

Resisting the Law: Opposition to the Launceston and Western Railway Rate 1872-1874

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‘When their children read the yet-unwritten page of Tasmania’s history, which will record the stand their fathers made against this monstrous injustice, they would feel an honest pride in being the descendants of men who nobly resisted oppression.’¹

Recently, it was argued that Australian historians have neglected ‘the role of law in the evolution of our national experience’.² Historians have ‘often failed conspicuously to recognise the significance of the interactions of law and its institutions with economics, politics and social conditioning as an integral part of mainstream Australian history’.³ Exploring the links between the law and national character is an intellectually demanding task, provocative of much debate, and will not be attempted here. However, one fruitful line of enquiry is how centres of population, well away from the seats of government, reacted to the law and its enforcement, which will be the leitmotiv of this article.

Drawing inspiration from American history, Alex Castles has made a case for employing the ‘frontier paradigm’ to explain the exercise of the law in the penal colony of Van Diemen’s Land in the early decades of settlement.⁴ Castles defined the ‘frontier paradigm’ as ‘the variations and adjustments which occur in legal ordering in new societies and in developmental circumstances’. He believed that in Van

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1 Comment by John Shepherd, *Examiner*, 6 January 1874.

2 A Castles, ‘A New Breed of Law Historians’ (1996) 180 *Australian Book Review* 12.

3 Ibid. For a recent attempt to argue for the centrality of law see B Kercher, *An Unruly Child: A History of Australian Law* (Allen and Unwin, 1995); see also A Davidson, *The Invisible State: The Formation of the Australian State 1788-1901* (Cambridge University Press, 1991) who considers the implications for society of the triumph of legalism in nineteenth-century Australia.

4 A Castles, ‘The Vandemonian Spirit and the Law’ (1991) 38 *Papers and Proceedings of the Tasmanian Historical Research Association* 113-4; for a pertinent American work see L Veysey (ed), *Law and Resistance: American Attitudes Towards Authority* (Harper and Row, 1970).

Diemen's Land, 'frontier-style conditions for the working of the law and in other ways remained intact longer and became more deeply entrenched' than in other Australian colonies. This was related to the almost untrammelled power of the Governor and his functionaries in running a penal colony. The convict class in particular suffered from the peremptory enforcement of the criminal law, which 'helped engender a deeply honed resentment of government power'.⁵ The lieutenant governor also 'rode roughshod' over the liberties of the free population 'whenever the interests of the convict department were at stake'.⁶ For different reasons, therefore, convict and free viewed government with suspicion.

Castles styled this frontier mentality the 'Vandemonian Spirit', which was characterised by

a strongly independent frame of mind, a deep suspicion of authority, healthy cynicism about it, a refusal to accept things at their face value, a capacity to battle on in the face of adversity, and an ability to come to terms with difficult conditions.⁷

Castles attributes the 'Vandemonian Spirit' especially to the ex-convict element in society, while Reynolds claims the opposite, that this same element was especially 'submissive, unprotesting and apolitical'.⁸ I incline to Reynolds' view that the ex-convicts, the emancipists, on the whole were cowed by their experience of the authoritarian convict system. They were inclined to submit to government *diktats* and to avoid - certainly not to confront - government. The 'Vandemonian Spirit', which undoubtedly did exist, can be more appropriately attributed to the free settlers, especially large landowners, who brought with them and revered the traditions of the free-born Englishman. They valued their liberties and railed against what they saw as arbitrary and unjust government interference, above all with property, as Englishmen had done for centuries.⁹

The opposition to the Launceston and Western district railway rate between 1872 and 1874 provides a clear example that the 'Vandemonian Spirit' remained strong well after self-government was granted to Tasmania (as Van Diemen's Land was later called) from

5 Castles, 'The Vandemonian Spirit and the Law' at 110.

6 G Rimmer, 'Hobart: A Moment of Glory' in P Statham (ed), *The Origins of Australia's Capital Cities* (Cambridge University Press, 1989) p 114.

7 Castles, 'Vandemonian Spirit and the Law' at 106.

8 H Reynolds, "'That Hated Stain': The Aftermath of Transportation to Tasmania" (1969) 14 *Historical Studies* 30-31.

9 See JH Hexter (ed), *Parliament and Liberty from the Reign of Elizabeth to the English Civil War* (Stanford University Press, 1992); HT Dickinson, *Liberty and Property: Ideology in Eighteenth-Century Britain* (Holmes and Meier, 1977).

1856. A sizeable number of ratepayers determinedly refused to pay the rate, levied to cover interest on a loan to build the railway. Contesting court cases, opposing rate valuations, holding public meetings, petitioning Parliament, resigning their commissions as magistrates, rioting in the streets, burning effigies of Ministers of the Crown, ignoring summonses to attend court, and allowing their goods to be distrained in lieu of paying the rate were only some of the ways ratepayers, from the largest landowners to the poorest labourers, resisted and showed the depth of antagonism towards the law and the Government.¹⁰ Few episodes of nineteenth-century Australian history can boast of civil disobedience on this scale, although examples of legitimate resort to violent protest were not unknown.¹¹ While most Tasmanians believed in adhering to the rule of law as 'a noble abstract idea', they were willing, even felt themselves obliged, to flout particular laws for particular reasons at particular times in their history.¹²

The 'Vandemonian Spirit' was strong in the North of Tasmania for a number of reasons. Launceston, the main city of the North and Tasmania's commercial capital, had been the centre of the anti-transportation movement for the Australian colonies in the late 1840s.¹³ The citizenry took on the might of the British Government and, through organized resistance, succeeded in ridding the colony of the convict system. Many anti-transportationists were also prominent in the anti-railway-rate agitation. Moreover, in England, Nonconformists had for centuries placed the interests of their religion above those of the state and were inclined to follow their consciences rather than the law. Launceston was the 'heartland of colonial nonconformism' and ratepayers explicitly cited the struggles of their English forebears as inspiration for their own resistance.¹⁴ Their dispute with government was conducted with all the fervour of religious conviction. As the *Examiner*, an advocate of resistance, noted, they recog-

- 10 For an interesting account of the varieties of popular resistance see JC Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (Yale University Press, 1990).
- 11 AGL Shaw, 'Violent Protest in Australian History' (1973) 15 *Historical Studies* 545-561; for a vindication of civil disobedience as a political strategy under certain circumstances, see H Zinn, *Disobedience and Democracy: Nine Fallacies on Law and Order* (Vintage Books, 1968).
- 12 Veysey, *Law and Resistance* at p 6; for example in 1865 a carriage tax was widely resisted and the *Scab Act* 1870 was ignored by leading landowners: see H Reynolds, "'Men of Substance and Deservedly Good Repute": The Tasmanian Gentry 1856-1875' (1969) 15 *Australian Journal of Politics and History* 71.
- 13 L Robson, *A History of Tasmania* (Melbourne, 1983) vol 1, ch 23.
- 14 Id at p 491; D Bebbington, *The Nonconformist Conscience: Chapel and Politics, 1870-1914* (Allen and Unwin, 1982); J Black, 'Can't Pay, Won't Pay' (1990) 40 *History Today* 4-6.

nised 'an authority higher than that of the Tasmanian Parliament, and a morality superior to that of Port Arthur'.¹⁵

The timing of the anti-railway rate opposition was not surprising either. Tasmania had been experiencing a depressed economy since 1858.¹⁶ In the early 1870s Launceston had not yet emerged from the depression and ratepayers were antagonised by the prospect of paying an extra rate after years of economic distress. A political factor was also pertinent. The *Cornwall Chronicle* argued that the elements for making constitutional government operate effectively were absent in Tasmania.¹⁷ Politics lacked 'properly constituted parties' and 'a healthy public opinion' to 'restrain the undue exercise of political power'. Decisions were based on 'expediency, and controlled by the exigencies of the moment' in order to retain office. As individuals were not bound by 'party or principle', they acted 'merely from the impulse or whim of the moment'. Between November 1872 and August 1873, three governments had been formed and political instability was a fact of life. Opponents of the rate often implied that the principles of British law had been corrupted by Tasmania's bastardised form of parliamentary government and therefore they were not necessarily bound by the laws of a Parliament in which they had no faith. As governments were, for good or ill, required to enforce the laws of Parliament, conflict with the Launceston and Western railway district could not easily have been averted.

