

## VICTORIA.

## A U S T R A L I A N M I N T.

*Ordered by the Council to be printed, 22nd May, 1855.*

CHAS. HOTHAM,  
*Governor.*

*Message No. 63.*

The Governor transmits, for the information of the Legislative Council, a copy of a Despatch from the Right Honorable the Secretary of State, dated the 31st December, 1854 (No. 50), transmitting copy of a Despatch addressed to the Governor of New South Wales, enclosing the Orders in Council and Proclamation necessary to empower the Coinage of Gold at the Sydney Mint, and for giving currency to the same within the Australian Colonies.

*Government Offices,  
Melbourne, 22nd May, 1855.*

No. 50.]  
SIR,

Downing-street, 31st December, 1854.

Received  
8th December  
1854.

I transmit herewith, for your information, the copy of a Despatch which I have addressed to the Governor of New South Wales, enclosing the Orders in Council and Proclamation necessary to empower the coinage of gold at the Sydney Mint, and for giving currency to the same within the Australian Colonies.

(Signed)

I have, &c.,  
G. GREY.

Lieutenant Governor,  
Sir Charles Hotham, &c., &c., &c.,  
Victoria.

No. 20.]  
SIR,

Downing-street, 8th December, 1854.

I transmit to you two Orders in Council and Proclamation, the one empowering the striking of Australian sovereigns and half-sovereigns at the Sydney Mint, the other giving currency to those sovereigns and half-sovereigns within the Australian Colonies.

With reference to Sir Charles Fitz Roy's Despatch, No. 84, of 24th June last, enclosing copy of a communication from the legal advisers of his Government, in which they express their opinion that the Act of Parliament, 56 George III, c. 68, is in force in the Colony, I transmit to you a letter from the Lords Commissioners of the Treasury, enclosing one from the Law Advisers of the Crown in this country, giving a contrary opinion, and another letter which has just been received from their Lordships on the same subject.

6th September,  
1854.  
4th December,  
1854.

It appears to me that in this conflict of authorities, and with the view to place the currency of New South Wales on a plain and safe footing, the best course will be for the Legislative Council to assume the opinion given in this country to be the correct one, and that the Legislative Council should thereupon pass an Address desiring you to publish and bring into effect the Order in Council of the 16th October, 1852, as originally suggested in the Duke of Newcastle's Despatch of 28th February, 1853.

This is the course which has been adopted, as you are doubtless aware, by the Legislature of Victoria, who passed an Address to this effect in November, 1853.

If the Legislative Council take this step you will then be able to publish the Order in Council and Proclamation of 16th October, 1852, and at the same time those of the 18th October, 1854, which I now transmit to you.

If the Legislative Council will not take this course, there remains the other suggested by the Lords Commissioners of the Treasury at the end of their letter, of passing a short enactment to the effect therein recommended.

(Signed)

I have, &c.,  
G. GREY.

Sir W. Denison, &c., &c., &c.  
B.—No. 63, a.

Treasury Chambers,  
4th December, 1854.

SIR,

With reference to Her Majesty's Proclamation and Order in Council of the 10th October last, giving currency in the several Colonies of Australia and New Zealand to the gold coins to be struck under the provisions of another Order in Council of the same date, at the branch of the Royal Mint at Sydney, I am commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you that my Lords are desirous of calling the attention of Secretary Sir George Grey to the present position of the currency of New South Wales, before the Proclamation and Order in Council in question are transmitted to the respective Colonies.

I am to observe that my Lords have already pointed out to Sir George Grey, by their letter of 2nd October last, that whatever laws may be in force regulating the coinage of money at Her Majesty's Mint, the only recognised constitutional course for giving legal currency to Her Majesty's coins issued under such laws, is by the promulgation of a Proclamation of this character. There can, therefore, be no objection to the issue of this Proclamation on the ground of any assumed privileges of the local Legislature of New South Wales, nor any legal objection to it, unless there should exist any law which would have the effect of precluding the circulation within the Colony of new coins of the description proposed to be issued.

The recent correspondence with the local Government on the subject of the Order in Council of Her Majesty, declaring the gold coin of the realm to be legal tender in New South Wales, and imposing a limitation on the amount for which British silver coin shall be a legal tender, has, however, raised questions which it is necessary to settle definitively before effect is given to the Proclamation and Order in Council now under consideration.

My Lords have already explained to Sir George Grey that in their opinion the passing of an Act by the Colonial Legislature declaring and enacting the Imperial Act, 56 George III, c. 68, sec. 11, to have force within the Colony, would have the effect of establishing the gold coins of this realm as the only legal tender for payment of sums exceeding forty shillings, in the Colony, and would have precluded Her Majesty from establishing a Mint at Sydney with a view to the issue therefrom of coins which would not be coins of the realm.

