

(No. 35.)



1877.

SESSION IV.

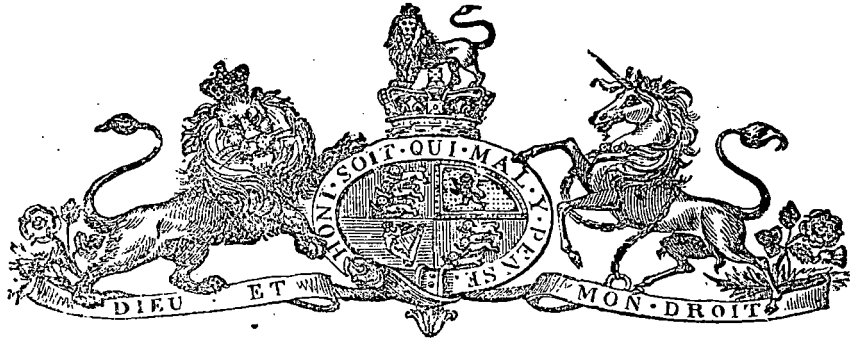
TASMANIA.

LEGISLATIVE COUNCIL.

MRS. HUNT:

CORRESPONDENCE BETWEEN THE JUDGES AND THE
GOVERNOR.

Laid upon the Table by Mr. Moore, and ordered by the Council to be printed,
November 20, 1877.



(Copy.)

Judges' Chambers, 16th November, 1877.

SIR,

WE have long been patiently silent while rumours reflecting upon our integrity have been prevalent, which are said, and widely believed, to be based upon your Despatches to the Secretary of State relating to the case of Louisa Hunt, in the expectation that those Despatches would be made public. We learn that Your Excellency does not intend to produce them pending a reference to the Secretary of State. But it must now be obvious that our judicial usefulness will be exposed to be too seriously impaired by the prevalence during that time of the public impression that we have been the object of censure emanating from so high a source.

We therefore request that Your Excellency will be pleased to make public the Despatches in question, in order that, if the rumours should prove well founded, we may either vindicate ourselves, or submit to the just alternative of removal from the Bench; or that, if the rumours should prove ill-founded they may be dissipated.

We feel that an apology is due to Your Excellency for assuming, even hypothetically, that you can have made injurious reflections upon us without communicating your intention and affording us the opportunity of defence or explanation.

We have, &c.

(Signed)

FRANCIS SMITH.

W. L. DOBSON.

His Excellency the Governor.

(Copy.)

To their Honors the Chief Justice and the Puisne Judge.

THE Governor has the honor to acknowledge your Honors' letter of the 16th November, in which you request that he will "make public" certain Despatches addressed by him to the Secretary of State, and inform him that "rumours reflecting upon" your Honors' "integrity have been prevalent, which are said, and widely believed, to be based upon" the Despatches in question.

Your Honors are doubtless not ignorant that no Governor under Constitutional Government can lay Despatches or papers (save only when he considers the rights of the Crown or Imperial interests demand it) before Parliament unless by advice of Ministers, and on their responsibility for that act.

In this case the Governor officially recorded that he had no objection to lay the Despatches before Parliament "if Ministers so advise." Ministers did not so advise. A constitutional question consequently arose, which it has been agreed to refer to Her Majesty's Secretary of State. That reference has been made. Pending reply, and seeing also that Ministers have refrained from advising him to accede to the request of the Legislative Council, your Honors must know that the Governor is, for the time, debarred from all further action.

It is the recognised duty of a Governor to comment upon correspondence, when, as in this case, advised by Ministers to transmit it to Her Majesty's Secretary of State, especially when such correspondence may be held to contain imputations upon himself; but the Governor is not aware that he has in any way exceeded the limits of fair criticism and comment, and by no natural construction can the Despatches in this instance be construed into "reflecting upon" your Honors' "integrity."

(Signed)

FRED. A. WELD.

Government House, 19th November, 1877.

(Copy.)

Judges' Chambers, 20th November, 1877.

SIR,

WE have the honor to acknowledge Your Excellency's letter of 19th November. It is satisfactory to receive your assurance that you have not in any way exceeded the limits of fair criticism and comment, and that by no natural construction can the Despatches in this instance be construed into reflecting upon our integrity. We believe, however, that nothing will so thoroughly clear up the rumours prejudicial to the administration of justice which have been so long in circulation as the production of the Despatches themselves. We regret that the question of practice to which you refer should be put in competition, in point of importance, with the obligation to preserve the administration of justice unimpaired.