Background

Popular agitation for the Launceston and Western Railway began in 1857.¹⁸ 'Tenants as well as landlords, occupiers as well as proprietors' in the major population centres of Launceston, Evandale, Westbury, Longford and Deloraine 'clamoured for a railway'. They expressed concern that other colonies were building railways and that the economy would be boosted if railways were built in Tasmania. Most supporters wanted a government-built railway, but financially-strapped governments hoped private individuals would see a railway as a tempting investment; and so it proved. In 1863 a Railway League was formed in Launceston with branch committees in the surrounding

15 *Examiner*, 13 January 1874.

16 WA Townsley, 'Tasmania and the Great Economic Depression 1858-72' (1960) 4 *Papers and Proceedings of the Tasmanian Historical Research Association* 35; letter by William Ritchie, *Cornwall Chronicle*, 11 March 1874.

17 *Cornwall Chronicle*, 19 January 1874.

18 WA Townsley, 'The Launceston and Western Railway Company: How the Railway Age Came to Tasmania' (1954) 3 *Papers and Proceedings of the Tasmanian Historical Research Association* 4.

districts.¹⁹ It lobbied at the forthcoming election to secure the return of men to Northern electorates who favoured the construction of the Launceston and Western Railway. Their support resulted in the *Launceston and Western Railway Act 1865*, which authorized the construction of the railway by the Launceston and Western Railway Company at £400,000, conditional on two-thirds of the landowners in the railway district voting to pay the interest on a loan of £300,000. The company was required to raise £100,000. On 18 December 1865 'a large majority' of the landholders voted for the railway, largely due to the influence of the Railway League. Some 2804 votes were polled, with 2259 voting for and 545 against the railway.²⁰

Problems arose when the company found it difficult to raise £100,000.²¹ In 1867 it persuaded Parliament to reduce the sum it had to raise by £50,000 and in 1869 to guarantee a further loan of £100,000. Landowners were not consulted about these changed conditions and protested to the Governor but without success. In February 1871 the railway line finally opened for traffic.²² Governor Charles Du Cane hoped that Tasmania's first railway would mark an era of 'continued peace'. How wrong he was.

Legal Resistance

On 31 August 1871, the Colonial Treasurer, TD Chapman, demanded that the Launceston and Western Railway Company pay £14,000, the arrears of interest upon 'certain railway bonds' that he had endorsed.²³ Consequent upon default by the company, the Governor-in-Council was required by the *Launceston and Western Railway Act 1865* and the *Launceston and Western Railway Act 1869* [the Railway Acts] 'to levy a railway rate upon the landholders and occupiers within the railway district' to pay 'the deficiency of interest money and expenses of collecting the rate'. The landholders were not slow to react. They instructed their lawyers to prepare 'a bill in equity' to find out quickly in the Supreme Court 'whether the Governor-in-Council can legally enforce the payment of the rate'. In February 1872 the lawyer RB Miller, on behalf of a number of landholders, applied to the Supreme Court 'for leave to give notice of motion for an inter-

19 Archives Office of Tasmania [AOT] Colonial Secretary's Department [CSD] 7/21/92, Clerke to Du Cane, 6 February 1869.

20 House of Assembly Journals [HAJ] 1872, vol 23, p 19.

21 AOT CSD 7/21/92, Clerke to Du Cane, 6 February 1869; AOT Governor's Office [GO] 27/1, Du Cane to Secretary of State, 23 February 1874.

22 *Examiner*, 11 February 1871.

23 *Mercury*, 3 February 1872.

locutory injunction' to stop the Governor-in-Council 'from making, levying, or enforcing the rate'.²⁴ Miller argued that 5000 landholders would be affected by the rate, 'the property of a large proportion of those would be absolutely confiscated, and they would be thereby reduced to ruin'. They had always questioned the power to impose a rate on 'dissentient' landholders to make good 'the losses of private speculators'. They had been led to understand that the rate would not exceed 1s and 9d but now believed it would be between 3s 6d, and 5s.

Miller argued that the Governor-in-Council had 'lost his equity in sanctioning deviations amounting to a breach of trust, or at least had not given that protection which they were bound to give'.²⁵ The landholders saw a suit in equity as their only chance of testing the validity of the law. Chief Justice Francis Smith was unconvinced; the application was 'a deviation from the ordinary practice of the Court on the footing of an apprehended wrong'. Smith pointed out that the rate had been sanctioned by 'the law of the land' and that the applicants had not made a case for a 'breach of trust' by the Government. Nor was action 'urgent and pressing' as the rate would not be levied for some months. Puisne Judge WL Dobson agreed with Smith that the application could not be entertained. The *Mercury* thought it discreditable that those who once supported the railway now sought to repudiate their obligation to pay the rate.²⁶ More important, the landholders exhibited 'a litigious disposition almost reckless of consequences'. They intended to challenge 'every step under the statute for the construction of a Line and the levying of a rate, ultimately taking their liability to the highest Court of appeal'. The *Mercury* asserted that it would be 'subversive of good Government' if the Executive and Parliament were 'coerced by threats of litigation'.

Frustrated in the Supreme Court, the landholders were not deterred and manifested their opposition in other arenas. The Railway Commissioners, appointed to oversee the construction of the railway, were required to draw up a Valuation Roll on which to base the railway rate. This they did, but they did not assign a rateable value to 270 properties which in their opinion 'had not received, and could not be reasonably expected to receive, any benefit from the construction' of the railway.²⁷ In February 1872 landholders appealed against the Railway Commissioners' Valuation Roll in the Court of Special Ses-

24 *Mercury*, 2 February 1872.

25 *Mercury*, 5 February 1872.

26 *Mercury*, 5 February 1872.

27 HAJ 1872, vol 23, Paper 22, 'Correspondence on the Launceston and Western Railway', pp 61, 64-5.

sions sitting as a Court of Appeal.²⁸ They argued that the Railway Acts required all properties to be assigned a rateable value and therefore the Valuation Roll was not valid. Seventeen magistrates were owners of property within the Launceston and Western Railway district and one-third of the magistrates were 'pledged to resist by every means in their power the levying of a rate, be it legal or illegal'. Only one magistrate declined to preside when his own case was before the court. But leading citizens such as James Aikenhead (co-owner of the *Examiner*), Edward Dumaresq, and James Scott, while supporting the appeals against the valuations, also sat as magistrates to hear the appeals. The Court of Appeal agreed that the Valuation Roll was incomplete and therefore it was not a Valuation Roll within the meaning of the Railway Acts. By this decision they hoped at least to delay the imposition of the rate.

The *Mercury* vented its spleen on 'such a caricature on the forms of a Court of Law'.²⁹ It was 'a travesty' undermining the 'impartiality that should distinguish the Bench'. It was 'a miscarriage of justice' for so many magistrates to preside over proceedings involving their 'own pecuniary interests'. The offending magistrates connived 'to defeat the legitimate operation of an Act of Parliament' and used their position as magistrates to escape 'their pecuniary obligations as private individuals'. It was well-known principle of English law that magistrates should not hear cases in which they were personally involved. According to the *Mercury*, the proceedings were held in 'a most irregular and unseemly manner'. Magistrates did not sit together on the Bench. Some sat near lawyers, others at 'the centre of a knot of appellants'. Despite having no *locus standi*, some Launceston lawyers repeatedly interjected 'without challenge', yet they and some magistrates refused to let the Solicitor-General, RP Adams, give his views on the Commissioners' valuations. The proceedings showed, wrote the *Mercury*, that the Launceston and Western Railway district, 'through its magistrates, and those chiefly affected by the rate', was in 'a state of rebellion against the law'.

The Wilson Government responded by seeking the views of the Crown Law Officers.³⁰ They opined that all properties within the railway district should have been assigned a rate and that the Commissioners had erred by not so doing. The Court of Appeal, without

28 *Mercury*, 17 February 1872; *Examiner*, 17 February 1872.

29 *Mercury*, 17 February 1872.

30 AOT Attorney-General's Department [AGD] 56/8, opinion of WR Giblin and RP Adams, 26 March 1872; HAJ 1872, vol 23, paper 22, 'Correspondence on the Launceston and Western Railway', pp 64-5.

much difficulty, could have assigned a value to the properties omitted by the Commissioners. The Crown Law Officers muddied the waters by concluding that 'we cannot say that the inchoate' Valuation Roll was not a Valuation Roll 'within the intent and meaning' of the Railway Acts.