My Lords, however, learnt by the Despatch, No. 84, 24th June, 1854, of the Governor of New South Wales, enclosed in Mr. Merivale's letter of the 16th October, that he had abandoned the intention of introducing a Bill on the subject, in consequence of advice given by the law officers of his Government, to the effect that any legislation on the subject was unnecessary, inasmuch as the Imperial Act in question was, in their opinion, already in force in the Colony.

My Lords must observe that if this exposition of the law be correct, it would equally follow, as in the former case, that Her Majesty would be precluded from issuing coins for circulation in the Colony of the character proposed.

Sir George Grey is aware, from a previous communication from this department, that Her Majesty's Attorney and Solicitor General have given an opinion on the subject adverse to that of the law officers of New South Wales.

My Lords must add that the question had engaged their attention when the proposition of the Colony, that Her Majesty should, in virtue of Her royal prerogative, establish a branch Mint at Sydney, was first taken into consideration.

A case had been previously submitted to the Law Officers of the Crown under the last Government, on general questions affecting Colonial currency, and those learned gentlemen expressed their opinion that until some Act shall have passed either by Royal authority or by local legislation, giving currency to the coins of the realm within any Colony, such coins would not be legal tender for payments within such Colony.

My Lords, on consideration of the proposals submitted to them for establishing Mints in New South Wales and other Australian Colonies, were of opinion, that having regard to the laws by which the issue of coins from the Royal Mint in London is regulated, it would not be proper to coin money in the United Kingdom at any place except the existing Royal Mint; but that referring to the legal opinion first adverted to, and to the fact of the apparent absence of any legislative enactments regulating the currency of the Australian Colonies, it was open to Her Majesty's Government to advise Her Majesty to exercise the prerogative in the manner prayed for by the Australian Governments, to the extent of establishing Mints in those Colonies for local purposes only.

It is almost unnecessary to observe that the subsequent proceedings for the establishment of a Mint in New South Wales for this object, have obtained the highest legal sanction.

The refusal, however, of the Government of New South Wales to give effect to Her Majesty's Proclamation and Order in Council of 16th October, 1853, will occasion embarrassment unless measures are adopted for obviating it.

As the Law Officers of the Crown, both under the last and the present Government, concur in opinion that the provisions of the Act 56 George III, cap. 68, do not extend to New South Wales, and as there appears to be no local Act to regulate the currency of Her Majesty's coins within the Colony, the effect of the promulgation of the present Proclamation and Order in Council, without some previous enactment on the subject, would be to constitute the coins to be issued from the Branch Mint at Sydney the sole legal tender within the Colony.

It was with a view to prevent any difficulty of this character that my Lords proposed, as they explained to the Duke of Newcastle, that the currency of the Colony should be placed on a sound and intelligible basis previously to the establishment of a Mint at Sydney, and foreseeing the embarrassment that might arise from erroneous local legislation on the subject, they suggested that in order to give unity to the proceedings, the whole matter should be regulated by Order of Her Majesty in Council.

My Lords have now to suggest that before any steps are taken for a coinage at the Sydney Mint, all doubts on the subject be removed, either by the promulgation of the Proclamation and Order in Council of 16th October, 1852, or by a short Colonial enactment, declaring that the coins of the realm, as by law established in the United Kingdom, together with such coins of similar value as may be issued from Her Majesty's branch Mint at Sydney, shall be the sole legal tender for payment within the Colony.

The only objection which my Lords are aware of to the adoption of the latter alternative, arises from the apprehension of the possible contingency of some omission or the introduction of some inadvertent clause in a local enactment which might interfere with the objects for which the establishment of a branch Mint at Sydney was sought by the Colony and conceded by Her Majesty.

I am also to observe that the promulgation of the Order in Council and Proclamation of the 18th October, 1854, in the other Colonies to which they refer, must be made contingent on the proceedings of the Government of New South Wales in the matter.

I am, &c.,

(Signed)

C. E. TREVELYAN.

H. Merivale, Esq.

*Draft Proclamation for giving currency to the Australian Sovereigns and Half-Sovereigns within the Australian Colonies.*

V. R.

WHEREAS by an Order in Council bearing date the 19th day of August, 1853, We have thought fit to order that a branch of Our Royal Mint should be established at or near Sydney in New South Wales.

