as Viceroy, nor as even generally representing the King, but with authority limited by his commission and instructions and any relevant Act of Parliament 30 (see *Musgrave v. Pulido*, 5 A.C. 102): He is selected by, and owing a duty to, the Crown; his duty is as constitutional Governor of the Colony to which he is accredited. From the moment he arrives, he is also controlled by those practical constitutional understandings not reducible to written law which go to form responsible Government. He is, in fact, a part of the Colonial Government, he is incorporated into its working system as an indispensable, and in theory the chief, element of its mechanism, and, though he is an Imperial officer, he is an officer whose primary function is to regard himself and to act as the head of the Colonial Government. His principal and daily duty is to follow his Ministers' advice in conducting the political 40 life of the community—the exceptions being exceptions only, and confined to Imperial interests, the responsibility for which he may transfer to his principal, or to transparent improprieties, the responsibility for which he may transfer to Parliament or the people. He is an integral part of the Government, not an outside element controlling it.

Consistently with this, if questions of an Imperial nature present themselves, if matters of general Imperial policy or of the interests of other parts of the Empire are involved, he is warranted and may be bound to

consult with his sovereign through constitutional channels; and he is always bound to obey his instructions so far as they are not opposed to the law of the Constitution and of the Colony, which law he is present to assist in carrying into effect. But the overwhelming characteristic of a constitutional Governor's functions is that they are Colonial.

(15) Constitutional Provisions as to the Governor.—Those general considerations are verified in respect of New South Wales by reference to the Constitutions of 1855 and 1902. The former expressly made the Governor an organic portion of the legislature, and the executive officer of the Colony. 10 The suggestion that for the protection of Imperial interests the land was required to be retained in the hands of the Home Government lest the Colonial legislature should refuse to provide any residence for him, is answered by the legal necessities of the Constitution itself. No vote, resolution or bill for the appropriation of revenue of any tax or impost, could be passed without a Governor's message (sec. 54); not a penny could be obtained from the Treasury without the Governor's warrant (sec. 55); Parliament could not meet after a General Election until summoned by the Governor (sec. 24). No member of either House could sit or vote until he took oath before the Governor or someone appointed by him (sec. 33); 20 and, of course, no law could be passed without the Governor's assent, except the Acts reserved, which always need personal assent of the Sovereign.

The Commonwealth Constitution, 1900, contemplated the Governor as an indispensable representative of his State for certain federal purposes.

The New South Wales Constitution of 1902 repeats the necessary functions of the Governor. Thus, though it is true the Governor's office is an Imperial purpose, still more must we recognise the existence, the welfare and the Constitutional Government of the State of New South Wales an Imperial purpose. If, however, it be replied that "Imperial" means as distinct from "Colonial," the reply is wasted, because, as shown, 30 the functions of a Governor are more distinctly Colonial than Imperial in that contrasted sense.

His legislative functions are not and cannot be performed in his official residence; his executive functions rarely are, and, unless he is to be understood as not required to visit other portions of his Colony, his residence elsewhere must be equally Imperial with his residence in the capital.

The actual understanding of both legislatures, Imperial and Colonial, on the subject of the residence, is to some extent reached by a reference to the Governor's residence which was before the Imperial Parliament when the Act 18 and 19 Vict. c. 54 was passed.

40 On 17th September 1852 a Select Committee of the Legislative Council of New South Wales made a report in anticipation of the grant of responsible government. That was forwarded in a despatch by Governor-General Fitzroy to Sir John Pakington, dated 1st November 1852, presented to the Imperial Parliament, and printed, by command, 14th March 1853. After referring to the Governor-General's new dignity and proposed salary, the report quotes, as applicable to the Colony, some observations by Lord Elgin relative to Canada, and this passage occurs:—"If the Governor-General adheres faithfully to the principles of constitutional government

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“ in the direction of public affairs, it becomes all the more necessary that his residence should be open to leading persons of different parties, and that he should be able by visiting different parts of the province, and taking a lead in works of public utility and benevolence which are not of a party character, to manifest personal sympathy with all sections of the community.”

It would be hard to indicate more effectually the view that his place of residence was closely bound up with Colonial interests and considerations. The salary fixed by the Colonial legislature on the basis declared in the report was accepted by the Imperial Parliament, and appears in the 10 schedule to the Constitution.