Constitutional Resistance

To follow up their action in the courts, the landholders of the Launceston and Western Railway district decided to organise their resistance. In late February 1872 the Mayor of Launceston, Alfred Harrap, was asked to convene a public meeting to form and organise 'a society to be called The Mutual Defence Association'.³¹ The farmer, politician and magistrate (since 1837), Alexander Clerke, moved the first resolution to form the Association.³² He disclaimed any intention of 'resisting the law of the land - unless by a legal and constitutional authority an enactment of our colonial legislators is pronounced at variance with our British Constitution'. Abraham Barrett, a teacher and one-time Mayor of Launceston, who became secretary of the Association, claimed that a Mutual Defence Association had been active privately 'for some time past' but now wanted to broaden opposition to the rate. Advice received from Tasmanian lawyers and from 'some of the first constitutional lawyers' in England - not named - 'pooh poohed the idea' of a railway rate. They averred, claimed Barrett, that the Government had 'no power to throw upon private property the burden of interest for a private speculation'. Rather than being a saviour, the railway had ruined the economy by diverting investment funds. James Scott, MHA for George Town and a magistrate since 1862, who became Treasurer of the Association, urged unified action against the rate, otherwise the Government 'would come upon them like the separated bundle of sticks, and break the whole of them'. Scott moved that a deputation from the Mutual Defence Association form branch associations in Deloraine, Westbury, Longford, and Evandale. The Congregationalist Reverend Charles Price tried to play down the significance of this aggressive lobbying, by claiming they were 'only a harmless people standing out in defence of our simple rights'.³³

31 *Mercury*, 26 February 1872; a Mutual Defence Association was formed in 1869 but kept a low profile: AOT CSD 7/21/92, Clerke to Du Cane, 6 and 8 February 1869.

32 *Examiner*, 2 March 1872.

33 *Ibid.*

The *Mercury* discerned something more sinister in the aims of the Association. It felt that resisting the railway rate 'by every legal and constitutional means' made no logical sense and argued that:³⁴

To resist the law is to become a rebel; to speak of resisting it, legally and constitutionally, is simply to propose an impossibility. Resistance of the law, and legal and constitutional action are inconsistent - as different as light from darkness.

According to the *Mercury*, the rate resisters had brazenly told the Government that 'we were law abiding people so long as the law suited us and we could get your money to carry out our great local work'. But, once the railway had been built, 'we care not a fig for the law' and we want to be relieved of the burden of the rate, while enjoying the advantages of the railway. By placing itself 'in an attitude of hostility to the law', the district had lost the sympathy of fellow colonists; no negotiations should begin until 'the majesty of the law is vindicated'.³⁵

While sympathetic, the *Examiner* urged the promoters of the Mutual Defence Association to seek a compromise. Whatever their legal rights, the district did 'morally bear some amount of direct responsibility' for the rate.³⁶ By arguing that the rate was unconstitutional and, as Barrett had hinted, seeking redress in the courts, they were 'wasting their energies in a hopeless conflict'.³⁷ Parliament was 'in a sense omnipotent, and its decrees cannot be abrogated or questioned by an inferior Court'. The Mutual Defence Association could not expect to engender widespread opposition to the rate until the Government announced how much it would levy from the district and that announcement was some months away.

Meanwhile, the Launceston and Western Railway Company, long plagued with financial problems, found it could not meet its liabilities and the Government decided to assume control of the line. Aware of the animosity of landholders, the Government offered an olive branch.³⁸ These concessions included freeing landholders of £36,000 in arrears of interest and of £12,000 in interest due on 1 August 1872. Interest on the sum of £100,000 advanced upon the Company's Bond of 25 January 1870 and on £50,000 of £300,000 advanced upon the Company's Bond of 29 January 1868 would be paid from the General Revenue. Landholders of the Launceston and Western Railway dis-

34 *Mercury*, 26 February 1872.

35 *Mercury*, 27 February 1872.

36 *Examiner*, 16 March 1872.

37 *Examiner*, 23 March 1872.

38 HAJ 1872, vol 23, 11 July 1872, pp 31-2.

tract would no longer be liable for £27,000 per annum but for £15,000 per annum collected in two moieties as interest of 6 per cent per annum on £250,000 of the £450,000 originally spent in building the railway. If the line made a profit, one moiety would be deducted from the £15,000. The chance of a profit was good, as between 1 November 1871 and 30 April 1872 gross receipts amounted to £8043 1s 8d.³⁹ Parliament enthusiastically supported the compromise.⁴⁰

Although the *Examiner* regarded the compromise as 'fair', it believed that the Government was 'over-sanguine' in expecting to get £15,000 from the depressed railway district.⁴¹ A number of landholders 'will quietly pay whatever rate may be levied'. They could afford to pay and felt bound by the agreement with the Government. But 'many' residents could not pay a rate of 18d or 2s in the pound added to the taxes already paid. Many more, 'if report be true, will resist to the utmost the imposition of any rate whatever'. Some have 'always been opposed to the railway'. Others argued that paying an annual subsidy from the General Revenue to the Mail Line Railway breached the principle of local liability for railways and freed them 'from all obligation to pay a special rate for the Western line'. Either all railways should be subsidised from a general rate (which most Northerners preferred) or each district should bear the expense of their railways.

After taking office in November 1872, the Premier FM Innes spoke for the former proposal but ran out of parliamentary time to enshrine the principle in legislation. Instead, he introduced a temporary measure, which levied a uniform railway rate on the Launceston and Western Railway district for 1873, one moiety being payable on 30 April and the other on 30 October. Despite some opposition in Parliament, the measure was quickly passed and it was noted in the Legislative Council by the President JM Wilson that when the Main Line Railway was built the rate would be reconsidered.⁴² The *Examiner* reflected Northern hopes that only one moiety would be collected and that when Parliament recommenced in 1873 a general railway rate would become law.⁴³ These hopes were based on a firm foundation. Innes had been an MP for various Northern constituencies since 1856 and the *Examiner* depended on Innes to protect Northern interests.

39 HAJ 1872, vol 24, Paper 29, 'Returns on the Launceston and Western Railway', p 4.

40 HAJ 1872, vol 23, 11 July 1872, pp 31-2, 15 August 1872, p 67.

41 *Examiner*, 17 August 1872.

42 *Mercury*, 19, 21 December 1872.

43 *Examiner*, 21 December 1872.

It soon became clear that Innes' compromise failed to appease the extremists. In January 1873, in a letter to the *Cornwall Chronicle*, Alexander Clerke, now MHA for Ringwood, counselled resistance to the first moiety of the rate.⁴⁴ The statute imposing the rate was 'conceived in injustice, cradled and matured in venality' and had 'no parallel or precedent on the statute book of any community of Britons'. The Railway Acts authorising the re-guarantee of interest by the districts for a private speculation was 'unprecedented, monstrous and unconstitutional'. Section 89 of the 1865 Act 'carefully excluded' citizens from 'any participation in profits or monies which may possibly arise' from the railway, which was 'an invasion of the rights of property' and 'unconstitutional in every sense of the word'.⁴⁵

The *Examiner* castigated Clerke, as a member of Parliament, for inciting citizens 'to rebel against the laws' passed by that Parliament, 'even though he may personally object to such laws'.⁴⁶ It denied that the legislation providing for the re-guarantee of interest, and voted for by a large majority of landholders, was unconstitutional. Clerke fell into the common trap of misapplying the word 'unconstitutional', which was often used to mean anything of which certain people disapproved. The *Examiner* posited that 'everything which Parliament does is constitutional, so long as it keeps within the bounds of the Imperial Act which conferred on us the Constitution under which we live'. As Parliament had offered major concessions and the rate was not high, it should be paid. Most ratepayers, especially in country districts, benefited from the 'very great convenience' of railway travel, which saved them far more than the rate would require them to pay. Despite the 'breach of faith' over the Main Line Railway, which was a fair reason for complaint, they were 'morally and legally bound' to pay interest on the sum of £250,000.⁴⁷

The *Cornwall Chronicle* also urged compliance with the law. Ratepayers had had ample opportunity to protest against the bill but did not and 'by their silence tacitly assented to the rate'.⁴⁸ For Clerke and others to encourage 'active opposition' now was tantamount 'to rebellion, and would certainly show a thorough contempt for the political institutions' of Tasmania and for 'those laws which emanating from the people ought to be religiously respected by them'. The rate-

44 *Cornwall Chronicle*, 29 January 1873; *Examiner*, 4 February 1873; see also a letter by Abraham Barrett, *Cornwall Chronicle*, 20 January 1873.