And whereas in the eighteenth year of Our Reign, by an Order in Council dated the 18th day of October, 1854, We had thought fit to order that certain pieces of gold money should be coined at the said branch of Our Royal Mint, to be called respectively Australian sovereigns and Australian half-sovereigns, and to be of the same respective weights, fineness, and values with the sovereigns and half-sovereigns now current within this Our realm.

And whereas pursuant to and in virtue of the powers given in Our said Orders in Council, it is provided that a coinage of the said Australian sovereigns and half-sovereigns shall be made, and that every such Australian sovereign shall have for the obverse the effigy of Her Majesty, with the inscription "Victoria D.G. Britanniar. Regina F.D.," and the date of the year; for the reverse the word "Australia" placed in the centre of the piece, encircled by a laurel wreath and surmounted by the Royal Crown, with the inscription "Sydney Mint, One Sovereign," and with a graining on the edge; and that every such Australian half-sovereign shall have the obverse in every respect similar to that of the sovereign, and for the reverse the same word "Australia" in the centre, encircled and surmounted in like manner, but for the inscription the words "Sydney Mint, Half-Sovereign," and a graining on the edge.

And whereas pieces of gold money of the above descriptions will be coined at Our said Branch of the Royal Mint, in pursuance of orders issued and to be issued by Us, We have, therefore, by and with the advice of Our Privy Council, thought fit to issue this Our Royal Proclamation: And We do ordain, declare, and command that the said pieces of gold money so to be coined shall be current and lawful money within all Our Colonies in Australia, New Zealand, and Van Diemen's Land, and shall pass and be received as current and lawful money therein by the names aforesaid, and at the values hereinbefore assigned to them.

*At the Court at Windsor, the 18th day of October, 1854.*

Present:

The Queen's Most Excellent Majesty,  
His Royal Highness Prince Albert,

Lord President,  
Duke of Newcastle,  
Duke of Wellington,  
Marquis of Lansdowne,  
Earl of Aberdeen,  
Earl Granville,

Viscount Palmerston,  
Sir James Graham, Bart.,  
Mr. Chancellor of the Exchequer,  
Sir Charles Wood, Bart.,  
Sir William Molesworth, Bart.

Whereas there was this day read at the Board the draft of a Proclamation declaring the rates at which certain gold coins, to be called Australian sovereigns and half-sovereigns, intended to be struck at Her Majesty's Branch of the Royal Mint at Sydney, in New South Wales, are to pass current in all Her Majesty's Colonies in Australia, New Zealand, and Van Diemen's Land: Her Majesty, having taken the same into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and to order, and it is hereby ordered, that the said Proclamation do take effect and come into force in each of Her Majesty's said Colonies and Possessions upon and from and after the promulgation thereof by the Governors or Officers administering the Government of the said Colonies respectively.

And the Lords Commissioners of Her Majesty's Treasury, and the Right Honorable Sir George Grey, Baronet, one of Her Majesty's Principal Secretaries of State, are to give the necessary directions therein accordingly.

(Signed) C. GREVILLE.

Treasury Chambers,  
6th September, 1854.

SIR,

I am commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you, with reference to your letter of the 15th July last, that in consequence of the opinion expressed by the Select Committee of the Legislative Council of New South Wales, as communicated in the Despatch of the Governor, of the 27th of February last, my Lords thought it right to refer a case for the opinion of the Attorney and Solicitor General as to whether the 11th and 12th sections of the Act 56 George III, cap. 68, by which the gold coin of the realm is made the only legal tender of payment within the United Kingdom for sums exceeding forty shillings, have been in force in the Colony of New South Wales since the passing of the Act 9 George IV, cap. 83.

I am directed to transmit, for the information of Secretary Sir George Grey, a copy of the said case and opinion, from which Sir George Grey will observe that the Law Officers of the Crown "are of opinion that the Act of the 9 George IV, cap. 83, has no application to the case in question, and consequently that the Act 56 George III, cap. 68, secs. 11 and 12 are not in force in New South Wales."

I have to observe that under these circumstances it must rest with the Legislative Council of New South Wales to decide whether or not they will authorise the promulgation of Her Majesty's Order in Council, which would give practical operation within the Colony to so much of the provisions of the Act in question as regards a limitation on the tender of silver coin.

With regard, however, to the intention which is reported by the Governor of passing an Act of Council declaring the law of tender, as established by the Act 56 George III, cap. 68, to be in force in the Colony, I am directed to state that although Her Majesty's Government could have no objection to the principle of such a course of proceeding, my Lords apprehend that it would occasion difficulty in carrying out the arrangements already far advanced for the establishment of the Royal Mint at Sydney.