(16) Effect of Responsible Government.—The truth, then, is that when responsible government was introduced, a vital change was made.

Lord Chancellor (then Mr.) Haldane, in his speech in May 1900, in the House of Commons, on the Commonwealth Constitution Bill, said:—“ This Bill is permeated through and through with the spirit of the greatest institution which exists in the Empire, and which pertains to every Constitution established within the Empire—I mean the institution of responsible government, a government under which the Executive is directly responsible to—nay, is almost the creature of—the legislature.”²⁰ Now, when New South Wales in 1855 received this “ the greatest institution ” in the Empire, and with it the full control of the waste lands and the full control of her Customs, which she had not before (see 7 & 8 Vict. c. 72) and, as part of all this, the uncontrolled management of all land occupied by her public buildings, it would be marvellous indeed if there were refused to her the control of these 47 acres. Clearly that passed, not as specifically given over to the control of the legislature, but as part of the Governmental means and property taken over by the self-governing community.

And if it were to be assumed that the original nature of the Governor’s office meant Imperial control of the land, the transition to constitutional³⁰ government, by parity of reason, meant Colonial control.

One word as to the Order in Council of 26th October 1899. This was apparently a clearing up of lands held for Imperial purposes. The lands in the first schedule had been granted to Ordnance Officers under 4 Vict. No. 2.

The second schedule lands are stated to have been “ reserved as appropriated or used for military and naval purposes but never granted for “ ordnance purposes.”

Reading that statement with the recital of 40 and 41 Vict. c. 23, it appears that they were held in trust for the defence of the Colony within the meaning of that Act and that they were held by the Imperial authorities.⁴⁰ That implies that the original reservation had, in fact, been practically to the Sovereign in his Imperial capacity; and that is a question of fact dependent, as in the British Columbia Case (1906) A.C. 552, on the circumstances. What these circumstances were we are not aware, and so the instance does not help, especially as to a reserve for civil purposes.

The third schedule: Garden Island was dedicated by the New South Wales Government under its own Land Act 1861.

In any event the agreement and its resulting conveyance go no further than the lands actually concerned, and I do not think they help to any conclusion in this case.

I am of opinion the appeal should be allowed, and the action dismissed with costs.

Higgins J. :

The terms of the decree, which is the subject of appeal have been already stated by the Acting Chief Justice.

One of the grounds of appeal is that the property was not dedicated as declared in the decree, but I understand that in the Court below as in this Court the main argument has been on the other problems of the case. At all events the dedication has been treated as clear, and the inference has been drawn that, if dedicated, the land was not "waste land" over which the Parliament of New South Wales was given control under the Constitution (18 & 19 Vict. c. 54, sec. II., 17 Vict. No. 41 (N.S.W.)).

According to the case of *Attorney-General v. Eagar* 3 S.C.R. (N.S.W.) 234, and the opinions of the British Law Officers appended thereto, the meaning of the words "waste lands belonging to the Crown" used in sec. II of the British Enabling Act, is to be found in the definition contained in sec. 23 of the Act 5 & 6 Vict. c. 36, or, it may be, in that definition taken with the definition contained in sec. 9 of the Amending Act 9 & 10 Vict. c. 104. There is some ground for the opinion that the true meaning of the words is broader than the definitions contained in these Acts; but, so far as the decision of this case is concerned, the narrower meaning may be admitted.

The Act 5 & 6 Vict. c. 36, sec. 23, provides that the waste lands of the Crown shall be disposed of by sale only and in the manner prescribed; but the rights of Her Majesty are saved to except from sale and either to reserve or dispose of the lands for roads and certain other public purposes; and, by sec. 23 the words "waste lands of the Crown" as employed in the Act, mean any land situated in New South Wales and vested in the Queen, "and which have not been already granted or lawfully contracted to be granted to any person or persons in fee simple, or for an estate of freehold, or for a term of years, and which have not been dedicated and set apart for some public use." By the amending Act (9 & 10 Vict. c. 104) power was given to grant lands for 14 years, or licences to occupy; and, by sec. 9, it was provided that "the words 'waste lands of the Crown,' as employed in this Act" (the Amending Act), "are intended to describe any lands in the said Colonies whether within or without the limits allotted to settlers for location, and which . . . are . . . vested in Her Majesty, . . . and which have not been already granted or lawfully contracted to be granted by Her Majesty, . . . to any person or persons in fee simple, and which have not been dedicated or set apart for some public use." For some reason the word "or" is substituted for "and" in the second definition, but in all other respects, and for the purposes only of the amending Act the aim seems to be to enlarge rather than to narrow

