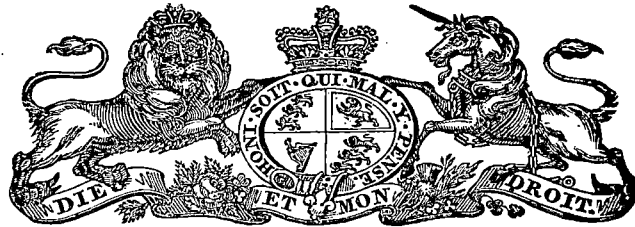


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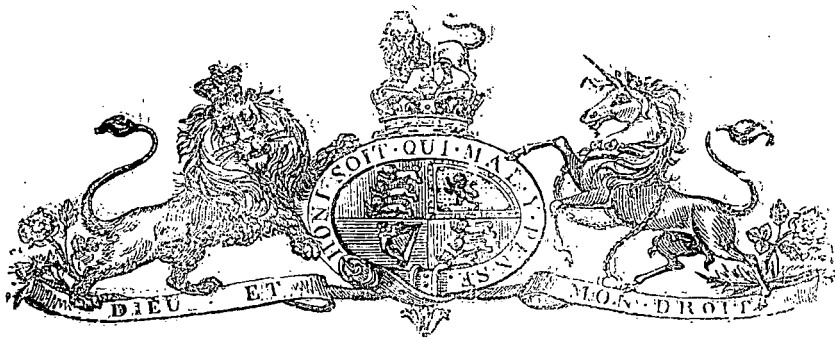
T A S M A N I A.

LEGISLATIVE COUNCIL.

MR. GRUBB'S SEAT FOR TAMAR :

OPINIONS OF THE LAW OFFICERS OF THE CROWN.

Laid upon the Table by Mr. Moore, and ordered by the Council to be printed,
August 18, 1881.



Mr. Moore to move—That it being provided by Section XIV. of the Constitutional Act that “whenever any question shall arise respecting any vacancy in the Legislative Council the same shall be heard and determined by the Legislative Council itself:” and the question having arisen whether on the 6th day of November, 1880, the seat for the District of Tamar, lately filled by the Honorable *Frederick William Grubb*, was then vacant, this Council determines and hereby declares that such seat was vacant on that day.

Colonial Secretary's Office, Hobart, 18th August, 1881.

MEMO.

THE Colonial Secretary proposes to move the enclosed Resolution in the Legislative Council to-day.

The Law Officers of the Crown are requested to advise whether the Council possesses the power to determine the question set forth in the Resolution; and whether, in the event of the said Resolution being carried, such determination would be a bar to all proceedings for the recovery of penalties under the provisions of the 28th Section of “The Constitutional Act,” 18 Victoria, No. 17?

WM. MOORE.

The Law Officers of the Crown, &c.

THE two questions asked by the Memorandum of the Honorable the Colonial Secretary are substantially these—

1. A question having arisen respecting the vacancy of the seat of the Honorable *F. W. Grubb*, as one of the Members for the District of Tamar in the Legislative Council, has the Council power to determine such question?
2. In the event of the Council determining the question by Resolution, is such determination a bar to proceedings for the recovery of penalties under Section 28 of the Constitutional Act?

I am of opinion that the provisions of Sect. 14 of the Constitutional Act give full power to the Legislative Council to hear and determine any question respecting the vacancy of Mr. *Grubb's* seat.

The Section, in clear and unambiguous language, states that “whenever any question shall arise respecting any vacancy in the Legislative Council the same shall be heard and determined by the Legislative Council itself.” Such a question has arisen, and it is the duty of the Council to hear and determine it.

Did the language of the Section raise a doubt as to its meaning, or render it necessary to enquire what the intention of the Legislature was when the Constitutional Act was passed, the provisions of Section 18 of the Act 5 and 6 Vict. Chap. 76, of the Imperial Parliament, “An Act for the Government of New South Wales and Van Diemen's Land,” would throw some light on the subject. This Section enacts “that any question which shall arise respecting any vacancy in the Legislative Council of the Colony of New South Wales, on occasion of any of the matters aforesaid, shall be heard and determined by the said Legislative Council, on such questions being referred to them for that purpose by the Governor of the said Colony, and not otherwise,”—that is, that the Legislative Council *alone* should decide any question coming within the provisions of this Section.

I have no doubt that Section 14 of the Constitutional Act of this Colony was taken from the Section just quoted, and although the language is not precisely similar the effect is the same, and the intention alike in both cases as regards giving the Council power to hear and finally determine any question arising respecting any vacancy.

As to the question of penalties, I do not think that Section 28 applies to the case of the Member for Tamar. It has reference to a person "by this Act disabled or declared to be incapable to sit or vote, &c." "Disabled" here has reference to such cases as are provided for by Section 19 of the Constitutional Act, and Sections 5 and 6 of 34 Vict. No. 42, which Act is to be read with the Constitutional Act,—that is, to those persons who are incapable of being elected. Mr. Scott is not, by anything that appears, disabled from being elected, nor has he been declared to be incapable to sit or vote.

If I am right in this view, it is unnecessary to enquire further what the effect of a Resolution such as is proposed would be as regards penalties.

J. S. DODDS, *Attorney-General*.
18th August, 1881.

Two questions are submitted for consideration of the Law Officers—

- 1st. Does the Legislative Council possess the power to determine the question whether on the sixth of November, 1880, the seat for the District of Tamar, lately filled by the Honorable *Frederick William Grubb*, was then vacant?
- 2ndly. Whether in the event of the Council determining and declaring that the seat was vacant on the said day, such determination would be a bar to all proceedings for the recovering of penalties under the provisions of the 28th Section of "The Constitutional Act," 18 *Victoria* No. 17?

As to the first question, I am of opinion that, by Section 14 of the Constitutional Act, the duty is imposed on the Council itself of hearing and determining any question which shall arise respecting any vacancy in the Council, and that it is not competent for the Council to remit the hearing and determination of such question to any other authority or tribunal; and that the Committee of Elections and Qualifications is not empowered by Section 122 of "The Electoral Act," (21 *Victoria*, No. 32), or otherwise, to enquire into or to determine such question.

As to the second question, I am of opinion that no penalty is imposed by Section 28 of "The Constitutional Act" upon the person elected to fill the vacancy in the District of Tamar if the Council shall determine that the seat was vacant on the day mentioned in the proposed Resolution. I may add my opinion that only those persons who, being disqualified, or declared to be incapable to sit or vote in manner provided by the Constitutional Act, have been elected and returned, shall presume to sit or vote contrary to the provisions of such Act incur penalties under Section 22.

ROBT. P. ADAMS, *Solicitor-General*.
18th August, 1881.