The effect of an Act of the character proposed would be to make the coins of the realm, as defined by the Statute 56 George III, the only legal tender within the Colony; and consequently, as my Lords conceive, to preclude Her Majesty from issuing coins from the Mint about to be established at Sydney without further legislative sanction.

It is true that this objection might be remedied by a further local Act. Not only, however, would great delay be incurred from the necessity of waiting for such sanction before Her Majesty could be advised to take steps for giving effect to the Mint arrangements in the Colony, but the objects for which the Colonial Legislature applied for the exercise of Her Majesty's prerogative, in establishing a Branch Mint at Sydney, would be weakened by giving to that institution a merely local character and operation.

I have, &c.,  
(Signed) G. ARBUTHNOT.

H. Merivale, Esq.

#### CASE.

*As to the Currency of the Coins of the United Kingdom and legal tender for payments in New South Wales.*

A case and opinion of the late Law Officers of the Crown, as to the currency in the British Colonies, &c., is left herewith.

The following is a copy of a Proclamation and Order in Council, dated 16th October, 1852:—

#### PROCLAMATION BY THE QUEEN.

Whereas it has been represented to Us that in Our Colonies in Australia, New Zealand, Ceylon, Mauritius, and Hong Kong, the silver coins of Our United Kingdom pass current as an unlimited tender for payments, and it is expedient that the regulations which govern the circulation of the coins of Our United Kingdom as by law established should be enforced in Our said Colonies: Now, therefore, We, by the advice of Our Privy Council, have thought fit to declare and ordain, and by the advice aforesaid We do hereby declare and ordain, that within and throughout Our Colonies in Australia, New Zealand, Ceylon, Mauritius, and Hong Kong, the coin of Our United Kingdom shall pass current in the manner directed in the several Acts of Parliament which regulate the currency of the same, and that the silver coins of Our United Kingdom shall not be a legal tender in payment of sums exceeding forty shillings.

*At a Court at Windsor, the 16th day of October, 1852.*

Present:

The Queen's Most Excellent Majesty.

Whereas there was this day read at the Board the draft of a Proclamation regulating the currency of the coins of the United Kingdom in Her Majesty's Colonies in Australia, New Zealand, Ceylon, Mauritius, and Hong Kong: Her Majesty, having taken the same into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and order,

and it is hereby ordered, that the said Proclamation do take effect and come into force in Her Majesty's said Colonies, or any of them, from and after the date of the publication thereof by the Governor, Lieutenant Governor, or Officer administering the Government thereof respectively.

And the Lords Commissioners of Her Majesty's Treasury, and the Right Honorable Sir John Pakington, Bart., one of Her Majesty's Principal Secretaries of State, are to give the requisite directions herein accordingly.

A copy of this Order in Council and Proclamation was transmitted to the Governors of the Australian Colonies by the Secretary of State for the Colonies, in a Despatch dated 28th February, 1853, from which the following is an extract :—

“ You will observe that the Proclamation has no legal effect until published by yourself. Her Majesty's Government do not consider that they would be authorised in directing such a step unless with the express concurrence of the Legislature of the Colony; you will therefore bring the subject before that body by Message, communicating the views of Her Majesty's Government, and make publication of the Proclamation, if an Address desiring you so to do should be passed by the Legislature.”

*The following is a Copy of the Despatch from the Governor of New South Wales.*

Government House,  
Sydney, 27th February, 1854.

MY LORD DUKE,

In obedience to the instructions contained in the third paragraph of your Grace's Circular Despatch of the 28th February, 1853, I brought under the consideration of the Legislative Council, by Message, dated 31st May last, the views of Her Majesty's Government with respect to the rate at which the coins of the United Kingdom should pass current in this Colony, and the amount to which silver coins should be a legal tender.

2. On a subsequent day an official member of the Council proposed for the adoption of the Council, a resolution affirming the expediency of publishing, and thereby giving effect to the Order in Council and Proclamation of Her Majesty, dated 16th October, 1852, as suggested in your Grace's Despatch.

3. The Council, however, declined to adopt the resolution, but in lieu thereof appointed a Select Committee to report upon the subject.

4. I now enclose for your Grace's information a copy of the Report brought up by the Committee, who state that notwithstanding the contrary opinion given some years ago by an eminent legal authority in the Colony, they have no doubt whatever that the 11th and 12th sections of the Act of Parliament 56 George III, cap. 68, which make gold coin the only legal payments above forty shillings in Great Britain and Ireland, have been in force in this Colony since the New South Wales Act, 9 George IV, cap. 83, came into operation. Under these circumstances the Council do not think it necessary to publish the Queen's Proclamation, and I have accordingly abstained from publishing it.