45 *Cornwall Chronicle*, 12 February 1873, letter by Alexander Clerke.

46 *Examiner*, 4 February 1873.

47 *Examiner*, 20 February 1873; see also the letter by 'Elihu, Son of Barachel'.

48 *Cornwall Chronicle*, 3 March 1873.

payers should pay the rate and when Parliament resumed agitate for 'a national system of railways'.

Theodore Bartley sprang to Clerke's defence. Bartley had been a prominent figure in the anti-transportation movement and became a leading proponent of resistance to the rate. He owned a number of properties in the district, had been one of the Railway Commissioners who had drawn up the Valuation Roll, and had been a magistrate since 1832.⁴⁹ Bartley pointed out that Clerke did not advocate 'unlawful resistance' as did Wat Tyler (the leader of a fourteenth-century peasants' revolt) but 'constitutional resistance as advocated and pursued by John Hampden' in the seventeenth century.⁵⁰ A member of Parliament was within his rights to urge constitutional resistance, which when 'energetically and perseveringly exercised' for many years banished 'those obnoxious Corn laws which taxed the bread of the British people'. Bartley accused the Government of repudiating the agreement with landholders by charging 'a uniform railway rate' rather than, as provided under s 70 of the *Launceston and Western Railway Act* 1865, assessing the value each property derived from the railway and charging accordingly, as the Railway Commissioners tried to do. Some properties within the railway district derived no benefit from the line, while properties outside derived great benefit.⁵¹ Opposition to the rate would have been lessened if the Government had enlarged the district to include those latter properties and thereby spread the burden.

All landholders, exhorted Bartley, must exert 'constitutional resistance' to the rate to show the Government that they did not lack 'that spirit of independence and intolerance of injustice which has hitherto been supposed to be inherited by every section of the British people'.⁵² By constitutional resistance Bartley meant that landholders would petition the Governor-in-Council 'to defer the levying of the first moiety' of the rate until Parliament met and they could petition against the uniform rate and for a general railway policy.⁵³ Public meetings would be convened throughout the district so landholders could sign the petition.

49 *Examiner*, 21 January 1873, letter by Bartley, who noted that his Kerry Lodge estate had been exempted from rates by the other Commissioners but that his Cressy property had been fairly rated.

50 *Examiner*, 11 February 1873, letter by Theodore Bartley, emphasis in original.

51 *Examiner*, 15 February 1873, letter by Bartley.

52 *Examiner*, 15 February 1873, letter by Bartley.

53 *Examiner*, 20 February 1873, letter by Bartley.

This approach seemed more moderate than Clerke's, although some questioned Bartley's interpretation of John Hampden's actions. Hampden resisted the shipping tax, which was illegal, and he was therefore justified in his resistance.⁵⁴ If Parliament had imposed the tax, Hampden would 'never have dreamt of resisting it'. Others noted that levying an uniform rate was not new or unusual.⁵⁵ Some properties derived more benefits from roads and police than others but '*all* have to pay alike for roads and police'. Bartley's idea of 'common justice' was flawed. It would be unjust to enlarge the railway district and compel owners of property, who had never voted on the railway, to pay interest on the loans. Nothing would be more unconstitutional than asking the Governor, 'by the exercise of an arbitrary prerogative, quietly [to] set aside an Act of Parliament'. If the Governor set aside all laws that citizens found obnoxious, 'constitutional government would be at an end'.⁵⁶

Such strictures did not deter the anti-railway-rate movement.⁵⁷ Opposition was particularly strong in Deloraine. At one meeting 'numerous knots of men', their tongues loosened by whisky, 'harangued' one another and threatened violence, saying they would resist payment of the rate 'to the death'.⁵⁸ Petitions arising from public meetings in Launceston and Deloraine were sent to the Governor but to no avail.⁵⁹ The Government appointed RC Gunn to collect the 2s rate.⁶⁰ Gunn was an 'intelligent and judicious' man, with the ability and public respect to calm stormy waters. He stated publicly that he did not want 'to oppress any persons liable under the railway rate'.⁶¹ He willingly gave poor ratepayers time to raise the money but laid informations against those who refused to give a reason for not paying.

Most districts paid their share of the rate, although a recalcitrant Deloraine lagged behind the others.⁶² Ratepayers cooperated for a number of reasons. In addition to Gunn's sensible approach, both the *Examiner* and the *Cornwall Chronicle* continued to preach moderation and to predict that the Innes Government would only collect one

54 *Examiner*, letter by 'Elihu, The Son of Barachel'.

55 *Examiner*, 22 February 1873, emphasis in original.

56 *Examiner*, 24 May 1873.

57 *Examiner*, 27 February 1873, letter by Bartley.

58 *Examiner*, 29 April, 1 May 1873.

59 *Examiner*, 17 May 1873.

60 *Examiner*, 11 March 1873.

61 *Cornwall Chronicle*, 4 and 25 June 1873.

62 *Cornwall Chronicle*, 7 May 1873; *Examiner*, 31 May 1873.

moiety and then introduce a general railway policy.⁶³ The Government was favoured by an unexpectedly 'abundant harvest' and increased stock prices, which lessened the burden of payment.⁶⁴ Consequently, Gunn collected £7960, which cost £500 to collect, excluding any compensation to Gunn.⁶⁵ Some 484 persons had a total of £352 remitted because of their inability to pay and 44 defaulters left £40 unpaid.

This obedience to the law impressed the Innes Government. As hoped by advocates of paying the first moiety of the rate, Innes announced his intention to introduce a general railway policy.⁶⁶ Innes was also influenced by Gunn's view that strong opposition to the rate would make the second moiety impossible to collect.⁶⁷ While pleasing Northern residents, Innes provoked a backlash from a number of Southern MPs, led by TD Chapman, regarded as an enemy of the North.⁶⁸ Using the respected Alfred Kennerley as a figurehead, the Chapman faction moved a no-confidence motion and brought down the Innes Government. The new Kennerley Ministry opposed a general railway policy and decided to collect the second moiety of the Launceston and Western Railway rate, although Kennerley's Treasurer PO Fysh had once called it an 'oppressive' tax.⁶⁹

The decision caused widespread disaffection throughout the railway district, not least because Kennerley's Ministry was composed entirely of Southern members, who were thought to be opposed to Northern interests. Large public meetings at Carrick, Westbury, Launceston and Longford denounced the Kennerley Government.⁷⁰ Five petitions with 2259 signatures were sent to the House of Assembly and six petitions with 2403 signatures were sent to the Legislative Council protesting against the decision.⁷¹ The Kennerley Government took no notice and aggravated Northern grievances by threatening to introduce an income tax, which led to the formation of the Anti-Income Tax Association in Launceston.⁷² While the colony

63 *Examiner*, 11 March 1873; *Cornwall Chronicle*, 25 April 1873.

64 *Examiner*, 19 April 1873, 17 May 1873.

65 HAJ 1873, vol 26, Paper 109, 'Return in Reference to the Collection of the Launceston and Western Railway Rate'.

66 *Examiner*, 26 July 1873; AOT GO 27/1, Du Cane to Secretary of State, 23 February 1874.

67 AOT CSD 7/8/1487, Chapman to Du Cane, 20 February 1874.

68 *Mercury*, 3 July 1873.

69 AOT CSD 7/8/31, Petition to Du Cane from TC Just et al, emphasis in original.

70 *Examiner*, 19, 24, 26 July 1873; *Cornwall Chronicle*, 1 August 1873.