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the class of waste lands. But the principal Act, with its definition of "waste lands," still remains. One may conjecture that the draughtsman of the amending Act felt a difficulty in applying the word "dedication" to the appropriation of lands for purposes other than the purpose of highways; that he meant the words "set apart" to refer to the appropriation of lands for recreation or for hospitals or for public purposes other than the purpose of highways. But, whatever may have been the motive for the change of language, there is no doubt, to my mind, that both expressions, "dedicate" and "set apart"—"for some public use"—connote the giving to the public of some right in the land which subtract from the Crown's 10 full ownership; the appropriation of the land for some definite public purpose, not for public purposes generally, and for some estate or interest better than at mere will. Probably—though this is not so certain—the appropriation of the land for the public use must also be permanent. In the case of highways there can be no dedication unless permanent (*Corsellis v. London County Council* (1907) 1 Ch. 704; (1908) 1 Ch. 13); and the words "set apart" should take their colour and force from the context. Lands granted in fee are exempted from "waste lands" which the Crown may sell or lease, lands contracted to be granted are excepted, and lands dedicated and/or set apart for some public use are excepted. The object clearly 20 is to presume existing rights against the Crown, and there is no such existing right to be preserved unless the Crown has bound itself in some way to keep the land for some public use. If the Crown has built a house for one of its servants, there is nothing to prevent it from changing its intention at any moment, and letting in another servant, or pulling down the house. The servant has no right to the house as against the Crown, and what is more to the purpose—the public have no right that can be recognised in a Court of law against the Crown.

Now, what evidence is there of any relinquishment of its full rights of ownership, on the part of the Crown? A number of documents, inter- 30 esting historically, have been collected from the time of the first settlement by Governor Phillip onwards; and it is urged that, as the result of these documents, it is to be inferred that the land was permanently dedicated to the public use of a residence for the Governor. There has been no Act to that effect; there has been no proclamation to that effect; there has not been any matter of record or deed to that effect. There certainly has been a series of letters, covering several years, passing between the Governors and the Secretary of State for the Colonies, as to the provision of a residence for the Governors; and in 1845 Governor Gipps entered this residence. When pressed to say when the dedication was complete, Mr. Knox put this 40 entry of Governor Gipps as being the latest date to which the dedication or setting apart could possibly be referred. But there is no evidence of anything in the nature of dedication. It is doubtful whether there can be any effectual dedication or setting apart, or appropriation by the Crown for the purpose of such a residence, except by matter of record: Chitty on Prerogative, p. 389. In the case of *Attorney-General v. Eagar*, 3 S.C.R. (N.S.W.) 234 the dedication to the purposes of religion and education was made by letters patent executed by the Queen; and in these letters patent it was

expressly provided that, if the corporation thereby created to be trustee should be dissolved, any lands granted to it should revert to Her Majesty to be held and applied to the same purposes of religion and education. Successive Governors "reserved"—held back—from sale a large but diminishing area of the frontage to the harbour, and the land in question was part of the area; but no evidence has been produced to shew either that the Governors had power, or that they intended to bind the Crown as to the purposes for which this land was to be used. The letters patent of the Governors have not been put in evidence, nor the commission, nor the
 10 instructions; but, by consent of the parties, we have looked at the letters patent issued to the first Governor, Governor Phillip, as set out in a book of historical records of New South Wales. Governor Phillip certainly seems to have had no power to dedicate, or even (with a few immaterial exceptions) to grant lands without valuable consideration; and unless further power were granted to subsequent Governors, they had no power either. A Governor is a special, not a general, agent (*Musgrave v. Pulido*, 5 App. Cas. 102); and the Governor of New South Wales had no such "autocratic power" with regard to Crown land as the Governor of British Columbia had (see *Attorney-General of British Columbia v. Attorney-General of Canada* (1906),
 20 A.C. 552 at pp. 554, 555. But the solid ground on which to rest the decision of this case is, to my mind, this—that the royal will so far as it is indicated by the facts before us, was, as to this land as yet kept back from sale, not to give the land at all to the public any more than to private persons, but to retain it for the use of the royal servants, the Governors; and the fact that the Governors are to be treated as useful to the public of the Colony should not blind us to the essential fact that their position is that of special deputies of the King. The transaction of building and enclosing this residence was approved by the Queen, not *animo donandi* but *animo retinendi*. By the very next mail the Queen could have directed that the residence should
 30 be used for an admiral or for an asylum.