5. The Committee, however, do not stop here, they proceed to say—“ Had the question of a legal tender in this Colony been, however, unsettled, as supposed, your Committee do not think that Her Majesty has any power, by proclamation, to dispose of it. Whatever power the Crown might have had in former times to fix what should or should not be a legal tender, was taken away by the beforementioned Act, 56 George III, cap. 68; and any alterations of the laws of tender can now be made by legislative enactment only.”

6. Entertaining these views, the Committee, in deference to the legal opinion adverted to, and to the practice which has prevailed, have recommended the passing of an Act of Council declaring the law of tender as established by the 56 George III, cap. 68, to be in force in the Colony; and I beg to add that I have accordingly instructed the Crown Law Officers to prepare a Bill for this purpose, which it is my intention to introduce during the ensuing session of the Legislative Council.

(Signed) I have, &c.,  
CHAS. A. FITZ ROY.

His Grace,  
The Duke of Newcastle.

*The following is Copy Extract from the Report referred to in the above Despatch.*

“ THE Select Committee of the Legislative Council appointed on the 30th day of June, 1853, to consider and report upon the Message of His Excellency the Governor General, No. 15, bearing date the 31st May, 1853, respecting the currency in this Colony of coins of the United Kingdom, have agreed to the following Report :—

“ Your Committee, notwithstanding the opinion of an eminent legal authority recorded in former proceedings of your Honorable House, have no doubt whatever that the 11th and 12th sections of the Act of Parliament 56 George III, cap. 68, which make gold coin the only legal tender in all payments above forty shillings in Great Britain and Ireland, have been in force in this Colony since the New South Wales Act, 9 George IV, c. 83, came into operation. Those clauses, at the time of the passing of the New South Wales Act, were in force within the Realm of England, and there never was at any time difficulty in applying them in this Colony under the 24th section of that Act. Your Committee therefore think that it is not necessary (supposing the course were a legal one) to address His Excellency the Governor General to publish the Proclamation referred to in His Excellency's Message.

B.—No. 63, b.

“ Had the question of a legal tender in this Colony been, however, unsettled, as supposed, your Committee do not think that Her Majesty has any power, by proclamation, to dispose of it. Whatever power the Crown might have had in former times to fix what should or should not be a legal tender, was taken away by the beforementioned Act, 56 George III, cap. 68, and any alteration of the law of tender can now be made by legislative enactment only.

“ Although your Committee are clearly of opinion, as above stated, yet in deference to the contrary opinion alluded to, and in consideration of the long continued erroneous practice which has prevailed, your Committee think that it would be desirable for your Honorable House to pass an Act declaring the law of tender, as established by the 56 George III, cap. 68, to be in force in this Colony.”

The 24th section of the Act 9 George IV, cap. 83, mentioned in the above Report is as follows :—

XXIV. Provided also and be it further enacted that all laws and statutes in force within the Realm of England at the time of passing this Act (not being inconsistent herewith or with any charter or letters patent or Order in Council which may be issued in pursuance hereof) shall be applied to the administration of justice in New South Wales and Van Diemen's Land respectively so far as the same can be applied within the said Colonies and as often as any doubt shall arise as to the application of any such laws or statutes in the said Colonies respectively it shall be lawful for the Governors of the said Colonies respectively by and with the advice of the Legislative Councils of the said Colonies respectively by ordinances to be by them for that purpose made to declare whether such laws or statutes shall be deemed to extend to such Colonies and to be in force within the same or to make and establish such limitation and modifications of such laws and statutes within the said Colonies respectively as may be deemed expedient in that behalf Provided always that in the meantime and before any ordinances shall be actually made it shall be the duty of the said Supreme Courts as often as any doubts shall arise upon the trial of any information or action or upon any other proceeding before them to adjudge and decide as to the application of any such laws or statutes in the said Colonies respectively.

The Attorney and Solicitor General are requested to advise—

Whether the 11th and 12th sections of 56 George III, c. 68, by which the gold coin of the realm is made the only legal tender within the United Kingdom for sums not exceeding forty shillings have been in force in the Colony of New South Wales since the passing of the Act 9 George IV, cap. 83.

We are of opinion that the Act of the 9 George IV, cap. 83, has no application to the case in question, consequently that the 56 George III, cap. 68, sections 11 and 12, are not in force in New South Wales.

(Signed)

A. E. COCKBURN,  
RICHARD BETHELL.

23rd August, 1854.