71 AOT CSD 7/8/31, Chapman to Just et al, 2 March 1874.

72 *Examiner*, 18 October 1873.

was preoccupied with opposing the Government's financial policy, the Launceston and Western Railway and Works Vesting Bill was rushed through Parliament before the residents of the district could block it.⁷³ This bill was designed permanently to settle the dispute with the district and end the 'bitter strife that existed between the North and South of the island'.⁷⁴ It authorised a rate amounting to £10,000 in 1874 and 1875 'clear of all costs of collecting the same'.⁷⁵ When the Main Line Railway opened for business, the liability of the Launceston and Western Railway district would end. To lessen resistance, the Government shrewdly provided that the rate would be paid by the owner where the assessed annual value of a property did not exceed £20 and that occupiers were not required to pay the rate. The Treasurer could also remit the rate on 'proof of poverty'. The Attorney-General, WR Giblin, pleaded with the leaders of the district to induce their fellow citizens 'to abide by the law of the land' in the name of 'good Government' and of 'civilisation'.⁷⁶ If the Government permitted the law to be broken on this issue after all the concessions that had been made, asked Giblin, 'what guarantee was there that if the Legislature imposed any law that it would be adhered to?' The Kennerley Government also decided to delay collecting the second moiety for 1873 until farmers had brought in the harvest.⁷⁷ The *Examiner* and the *Cornwall Chronicle* doubted that the Government's actions would heal the rift with the district.⁷⁸ The scene was set for a new phase of 'passive' resistance.

Passive Resistance

The policy of passive resistance adopted by opponents of the railway rate drew inspiration from a number of sources. Noted English law reformers Jeremy Bentham and Lord Brougham were quoted to the effect that resistance was crucial to good government.⁷⁹ Some cited 'the steady resistance' of the Quakers and Nonconformists to church rates in England:⁸⁰ year after year their homes were plundered by government officials for personal possessions to sell in lieu of pay-

73 *Cornwall Chronicle*, 11 February 1874.

74 *Mercury*, 16 and 22 October 1873.

75 *Cornwall Chronicle*, 8 October 1873; *Examiner*, 14 October 1873; *Mercury*, 16 October 1873.

76 *Mercury*, 16 October 1873.

77 AOT CSD 7/8/1487, Chapman to Du Cane, 20 February 1874.

78 *Examiner*, 4 November 1873; *Cornwall Chronicle*, 20 October 1873.

79 *Examiner*, 3 February 1874, quoted Bentham and 'Sententia' quoted Brougham, *Examiner*, 31 January 1874.

80 *Examiner*, 25 December 1873.

ment. Although a small number of resisters, they succeeded in abolishing the church rates. Some invoked the example of those British people who resisted the slave trade by refusing to buy slave-grown sugar.⁸¹ A more current English example was the refusal to pay the denominational school rate required by the 25th clause of the *Education Act*.⁸² These examples indicated that 'if a law or tax is unjust and it is firmly resisted, it is certain to be abolished', especially if large numbers of people are united.⁸³

On 12 December 1873, a public meeting was held in the Launceston Town Hall to launch the passive resistance movement.⁸⁴ A number of resolutions, which rehearsed arguments against the rate, were unanimously passed. The third resolution, moved by TC Just, owner of the *Cornwall Chronicle* and prosperous businessman, best exemplified ratepayer discontent. All their 'legitimate' representations had been 'contemptuously' ignored by the Government, and 'that majority they unfortunately command in the Legislature'. The landholders have, 'as loyal British subjects, no other means of defending and maintaining their constitutional rights than by meeting any attempt to enforce' the rate by 'a *passive* resistance'. The landholders pledged themselves not to 'comply with nor take any notice of any demands' for the payment of the rate. If their stock or goods 'be distrained to satisfy such demands', the landholders 'will not purchase or bid for any such stock or goods that may be offered for sale'. Just stressed that their resistance should be passive and not invoke 'force of arms or otherwise'. Although some wanted to sign a pledge immediately, the meeting decided to draft a document and leave it in public places for citizens to sign. Public meetings held in other towns also resoundingly passed similar resolutions.⁸⁵

Unsurprisingly, the *Mercury*, the organ of the Kennerley Government, denounced those who incited others to 'open resistance of the law'.⁸⁶ The dispute was not a question of the North of the island against the South. Rather the railway district defied the rest of the colony, which wanted the law to be respected and reproved men who risked 'anarchy and confusion in search of their own ends'. People in Northern districts not affected by the railway were as equally opposed

81 *Cornwall Chronicle*, 15 December 1873; *Examiner*, 6 January 1874.

82 *Examiner*, 3 January 1874, letter by Baines of Longford.

83 *Examiner*, 25 December 1873.

84 *Examiner*, 13 December 1873; *Cornwall Chronicle*, 15 December 1873.

85 *Examiner*, 23, 25, 30 December 1873, 6 January 1874; *Cornwall Chronicle*, 31 December 1873, 2 January 1874.

86 *Mercury*, 15, 22 December 1873.

to the resistance movement as people elsewhere in Tasmania. Regional jealousies must be avoided for they could only undermine 'the functions of the Legislature' and 'the very dispensation of justice would be surrounded with suspicion'. Ministers, Legislators, Judges, and magistrates would consider, 'not what is right, but what is the locality of the persons interested'. The *Mercury* forgot to mention that the anti-railway rate movement could boast some Southern support. The Hobart-based, somewhat radical newspaper the *Tasmanian Tribune* had consistently sided with the Launceston and Western Railway district in seeing the railway rate as unjust.⁸⁷

The *Mercury* was on firmer ground when it held that the essence of the dispute was 'shall the law be respected and the rate enforced' or should 'a reign of misrule' be allowed with 'every man doing that which is right in his own eyes?'⁸⁸ If Ministers failed to carry out 'the duty' which Parliament had imposed upon them, they would be 'traitors to the sovereignty of the law'. The *Mercury* proposed that the collector should first call on the leaders of passive resistance who spoke for 'incendiary and rebellious resolutions', and who have openly 'assumed an attitude of hostility to the constituted authorities, and threaten to take the law into their own hands'. Taking 'stringent and prompt measures' against the leaders will 'speedily reduce the disaffected to order'. The Government might also adopt its own brand of passive resistance by suspending the operation of the Launceston and Western Railway until the Main Line Railway was opened.

The *Mercury* underestimated the resistance movement's commitment to its cause. Resistance manifested itself in a number of ways in the coming months. A significant gesture of defiance was made by a number of magistrates, who were among the 'oldest and most respected colonists'.⁸⁹ The Launceston and Western Railway district contained 79 of the 329 magistrates who held appointments in Tasmania.⁹⁰ Of those 79 magistrates, 65 sent a lengthy petition to the Governor, detailing their grievances and asking him to delay the collection of the rate.⁹¹ Governor Du Cane refused to intervene. He

87 For example see *Tasmanian Tribune*, 4, 7 February 1874.

88 *Mercury*, 22, 30 December 1873.

89 *Examiner*, 31 January 1874.

90 *Walch's Tasmanian Almanac for 1874* (Walch and Sons, 1874), pp 42-50.

91 Of the remaining magistrates, eight were MPs who were not asked to sign, one was too late to sign, and four refused to sign. Of the 65 who signed the petition, eight recorded their approval of only paragraph 52: Legislative Council Journals [LCJ], 1874, vol 20, Paper 64, 'Return of Seizures; of Magistrates' Resignations etc re the Launceston and Western Railway Rate', pp 4ff.

later revealed that he thought resistance to the rate was 'entirely unjustifiable'.⁹² The Government had treated the ratepayers with 'all possible forbearance and generosity'. By agreeing to abolish the railway rate when the Main Line Railway was built, the district received 'all the relief of which it [was] fairly entitled'. The existing Parliament had passed the rate and Du Cane saw no reason to think that MPs would change their minds.

A number of magistrates thought they should bow to the dictates of their conscience and resign their commissions. Some supporters questioned whether this was an effective tactic, arguing that the magistrates could fight better as magistrates than as private citizens.⁹³ As magistrates, they could 'defend themselves and their friends' and 'uphold British law and justice for British subjects'. Moreover, they would be replaced by men 'subservient' to the Government.