We, however, are powerless to cause the production of the Despatches; and nothing remains but to lay the present correspondence before Parliament, in order that the authority to which we are responsible may be made aware that we have done all we can to obtain their disclosure. We beg therefore to request that Your Excellency will cause this correspondence to be laid before Parliament.

We have, &c.

(Signed) FRANCIS SMITH.
W. L. DOBSON.

His Excellency the Governor.

ET.-COLONEL St. Hill—write for my signature and acknowledge their Honors' letter, and say that I will at once request Ministers to lay this correspondence before Parliament.

(Signed) FRED. A. WELD.

20th November, 1877.

FOR MINISTERS.

I RECOMMEND compliance with the request that this correspondence—viz. their Honors' letter of 16th November, my reply of 19th November, and this letter of 20th November—should be at once laid before Parliament; it is but just to all parties concerned that this should be done at once.

(Signed) FRED. A. WELD.

20th November, 1877.

(In continuation of Paper No. 35.)

[Laid on the Table by Mr. Moore, and ordered to be printed, November 30, 1877.]

LEGISLATIVE COUNCIL.

To His Excellency FREDERICK ALOYSIUS WELD, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Tasmania and its Dependencies.

MAY IT PLEASE YOUR EXCELLENCY.

WE, Her Majesty's dutiful and loyal Subjects the Members of the Legislative Council of Tasmania, in Parliament assembled, pray that Your Excellency will cause to be laid upon the Table of the Council all the Correspondence that has taken place between Your Excellency, their Honors the Judges, and the Secretary of State upon or having reference to the Hunt Case, subsequently to the date of the Paper laid upon the Table of the Council on the 25th April last.

(Signed) J. M. WILSON, *President.*

Passed the Legislative Council, this
9th day of October, 1877.

(Signed) E. C. NOWELL, *Clerk of the Council.*

FOR MINISTERS.

THE Governor has no objection to the Return being made if Ministers so advise. If they advise affirmatively, the Governor will be obliged by being informed as soon as possible as his Despatches will have to be copied; and if negatively, the Governor doubts not but that they will explain to the House the reasons which have led to their decision, and the position taken by the Governor.

(Signed) FRED. A. WELD.

11th October, 1877.

I FIND from conversation with the Premier that my Minute above does not seem fully to explain my meaning. I have no objection to any of my public Despatches being published. It is for Ministers to advise whether, in their opinion, such publication will in any given case promote the public service. In this case, if I am asked whether I require the publication on the ground that the position taken by the representative of the Crown requires further explanation, I cannot say that it does; because I have reason to believe that position to have been accepted as satisfactory and sufficient by the Secretary of State (who has consequently simply acknowledged the Despatches), and by the public generally. The question is, therefore, one for Ministers purely. If Ministers should consider that a greater public advantage is to be attained by publishing these Despatches than by withholding them from publication, they will advise accordingly. If, on the other hand, they should consider that no sufficient grounds of public policy exist for re-opening the question, and that no constitutional question requires fresh affirmation, or that the dignity of the Supreme Court will be best consulted by withholding my Despatches from publication, they will advise me not to comply with the request of the Legislative Council, explaining to that Honorable House that I have, as constitutionally

is my duty, left the matter unreservedly in their hands,—that I offer no objection to the publication should I be so advised; but that, for reasons that appear sufficient to them, they do not so advise me, and that, though I have felt it to be my painful duty to point out differences of opinion between myself and their Honors the Judges, I have done so simply from a sense of duty and fairness, and with all due respect for the dignity of the Supreme Court and for their Honors personally.

I shall be obliged by Ministers recording their decision on this paper, and they are quite at liberty to read this Minute to the House if they think proper.

(Signed) FRED. A. WELD.
October 15, 1877.

MEMORANDUM.

MR. Fysh has the honor to acknowledge the receipt of His Excellency's Memoranda of the 11th and 15th instant, and subsequently, of copies of His Excellency's Despatches referred to in the within Address, which Despatches Ministers have attentively perused and considered.

Mr. Fysh has the honor to inform His Excellency that Ministers do not feel called upon to interpose between His Excellency and the Address of the Honorable the Legislative Council, inasmuch as His Excellency states that he has no objection to the production of the Despatches in question.

Ministers are of opinion that the question whether the contents of a Despatch addressed by His Excellency to the Secretary of State should be made public, is, in the first instance, one for His Excellency's own consideration; and they would not desire, in any case in which His Excellency was willing to assent to a request on the part of either House of Parliament for information, to appear to intervene for the purpose of withholding such information.

Ministers are unable to advise that the publication of the Despatches in question would "promote the public service;" and they are of opinion that such publication would revive an exhausted controversy, in which the position of the Judges, and that of His Excellency as ruler of a constitutionally governed colony, might become the subject of acrimonious discussion.