If this view is right, this land was "waste land belonging to the Crown" within the meaning of the Constitution; and, under the Constitution, it became subject to the power of the legislature of two houses thereby created. We have not been referred to any provision in the numerous and complicated Acts of New South Wales relating to Crown land that is in the nature of a dedication of this area of 47 acres, or that alters the rights of the King with respect thereto; and it has not been made clear where the power over this land really rests pending legislation of the New South Wales Parliament. By the Act 18 & 19 Vict. c. 54, sec. II, "the entire manage-
 40 "ment and control of the waste lands belonging to the Crown in the said
 "Colony and also the appropriation of the gross proceeds of the sales of
 "any such lands and of all other proceeds and revenues of the same from
 "whatever source" are vested in the legislature of the Colony (and see sec. 43 of 17 Vict. No. 41, in the schedule). The Colonial legislature could make laws with respect to these lands; but what if there are no laws made applicable? It, by virtue of letters patent granted or other authority conferred before the Constitution, the Governor had power to manage the land, and to remove erections thereon (*c.f.* 9 & 10 Vict. c. 104, sec. 10) that

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power was not affected by the Constitution, but remained. There is nothing in the Constitution to take away any power which the Governor had at the time of the Constitution (and see secs. 42 and 57 of 17 Vict. No. 41); but, under the instructions given by his principal, his duty was, in the execution of his powers legal and discretionary, to consult with his Executive Council. That is to say, the Governor in Council can exercise the powers of the Governor; and the Governor in Council is the Government of New South Wales; and the nominal Defendant Williams represents the Government. It is true that no evidence has been produced, no Act has been cited, to show that such a power of management was ever conferred on the Governor; 10 but there is no issue raised by the information as to the rights of the King in the absence of dedication; there is no issue to which such evidence, or such an Act, would have been relevant. The information is based solely on the allegation of a permanent dedication of the land to the public purpose of a residence for the New South Wales Governors (par. 8); and the allegation has not been proved. As there was no dedication, this case must fail. Besides, if the right of the King to this land, in his capacity as ruler of all parts of the Empire, were to be tested by litigation as against the King in his right of New South Wales, the Attorney-General for New South Wales could not fitly represent the King in asserting the former right as against 20 the Government of New South Wales—a Government of which the Attorney-General is himself a member, a Government which, as Appellant, now seeks to have the information dismissed.

In this view of the merits of the case it becomes unnecessary to speak more at length as to the unusual framework of this information. We have been relieved of some difficult questions by the Appellant's admission that the Government—including the Governor—intended to open the grounds to the public. But, so far as I am personally concerned, I desire not to be taken as accepting the position that the Attorney-General for New South Wales, who is a Member of the Ministry for New South Wales, can succeed 30 in an information against the Government for an actual or threatened trespass to which, in the absence of evidence to the contrary, he must be taken to have been a consenting party. See *Burt v. British Nation Life Insurance Association*, 4 De G. & J. 158. Moreover, the Government of New South Wales is not a corporation; and if the name of the nominal Defendant is to be treated as a short expression for the names of the Governor and the Councillors who advise him, we find Mr. Holman, in his capacity of adviser of the Governor, suing himself in his capacity of adviser of the Governor. If the injunction granted should be discharged by the Government, Mr. Holman may be found in the position of moving for an attach- 40 ment against himself. It is not a question of the King in one capacity suing the King in another capacity; it is a question of the Attorney-General suing himself. But I am glad that the case is to be decided on its merits; and, on the merits, I concur in the view that the appeal should be allowed.

Gavan
Duffy and
Rich, J.J.

Gavan Duffy and Rich, J. J.:

The Judgment of Gavan Duffy and Rich JJ. was read by Gavan Duffy J. The Informant's claim in this case is based on the hypothesis that

there has been a dedication or setting apart of land by the Sovereign so as to constitute something in the nature of a trust for the benefit of the public of New South Wales, and that the right so created can be enforced, and any interference with its exercise can be prevented, by the Attorney-General of New South Wales suing on behalf of the public of New South Wales.