Despite these considerations, twenty eight magistrates, including two MPs - James Cox and James Aikenhead - did resign.⁹⁴ Theodore Bartley, who also resigned, revealed his mounting frustration. Having tried 'every legitimate and constitutional effort to obtain redress', Bartley now became a public advocate of passive resistance.⁹⁵ Rate resisters should 'carefully' avoid interfering, 'either in the way of help or hindrance', with those appointed to collect or levy the rate, 'so long as they conform themselves to the legitimate discharge' of their duties. Undue interference and obstruction will prove to be 'the worst enemy' of the landholders in defending their 'constitutional rights as British citizens'. He appealed to all to follow his 'peaceable and inoffensive course' of not paying railway rates on his properties and ignoring summonses to attend the Police Office. He warned that passive resistance will be 'attended with inconvenience and loss' but the constitutional rights they enjoyed were 'acquired by a long continued series of far greater sacrifices' and they should 'make some sacrifice to defend and maintain them'. To mitigate the 'positive distress' of poorer landholders, Bartley suggested that they raise money to replace household goods taken by government officials. He subscribed £25 and others soon followed, often subscribing amounts higher than the rate.⁹⁶ This showed that some resisters at least were not motivated by saving money but by principle. Those who 'proved recreant

92 AOT GO 27/1, Du Cane to Secretary of State, 23 February 1874.

93 *Examiner*, 10 January 1874, letter by WS Button, 13 January 1874, letter by 'Observer'; see also the letter by C Buesnel, *Cornwall Chronicle*, 12 January 1874.

94 LCJ 1874, vol 20, Paper 64, 'Return of Seizures; of Magistrates' Resignations etc on Launceston and Western Railway Rate', p 3; AOT AGD 56/8, p 188.

95 *Examiner*, 17 January 1874, letter by Bartley.

96 *Cornwall Chronicle*, 21 January 1874.

to manliness and honor' and paid the rate, warned the *Examiner*, will have their names publicly 'disclosed'.⁹⁷ Those who condemned the rate but then paid it, wrote 'A Resident', will be regarded as 'traitors to a just cause'.⁹⁸ Intimidation played its part with principle in the anti-railway-rate movement.

Resistance was evident in appointing collectors. Although FJ Boothman, a Clerk in the Survey Department in Launceston, was appointed the chief collector, the Government encountered difficulties in appointing sub-collectors.⁹⁹ In Longford the municipal council allowed the Council Clerk to collect the rate but some days later he 'voluntarily resigned'. He found that 'the opposition to the rate (even in the quiet, orderly, well-to-do district of Longford) was far more general and determined' than he had expected and he did not want to antagonise the ratepayers. At Westbury an ordinary resident agreed to act as a collector but resigned for similar reasons. At Deloraine a one-time Stipendiary Magistrate on the northern goldfields, Bernard Shaw, was appointed a collector. He was reportedly paid £100 and 5 per cent of what he collected. That the collectors were 'bribed ... to extort the rate' from ratepayers, claimed the *Examiner*, strengthened resistance to 'this unrighteous tax'.¹⁰⁰ The advent of the Southern Ministry, manipulated by Colonial Secretary TD Chapman, the North's bogey-man, converted the *Examiner* from a policy of moderation to a policy of determined resistance to the rate.

Colonial Secretary Chapman shrewdly picked popular men to collect the second moiety.¹⁰¹ Boothman was 'very generally known as one of the most courteous and obliging officials' ever appointed to the Crown Lands Department. C Spotswood was renowned for 'his civility and kind attention to all classes of persons' attending the Police Office, where he was the clerk. TB Prosser was 'the most popular Sheriff's officer who ever tapped a defendant on the shoulder'. But even these popular men were 'hooted, hissed, tin kettled, and threatened with still greater indignities' in their roles as rate collectors. Feelings were even more intense against the rural police, headed by the Chief District Constable of Selby, James Propsting, who confiscated the household goods of rate defaulters.

On 29 January 1874, the *Examiner* announced that the 'Reign of Terror' instituted by 'those highminded hucksters' Colonial Secretary

97 *Examiner*, 13 January 1874.

98 *Examiner*, 31 January 1874, letter by 'A Resident'.

99 *Examiner*, 20 December 1873.

100 *Examiner*, 20 December 1873.

101 *Cornwall Chronicle*, 2 March 1874.

Chapman and Attorney-General Giblin had begun and that property had been taken from a number of homes.¹⁰² The *Examiner* pitied the rural police who were forced to discharge 'this odious work'. The ordinary work of the police was 'sufficiently unpleasant' without this added 'source of annoyance and irritation'. Leaders of the passive resistance movement were the first targets of the collectors. Setting an example for other citizens, Theodore Bartley, William Aikenhead, Edward Dumaresq, TC Just and the Reverend Charles Price, among others, refused to pay their rates and ignored summonses to appear at the Police Office.¹⁰³ Soon the police visited their homes to seize their goods.

In the beginning the police were treated with 'studied civility'.¹⁰⁴ Defaulters opened their doors and invited policemen 'to "pick and choose"'. But such accommodation would not last, predicted the *Examiner*. Loyal Launcestonians would not meekly submit to their homes being 'ruthlessly invaded and "robbed by law"' of the prized 'gift of a dead or absent friend, or an heirloom valued for what it commemorates rather than for what it is'. Doors and windows will be 'securely closed' and possessions will be hidden, resulting in 'great trouble and delay'. Passive resistance did not embrace giving 'a hearty welcome to the bailiff'. Nor did it include buying seized goods. At 11 am on 5 February one thousand people assembled at the Commissariat Stores where the first sale of seized goods was scheduled to take place.¹⁰⁵ Roars of derision met Propsting's attempts to sell goods and no bids were made. Before the crowd dispersed, they gave three cheers to the Queen 'to show they were loyal subjects'.

But the mood of the town was about to change. Advocates of passive resistance, such as Bartley and the press, had pleaded with their supporters not to weaken the cause by violent outbursts. But the resignations of magistrates, the inflammatory language used by some opponents of the rate, the provocative tone of supporters of the rate such as the *Mercury*, the entry, sometimes with excessive force, of police into private homes, and the seizure of personal possessions combined to ignite a reaction. On the night of Wednesday 4 February 1874, an effigy of Colonial Secretary Chapman, labelled with the words 'The Tyrant', and a coffin on which appeared the words 'Don't pay the railway rate', headed a procession of 500 people parading

102 *Examiner*, 29 January 1874; *Cornwall Chronicle*, 28 January 1874.

103 *Cornwall Chronicle*, 21, 30 January 1874.

104 *Examiner*, 29,31 January 1874.

105 *Examiner*, 7 February 1874.

through the streets of Launceston.¹⁰⁶ Rocks were thrown at some windows and the effigy was burnt, but worse was to come. The following night, 5 February, a bigger crowd assembled and members of the crowd threw stones at the homes or business premises of supporters of the rate and committed other acts of vandalism.¹⁰⁷ Superintendent Coulter of the Launceston municipal police was assaulted and some of his men were pelted with stones.¹⁰⁸ It was later revealed that 'anti-rate agitators' had 'secretly encouraged' the rioters.¹⁰⁹

Expecting another disturbance on Friday night, aldermen - nearly all supporters of passive resistance - called for public support and decided to swear in municipal employees as special constables.¹¹⁰ As a further precaution the Mayor, John Murphy, summoned the two volunteer Fire Brigades to act as special constables. Despite evidence to the contrary, Murphy denied that the demonstrations were politically motivated or that they had any connection with the anti-railway rate movement. He blamed bands of larrikins for using that movement as an excuse 'to do what they pleased'. But the Fire Brigades were unpersuaded and adopted the methods of the passive resistance movement. Their spokesman, FH Hely, said that the demonstration was 'avowedly against the rates' and if they acted as special constables they would be 'held in contempt' and it would 'materially impede their progress' as they depended on public support.¹¹¹ Reluctantly, the municipal employees, bar one, were sworn in.¹¹² On Friday night more vandalism occurred but little damage was done.

That no further demonstrations occurred was due to a number of factors. Perhaps most important was the work of the clergy, especially the Roman Catholic clergy, in calming 'the irritation' which the Government had stirred 'among the poor struggling ratepayers of their communion'.¹¹³ On Saturday night, the performance of juveniles in the Siamese Troupe purportedly diverted the attention of young riot-

106 *Examiner*, 5 February 1874; *Cornwall Chronicle*, 6 February 1874.

107 *Examiner*, 7 February 1874; *Cornwall Chronicle*, 9 February 1874.