Ministers trust that His Excellency will not suppose that they, in any way, desire to impugn the contents of Despatches (presumably based on information derived from His Excellency's then Advisers), but they deem it their duty to state that these Despatches appear to them to contain numerous references to matters of fact which may possibly be challenged, and made occasion for new controversy and matters of opinion in which there is obviously much to be said on both sides.

They think that it is undesirable that the unfettered expressions used in a Despatch by a Governor to his official superior in England should become the subject of debate in the Colony over which the Governor presides, and they, therefore, think that no good end will be attained by giving them publicity.

But seeing the matter is one much more for His Excellency's personal consideration than that of the Cabinet, they will not advise His Excellency to withhold his assent to the request contained in the Address from the Honorable the Legislative Council.

(Signed) P. O. FYSH.
Cabinet Office, 24th October, 1877.

His Excellency the Governor.

Government House, Hobart Town, 29th October, 1877.

MEMO. FOR MINISTERS.

THE Governor has this day received the Premier's Memorandum of the 24th instant.

The Governor observes that Ministers, whilst giving reasons against acceding to the request of the Legislative Council for the production of certain Despatches, state that they will not advise the Governor to withhold them.

The Governor is bound by regular constitutional practice; he must on this, as on all former occasions, be advised to lay Despatches or Papers before the Legislature on the responsibility of Ministers, or he cannot constitutionally do so. And this is but just, for otherwise, whose duty would it be to defend his action in producing Papers if that action was impugned as injudicious?

If the Governor rightly understands the position taken by Ministers, they now decline to recommend him to produce the Despatches asked for,—they even give reasons against their production.

The Governor cannot accept the view that Ministers can relieve themselves of the responsibility of advising as Executive Councillors, nor is he at liberty to deviate from the usual constitutional practice in cases not involving the rights or prerogatives of the Crown or Imperial interests.

The Governor, therefore, feels that the minor question of the advisability or inadvisability of producing the Despatches in question, is overshadowed by the larger one of the constitutional position in regard to production of Despatches and Papers.

The Governor holds that Ministers must always be responsible to the Legislature, and the Governor to Her Majesty through Her Secretary of State.

The Premier has unofficially suggested a reference to the Secretary of State, and the Governor is willing to forward this Memorandum, with any other Memoranda or correspondence they may see fit, to His Lordship by this Mail, and to await his reply.

(Signed) FRED. A. WELD.

Cabinet Office, Hobart Town, 29th October, 1877.

MEMORANDUM.

MINISTERS concur in the course indicated in His Excellency's Memorandum dated this day, and hope that the Ministerial Memorandum of the 24th instant will accompany the documents relating to this subject, which His Excellency may forward to the Secretary of State by the outgoing mail.

(Signed) P. O. FYSH.

His Excellency the Governor.

THE Premier has asked the Governor whether he considers himself still at liberty (correspondence being in progress, and a reference made by Governor and Ministers to Lord Carnarvon) to lay his Despatches on the Hunt question before Parliament, should Ministers now so advise.

The Governor has every desire to meet the wishes of the Legislative Council, and at the outset made no objection to the production of the despatches in question; but now he does not consider himself any longer at liberty to do so, under the circumstances that have arisen, and now exist, pending the Secretary of State's reply.

Constant official practice, and ordinary courtesy to Lord Carnarvon, alike forbid it; but, unless instructed otherwise, the Governor will offer no objection, should Ministers so advise, on the receipt of His Lordship's reply.

The Premier has also informed the Governor that he has reason to believe that it is held in some quarters that the Governor is bound to produce Despatches when called for even pending correspondence and reference.

Such a doctrine is new to the Governor, and he cannot accept it unless sanctioned by Her Majesty's Secretary of State.

(Signed) FRED. A. WELD, *Governor.*

Government House, 26th November, 1877.

FRED. A. WELD,
Governor.

AT the request of the Legislative Council, contained in the Address passed by the Legislative Council on the 29th instant, the Governor directs the correspondence that has taken place between His Excellency and Ministers on the subject of the Despatches between His Excellency and the Right Honorable the Secretary of State for the Colonies, referred to in the Resolution agreed to by the Council on the 23rd day of November instant, to be laid on the Table of the Council.

Government House, 30th November, 1877.

[Laid upon the Table by Mr. Moore, and ordered by the Council to be printed, December 5, 1877.]

(Copy.)

Judges' Chambers, 1st December, 1877.