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Court of
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June, 1913.
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Duffy and
Rich, J.J.
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The Supreme Court of New South Wales were of opinion that this claim was well founded. The decree appealed against declares that the land in question is vested in the King dedicated to the public purpose of a residence for His Majesty's representative in New South Wales, and that the action
10 or concurrence of the Imperial Government is necessary to divert it from that purpose; it also enjoins the Government of New South Wales, its officers and servants from any interference with that purpose.

On a consideration of the evidence, we find no ground for saying that there is any such right in the public of New South Wales. It is true that the land was reserved, and has long been used, as a residence and domain for the Governor of New South Wales; but the reservation was not intended to confer on the public of New South Wales any rights as against the Sovereign. Its intention and its effect were to retain the land for the purpose of the King's Government in the Colony. It created no right which could
20 be enforced in a Court of Law by any individual or set of individuals, or by the public of New South Wales; the Sovereign still retained complete and undivided ownership and dominion, and he alone could complain of any interference with the land or with the method of dealing with it. The reservation gave to the public no more than it would have given had the land been reserved and used for a post office, a Court of Justice or a Custom house. Such purposes are commonly called public purposes, but the public has no right with respect to them which can be enforced in a Court of law, apart from the proprietary right which the Sovereign can enforce and defend.

This is enough to dispose of the case, for, if the public has no right which
30 can be asserted in a Court of law, it is unnecessary to inquire whether the Government of New South Wales has interfered with the rights of the Imperial Government. Were it necessary to decide the question we should be disposed to hold with our brother Isaacs, whose judgment we have had the advantage of reading, that the Imperial Government is no longer concerned with the land, and that the Government of New South Wales is within its legal rights in all that it has done or threatened to do.

In our opinion the appeal should be allowed.

Powers J. :

Powers, J.

I cannot add, nor do I think it necessary to add any further reason why
40 the appeal should be allowed on the merits. I do not propose to repeat any of the reasons already given. I concur in the opinions expressed by all my colleagues, that the appeal should be allowed.

RECORD.

No. 16.
Order in
Council
granting
Special
Leave to
Appeal,
dated 22nd
November,
1913
(extract).

No. 16.

Order in Council granting Special Leave to Appeal.

At the Court at Windsor Castle.

The 22nd day of November 1913.

Present

The King's Most Excellent Majesty.

* * * * *

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 17th day of November 1913 in the words following viz. :—

“ Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Your Majesty's Attorney-General of and for the State of New South Wales on the relation of Arthur Alfred Clement Coeks Sir William McMillan K.C.M.G. and Thomas Henley in the matter of an Appeal from the High Court of Australia between the Petitioner Appellant and James Leslie Williams (Nominal Defendant) Respondent setting forth :—

* * * * *

“ The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the said humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Decree of the High Court of Australia dated the 19th day of June 1913 upon depositing in the Registry of the Privy Council the sum of 300*l.* as security for costs.

“ And their Lordships do further report to Your Majesty that the proper Officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under the seal of the said High Court of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.”

His Majesty having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General Lieutenant-Governor or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

ALMERIC FITZROY.

No. 17.

List of Formal Documents omitted from the Transcript Record.

(Not printed.)

No. 17.
List of
Formal
Documents
omitted
from
Transcript
Record.

No. 18.

Certificate of Acting District Registrar verifying Documents and as to Notices, &c.

(Not printed.)

No. 18.
Certificate
of Acting
District
Registrar
verifying
documents
and
as to Notices
etc.,
dated 26th
March, 1914

No. 19.

Certificate of the Chief Justice.

(Not printed.)

No. 19.
Certificate
of the Chief
Justice,
dated 1st
April, 1914

In the Privy Council.

No. 47 of 1914.

*On Appeal from the High Court of
Australia.*

BETWEEN

HIS MAJESTY'S ATTORNEY,
GENERAL OF AND FOR THE
STATE OF NEW SOUTH WALES *Appellant,*

AND

JAMES LESLIE WILLIAMS . *Defendant.*

RECORD OF PROCEEDINGS.

CRAWFORD, CHESTER & SLADE,
90, Cannon Street, E.C.
Appellant's Solicitors.

LIGHT & FULTON,
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Respondent's Solicitors.

70656