108 For Coulter's report on the 'Rioting at Launceston, February 1874', see AOT CSD 7/8/1487.

109 AOT GO 27/1, Du Cane to Secretary of State, 23 February 1874; I deal more fully with the riots in S Petrow, 'Turbulent Tasmanians: Anti-Railway Rate and Sectarian Riots in the 1870s', Paper given to the 15th Annual Law and History Conference, Brisbane, 5-6 July 1996.

110 *Examiner*, 7 February 1874.

111 Hely later refused to pay the rate: *Examiner*, 17 February 1874.

112 Later the municipal employees petitioned aldermen to be relieved of their commissions but the request was refused: *Examiner*, 17 February, 10 March 1874.

113 *Examiner*, 24 March 1874.

ers.¹¹⁴ The municipal police ensured that they did not further provoke the crowd by deciding not to (or being unable to) arrest any of the rioters.¹¹⁵ Appeals for calm by opponents of the rate might have had some effect. One supporter called 'Philanthropist' told readers of the *Examiner* that he would pay the rate if 'personal violence' continued.¹¹⁶ Passive resistance was 'a manly struggle for principles and justice' but violent resistance was 'a brutal struggle for the paltriness of money'. Governor Du Cane also publicly called for calm.¹¹⁷ Finally, the appearance, stemming from Mayor Murphy's request to the Colonial Secretary, of 100 policemen from other parts of Tasmania made the rioters think twice about further demonstrations.¹¹⁸ Armed with carbines, the police were instructed to protect public buildings but no doubt also to intimidate the locals and to strengthen the will of those too scared to pay the rate. In Deloraine, according to one report, a detachment of these police soon dampened the embers of rebellion.¹¹⁹

Seeking to settle the dispute, a deputation including Mayor Murphy and the Wardens of Longford, Westbury, and Deloraine asked the Kennerley Government to delay collection of the rate.¹²⁰ The deputation tended to exaggerate the seriousness of the riots but the Government thought that resistance would not be 'pacified' by further delay, believing that 'the cause of law and order' required them to execute the powers imposed on them by Parliament. If the rioters believed they had won a concession, they might renew demands for the abandonment of the rate. More officials were appointed to prepare informations and summonses.

Despite the presence of foreign police, the residents of the Launceston and Western Railway district were not intimidated enough to abandon their opposition to the rate. As one passive resister noted, '[a] mob you may overcome and silence, but Cromwell's Ironsides never'.¹²¹ Some responded with intimidation of their own.

114 *Cornwall Chronicle*, 9 February 1874.

115 *Cornwall Chronicle*, 9 February 1874.

116 *Examiner*, 7 February 1874, letter by 'Philanthropist'.

117 Du Cane was criticised for exaggerating the danger: *Examiner*, 17, 19 February 1874.

118 *Examiner*, 7 February 1874; *Mercury*, 10 February 1874; LCJ 1874, vol 20, Paper 41, 'Copies of Telegrams between Mr Murphy, the Mayor of Launceston, and the Government, Respecting the Assistance of the Police in Collection of the Railway Rate'.

119 K Bonney (ed), *Early Deloraine* (Regal Press, c1985) p 83.

120 *Examiner*, 12 February 1874; *Mercury*, 11 February 1874.

121 *Examiner*, 21 February 1874, letter by 'Westward'.

In a Launceston suburb, a notice appeared indicating that if certain people paid the rate they would 'smoke'.¹²² To counter such threats, local newspapers were refused permission to publish the names of citizens who paid the rate.¹²³ The threat of violence did not deter the respected Launceston solicitor William Ritchie. In a series of letters to the *Cornwall Chronicle*, he was almost the lone public voice to urge payment of the rate.¹²⁴ Although Ritchie's business largely depended on 'the support of the landowners of the district', he argued that they had incurred a legal liability and had been treated fairly by the Government. He claimed 'many men of property and influence within the district' agreed with his views.¹²⁵

Passive resisters continued their struggle in the Launceston Police Office, where all country defaulters were now required to attend. According to the Launceston Police Magistrate, Thomas Mason, country magistrates delayed proceedings, refused to issue or authorise the serving of summonses, or were too lenient, forcing the Government to move all proceedings in the district to his Police Office.¹²⁶ It was precisely because Mason, a magistrate for nearly forty years, did not let personal matters or questions of equity interfere with his duty to uphold the law that the Government directed that all cases be heard by him.¹²⁷

Passive resisters realised that it was a mistake not to attend the Police Office when summoned as this allowed the Magistrate to dispose of cases quickly *ex parte*.¹²⁸ Each defaulter was encouraged to attend and 'insist upon the proper form being gone through - the reading of the information, and the offering of proper evidence to substantiate each case'. A number of defaulters took up this suggestion. When John Bryant appeared before Mason, he claimed that as an occupier he should not have to pay £4 as he had no vote in the railway poll.¹²⁹ Mason's response was characteristic: 'I cannot go into questions of feeling or of justice or injustice of the law; all that is settled by the law

122 *Examiner*, 14 February 1874.

123 *Mercury*, 11 February 1874.

124 *Mercury*, 21 February 1874; for some of Ritchie's letters see *Cornwall Chronicle*, 25 February, 2, 11, 18 March 1874.

125 *Cornwall Chronicle*, 16 February 1874, letter by Ritchie. For the views of one large landowner with whom Ritchie was close see MN Sprod (ed), *The Whitehead Letters: Tasmanian Society and Politics 1871-1882* (Tasmanian Historical Research Association, 1991) pp 24-5, 47.

126 *Examiner*, 14, 26 February, 24 March 1874; *Cornwall Chronicle*, 2 March 1874.

127 *Mercury*, 1 July 1879.

128 *Examiner*, 14 February 1874, letter by 'Ceremony'.

129 *Examiner*, 14 February 1874.

being passed'. Bryant's representatives passed the legislation and he was 'as much responsible for the acts of your representatives as others'. Once Parliament had passed a law, 'any justice of the peace who refuses to receive an information for non-payment of the rate may be compelled by *mandamus* from the Supreme Court' and, if he still refused, would be 'liable to a criminal information by the Attorney-General, and subject to fine and imprisonment'. Mason pointed out that the Railway Acts provided that the landlord should 'allow the tenant one-half the rate he pays. I have deducted my half from the rent' and so should Bryant. Bryant still refused to pay.¹³⁰

Mason refused to allow expenses to those who 'successfully defended' their cases, irrespective of the distance they travelled to court and was most affronted when defendants from country areas questioned his right to hear their cases.¹³¹ Mason replied that he did not want to hear the cases but 'I have always done my duty conscientiously and the whole proceedings before me have been conducted regularly'.¹³² He had even issued distress warrants against his 'most intimate friends' and had yet to issue 'a warrant against the goods of my own nephew'. With time, Mason 'moderated his tone' when dealing with costs; in cases where the parties received several informations, he only imposed costs once.¹³³ But the great pressure to deal quickly with the 2440 complaints filed by the collectors took its toll on Mason's temper.¹³⁴ While the collectors tried to be polite and reasonable, Mason antagonised everyone. He 'bullied the Government officials, wrangled with defendants, and snubbed his subordinates'; worst of all 'justice ... often wept at his decisions'.

Even more antagonistic to residents of the district was the way the police discharged their duty when seizing goods.¹³⁵ On 25 February Attorney-General Giblin gave his opinion that breaking into a house to collect goods in lieu of payment of the rate was legal.¹³⁶ It appeared that in cases where the Crown was a party, the sheriff could break down locked doors to execute his duty if he could not otherwise en-

¹³⁰ Another defaulter, James Barton, told Mason that his wife had ordered him not to pay the rate and he was 'frightened to do so: I must either beat Mr Chapman or be beaten by my wife': *Examiner*, 17 February 1874.

¹³¹ *Examiner*, 7 March 1874, letter by D Rock; AOT CSD 7/8/1487, Mason to Chapman, 11 April 1874.

¹³² *Cornwall Chronicle*, 27 March 1874.

¹³³ *Examiner*, 21 March 1874

¹³⁴ *Examiner*, 16 April 1874, letter by D Rock.

¹³⁵ See the example in J Reynolds, *Launceston: History of An Australian City* (Macmillan, 1969) pp 110-11.