SIR,

REFERRING to the correspondence between Your Excellency and Ministers, published in to-day's *Mercury*, we find in your Memo. of the 15th October this sentence—"If they (Ministers) should consider that the dignity of the Supreme Court will be best consulted by withholding my Despatches from publication, they will advise me not to comply with the request of the Legislative Council."

Here is a suggestion of sinister import, which, we submit, makes it impossible that the Despatches can remain longer undisclosed with any regard to justice: It is not treating the Judges of the land with common fairness, to say nothing of courtesy, to leave them exposed to the whispering comments of curiosity, excited, not unnaturally, as to what can be the mysterious communications made to Her Majesty's Secretary of State, which if not, as people were at first led to believe from hints dropped from those who were supposed to be well informed, capable by a natural construction of being construed into reflections upon their integrity, are *ex confesso* of such a nature as to make it a matter of opinion whether the dignity of the Supreme Court may not be best consulted by keeping them secret.

After this significant allusion to the nature of their contents, we protest, with all respect, against the further postponement of their publication. When once it is known that a despatch contains matter which in the opinion of the Governor can possibly be considered to compromise the dignity of the Supreme Court, we conceive that there can be no question that that despatch ought to see light without a moment's delay.

The ground assigned in Your Excellency's Memo. of 26th November for declining to make public the despatch, even if now advised by Ministers, is, we respectfully submit, untenable. The point of practice which has been referred to the Secretary of State is obviously quite distinct from the question whether the despatches ought to be produced.

Under the new circumstances which have arisen it is difficult to see in what respect their production can be supposed to anticipate in any way His Lordship's decision or otherwise, to involve the remotest discourtesy.

We have the honor to be,

Sir,

Your Excellency's most obedient humble Servants,

(Signed) FRANCIS SMITH,
W. L. DOBSON.

His Excellency the Governor.

(Copy.)

To their Honors the Chief Justice and the Puisne Judge.

THE Governor acknowledges your Honors' letter dated December 1st, and delivered to him by messenger on Sunday afternoon, December 2nd.

Merely observing that it is for the Houses of Legislature and not for your Honors to call for Despatches, the Governor regrets he is unable to concur in your Honors' arguments, or conclusions, or your Honors' estimate (if he rightly appreciates it) of the duties and position of Governor and Judges.

He has the honor to inform your Honors that he will have pleasure, should your Honors see fit to make any comments on his conduct or on his sense of what is due to your Honors or to his official Chief, to refer them to Her Majesty's Secretary of State for the Colonies, to whom, as Her constitutional adviser, he is responsible, and by whose decision, on the part of Her Majesty, he is constitutionally bound to abide.

(Signed) FRED. A. WELD:

Government House, 3rd December, 1877.

FOR MINISTERS.

THE Governor encloses a copy of a letter received this morning from their Honors the Judges of the Supreme Court; and, in compliance with their expressed wish, he requests Ministers to lay before the Legislature their Honors' letter of December the 1st, the Governor's of December the 3rd, and their Honors' letter of this day's date, with the Governor's acknowledgment thereof.

FRED. A. WELD.

Government House, 4th December, 1877.

(Copy.)

Judges' Chambers, 4th December, 1877.

SIR,

WE have the honor to acknowledge Your Excellency's Memo., dated 3rd December, and delivered to us this morning.

We do not propose to enter into any discussion with Your Excellency upon the points as to which you give us your opinion, and state your dissent from our views.

We thank Your Excellency for your obliging offer to refer to Her Majesty's Secretary of State any comments we may see fit to make upon the points you suggest. It is not impossible that we may see reason hereafter to address His Lordship in relation to the subject matter of Despatches the production of which is in question; but we are disposed at present to await that production.

In the meantime we have to request that our letter of the 1st December, your answer, and this reply may, in like manner as was the late correspondence between Your Excellency and ourselves with reference to the publication of the Despatches, be laid before Parliament.

We have the honor to be,

Sir,

Your Excellency's most obedient humble Servants,

(Signed) FRANCIS SMITH.
W. L. DOBSON.

His Excellency the Governor.

True Copy.

W. H. ST. HILL, *Lt.-Colonel,*
Private Secretary.

(Copy.)

To their Honors the Chief Justice and the Puisne Judge.

The Governor has the honor to acknowledge your Honors' letter of this day's date, and, in compliance with your Honors' wishes, he has requested Ministers to have your Honors' letter of the 1st instant, the Governor's acknowledgment of the 3rd instant, your Honors' letter of this day's date now under reply, and the communication now being addressed to you, laid before Parliament.

(Signed) FRED. A. WELD.

Government House, 4th December, 1877.