

"1. Are the indorsed petitions the property of the petitioners, and should they have been delivered to them at once when received by the Governor?"

"2. Is the right to petition Her Majesty a common-law right personal to every British subject?"

"3. Is this right in Western Australia taken away or restricted by the local Act—31 Vict., No. 7?"

"4. Is there any doubt as to the constitutional right of Her Majesty to grant her fiat addressed to the Supreme Court of a colony where, as in Western Australia, the English common law prevails?"

"5. If the petition is in proper form, and discloses a proper case, is the fiat granted as a matter of course, or can it be constitutionally refused?"

"6. Is the object of the fiat to prevent a denial of justice, and may it be granted even though the Governor of a colony—acting on the advice of his responsible Ministers—may have refused to refer to the Supreme Court a petition for redress presented to him under authority of a colonial statute, as in the present case?"

"7. Has the Secretary of State for the Colonies any discretionary power to withhold a petition from Her Majesty, or to delay it longer than is necessary to obtain advice as to its being in form and as to its raising a proper case?"

"8. Has the colonial Government any discretionary power to prevent the petition from reaching the Secretary of State, or to hinder the petitioner from acting upon the petition when returned with Her Majesty's fiat?"

"9. Is the question of the applicability of the arbitration clause to the matters raised in the Western Australian Land Company's petition within the province of the Secretary of State to decide with a view to stopping the petition, or is it one for decision by the Supreme Court in the proceedings on the petition?"

1. In reply, the Law Officers advised me that the indorsed petitions ought at once to have been delivered to the petitioners by the Governor when received by him.

2. That the right to petition Her Majesty is a common-law right personal to any British subject, so long as the petition is presented in the regular and constitutional way.

3. That this right is not taken away in Western Australia by the local Act—31 Vict., No. 7: That that Act is an enabling one, and if a petitioner chose not to take advantage of its provisions, but addressed a petition to Her Majesty direct, the fact that a remedy is available in the colony might be a reason for refusing to indorse the petition; but that in a case where leave has been refused in the colony, the right of petitioning Her Majesty is in no way restricted by this local Act.

4. That if the petition is in proper form, and discloses a proper case, the fiat cannot be properly refused.

5. That this fiat may be granted even though the Governor of the colony, acting upon the advice of his responsible Ministers, may have refused to refer to the Supreme Court such petition for redress; and that the prerogative in question should be exerted in any case in which it appears necessary to prevent a denial of justice.

6. That the Secretary of State for the Colonies has no discretionary power to withhold a petition from Her Majesty, or to delay it longer than is necessary for obtaining advice upon it.

7. That the Colonial Government has not any discretionary power to prevent the petition from reaching the Secretary of State, or to hinder the petitioner from acting upon the petition when returned with Her Majesty's fiat.

8. That the question of the applicability of the arbitration clause to the matters raised in the Western Australian Land Company's petition is one for decision by the Supreme Court in the proceedings upon the petition; that they did not at all lay down that the existence of an arbitration clause which clearly barred any right of action might not be a ground for refusing the fiat; but that this is not such a case; and that the question whether the dispute should be referred to arbitration could be raised by defence to the petition or by motion to stay the proceedings.

I should inform you that the prerogative right of Her Majesty to grant her fiat upon a petition of right from a self-governing colony had before the two cases from Western Australia now in question already been more than once before the Law Officers of the Crown, and that their advice has invariably been given in favour of the existence of that right. This advice was given with respect to Newfoundland in 1861 and 1862, to New South Wales in 1863, and to South Australia in 1894.

I have received and given careful consideration to the resolution adopted at the Conference of Premiers held at Hobart in February last: "That, in the opinion of this Conference, Her Majesty's fiat should not issue to supersede the decision of the local Executive on the subject of any reference to the Supreme Court of local claims against the Crown." But your Ministers will, I trust, on considering the opinion quoted above, agree with me that there has been no question of superseding their decision under the powers given to them by the Act 31 Vict., No. 7. With their discretion under that Act I have no power, and I certainly have no desire to interfere. I would, however, point out that these petitions of right are outside that Act altogether, and the question is purely one of law as to the individual right of a British subject to present a petition of right for redress in a colonial Court for an alleged breach of a contract made on behalf of the Crown.

So long as that right has not been taken away by express legislation, I have no power to interfere with its exercise. My duty on receiving such a petition is simply to ascertain from the Law Officers of the Crown that the petition is proper in form and discloses a grievance which may properly be made the subject of a petition of right, and then, if the answer is in the affirmative, to submit the petition to the Queen, and, as a Ministerial Act, advise Her Majesty to grant her fiat. I have no discretion in the matter.

I think it right to add that I should deprecate any attempt to deprive British subjects of their right to petition the Queen for redress unless a direct right of action against the Attorney-General