¹³⁶ *Cornwall Chronicle*, 3 June 1874 and 4 March 1874, letter by 'Observer'.

ter. While some police tried to minimise ‘the inconvenience to parties’, the *Examiner* described the actions of others as ‘Thuggism and wholesale housebreaking’.¹³⁷ They broke into Launceston homes ‘with battering rams and crowbars’ and dragged goods away ‘by force’. The first house broken into was owned by Thomas Youl, who had threatened to shoot police if they entered.¹³⁸ That threat was not carried out but Youl did assault police, who were forced to hold him down while others ‘ransacked the premises’. On 26 February Youl was charged with ‘unlawfully assaulting’ police in the execution of their duty and committed to trial in the Supreme Court, to which I shall return.

Not all interventions were so dramatic. In practice, most ratepayers preferred to lose valuable goods than be kept in ‘a state of siege’ and so police usually experienced little difficulty in collecting goods and taking them away in ‘the plague cart’ belonging to the Invalid Depot.¹³⁹ Some policemen took more goods than necessary and forced the protesting owners to retrieve them from the Commissariat Stores themselves.¹⁴⁰ Sometimes female occupants were subjected to ‘rough usage’ and were ‘treated to coarse language’. But many women were as defiant as men. James Aikenhead, MLC for Tamar, had hoped to save his invalid wife and daughters from the police entering his house.¹⁴¹ He left money on a sideboard where the police could find it and leave ‘without disturbance’. His wife said such an act would be ‘disgraceful’ and wanted the police to take what they liked. They took furniture worth ‘four times the amount of the rate’. On 27 February, a ‘Railway Rate Legal Expenses Fund’ was set up to defray the costs of those passively resisting the rate.¹⁴² The costs were not meagre. On 16 April, one resister noted that in over two thousand cases individuals showed that they ‘preferred to pay a larger sum under compulsion’ rather than ‘admit the justice of the claim by paying a smaller one’.¹⁴³

No one knew for sure how many Launcestonians succumbed to the temptation to buy seized goods at a cheap price. On 3 March at the second auction, the only buyer was the Superintendent of the Launceston Gaol, Alfred Jones, who obtained tea, sugar, and flour for

¹³⁷ *Examiner*, 26 February, 17 March 1874.

¹³⁸ *Cornwall Chronicle*, 27 February 1874; *Examiner*, 28 February 1874.

¹³⁹ *Cornwall Chronicle*, 2 March 1874; *Examiner*, 28 February 1874.

¹⁴⁰ *Examiner*, 17, 24 March 1874.

¹⁴¹ *Examiner*, 8 August 1874.

¹⁴² *Examiner*, 28 February 1874.

¹⁴³ *Examiner*, 16 April 1874, letter by D Rock.

his prisoners.¹⁴⁴ The police, whether on Government orders or not we cannot say, tried to provoke an incident by marching through the crowd with fixed bayonets and by refusing entry to some individuals. It was rumoured that many articles were bought privately by the police and other articles were sold outside the Launceston and Western Railway district.¹⁴⁵ But some residents allegedly visited the Commissariat Stores secretly to buy articles to sell at a profit. A smaller crowd attended the third sale, where Benjamin Crow of the Market House Tavern was the first resident to bid for the seized goods.¹⁴⁶ Superintendent Jones was again the main buyer as he was at the fourth sale.¹⁴⁷

Believing they had tamed the North, by mid-April the Government began slowly withdrawing the police sent to the district.¹⁴⁸ The police presence added greatly to the cost of collecting the rate. By 31 July 1874, £7610 6s 6d had been collected for the second moiety of the 1873 rate.¹⁴⁹ The cost of collecting that amount was £2843 2s 2d, of which £2071 19s 8d was police pay, £265 15s 1d was for conveying and travelling expenses for police, and £64 7s 6d was for the maintenance of the police. The Government had enforced the law, but at a high price.

Having weathered the storm, the Kennerley Government set the rate for 1874 at 1s and 4d, payable by 30 April.¹⁵⁰ Demands for payment were issued but most demands had been unanswered by late-June.¹⁵¹ Instead of threatening the defaulters with 'summonses and executions', the Government responded in 'a most gentle and considerate manner'. Boothman gave all ratepayers one month's grace from 23 June and was willing to accept written applications for further time. The *Examiner* quizzed this change of heart. After calling the Northern residents 'rebels' and 'devils', after sending constables 'armed to the teeth' to enforce the law, and after breaking into 'peaceful dwellings' and carrying off personal possessions, the Government suddenly adopted a policy of moderation. The solution to the puzzle was the impending meeting of Parliament. If they continued a policy of aggression, Ministers feared they would lose office.

144 *Examiner*, 5 March 1874.

145 *Examiner*, 12 March 1874.

146 *Examiner*, 24 March 1874.

147 *Examiner*, 2 April 1874.

148 *Examiner*, 16 April 1874.

149 HAJ 1874, vol 27, Paper 57, 'Returns of the Amount and Cost of Collection of the Second Moiety of the 1873 Rate'.

150 *Examiner*, 16 April 1874.

151 *Examiner*, 25 June 1874.

Another indication that the Government wanted to avoid public scrutiny of their enforcement of the railway rate and hoped to mend the breach with the North involved Thomas Youl, who was never committed for trial at the Supreme Court, despite Magistrate Mason's directions. Attorney-General Giblin, as the grand jury of Tasmania, 'declined to file a bill' against Youl on the grounds that it was against 'public policy'.¹⁵² This decision had more to do with politics than justice. If Youl had committed the serious offence of assaulting policemen, he should have been tried. If the policemen had 'no right' to break into his house, then Youl should not have been tried at the Police Office, and all the seizures whereby policemen forced open windows and doors were 'illegal'. Giblin did not want a trial where 'all the tyrannical, extra-ministerial acts of the Government' in collecting the railway rate would be 'ripped up and commented upon by counsel'.¹⁵³

As it happened, most of the £10,000 for the 1874 rate was collected during the year, but memories of the dispute remained fresh. In August 1874, soon after Parliament had resumed, James Aikenhead moved a motion for information on whose goods had been seized, the amount of rate they owed, what goods were seized and their value, whether the seizures were sold or otherwise disposed of, who purchased them, at what price and how much the goods cost to collect.¹⁵⁴ Colonial Secretary TD Chapman was opposed to 'raking up' details of that bitter period. He intimated that 'some of the most prominent opponents of the rate submitted to seizures' but later purchased their own goods. If their names were disclosed, they would be 'hounded and howled down by a section of the community'. Knowing that Chapman was casting false doubt over who had bought the seized goods, and arguing that Tasmanians had 'a right to the information', Aikenhead pressed his motion, which was passed on the casting vote of the President, James Milne Wilson. Chapman's only recourse was to delay the printing of the return. As the names had not been laid on the table by the end of the session, the order to have the paper printed lapsed until 1875. In August 1875, Aikenhead renewed his motion, which was again passed.¹⁵⁵

Chapman had dissembled. While some citizens did privately buy seized goods, the return showed that no-one bought back their own goods and that the leaders of the anti-railway-rate movement re-

¹⁵² *Examiner*, 10 September 1874.

¹⁵³ *Cornwall Chronicle*, 3 June 1874.

¹⁵⁴ *Examiner*, 8 August 1874; LCJ 1874, vol 20, 6 August 1874, p 20.

¹⁵⁵ *Examiner*, 31 August 1875.

mained true to their words. The return also confirmed that in the vast majority of cases the goods seized were worth more than the cost of the rate. The Kennerley Government found little difficulty in collecting the rate of £10,557 18s 6d in 1875, the last year it was collected.¹⁵⁶ The law was enforced, Parliament was supreme and the exemplars of the 'Vandemonian Spirit' remained true to their principles and their consciences, but the intransigence of both sides would sour relations between the South and the North for many years to come.

¹⁵⁶ HAJ 1876, vol 31, Paper 60, 'Consolidated Revenue: Account Current, Assets and Liabilities 1875', p 4. In 1876 a remnant of £7 8s 8d was collected: HAJ 1877 session 2, Paper 43, 'Consolidated Revenue: Account Current, and Assets and Liabilities 1876', p 4. The Main Line Railway opened in March 1876.