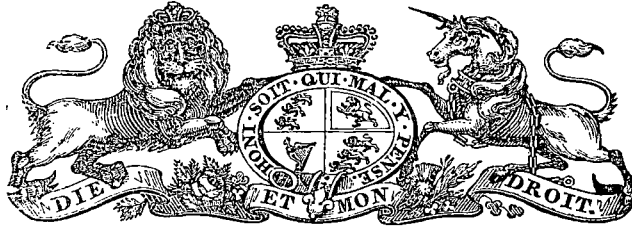


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1899.

PARLIAMENT OF TASMANIA.

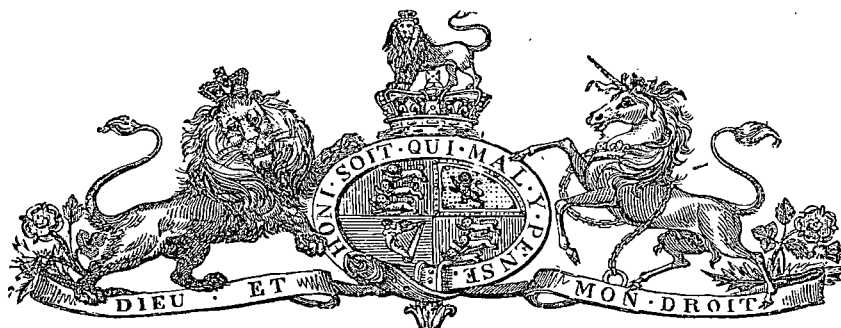
POWERS OF THE LEGISLATIVE COUNCIL IN  
REGARD TO MONEY BILLS:

CASE FOR THE OPINION OF THE PRIVY COUNCIL.

*Return to an Order of the House of Assembly dated June 23, 1899.*  
*(Mr. Ronald Smith.)*

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MOST GRACIOUS SOVEREIGN,

WE, Your Majesty's loyal and dutiful subjects, the Members of the Tasmanian Administration humbly approach Your Majesty with a renewed assurance of our affection and loyalty towards Your Majesty's Person and Government.

We are desirous of submitting certain questions for the opinion of Your Majesty's Most Honourable Privy Council.

Prior to "The Constitution Act," 18 Vict. No. 17 (Tasmanian Act), Appendix A, legislative authority was exercised in this Colony by a Legislative Council established under Imperial enactment.

In the year 1854 the above-mentioned Act was passed to establish a Parliament in Tasmania and to grant a Civil List to Her Majesty, and under its provisions the Legislative Council ceased to exist.

Some light may be thrown upon the aim, scope, and object of 18 Vict. No. 17, by a consideration of the expressed intentions of its framers given in Appendix B, pages 45 to 82.

From these historical references the following extracts are taken:—

In 1853 a Select Committee composed of ten of its members was appointed by the Legislative Council to prepare a Draft of a new Constitution for the Colony.

That Committee reported, *inter alia*, page 54 of Appendix B, that "any Constitution Act which may be adopted should be assimilated as closely to the British Constitution as the circumstances of the Colony will admit," and that it had agreed upon the leading principles "of a measure calculated to effect that object." One of the Heads of the proposed Bill which the Committee agreed upon was as follows:—"That the Revenues of the Colony shall be consolidated, and that all Bills for raising and appropriating the same shall *originate* in the House of Assembly," page 55, Appendix B.

The Committee, in giving reasons for the proposal to establish an Upper Chamber, "acquiesced in the necessity of placing a "*safe, revising, deliberative, and conservative element* between the Lower House and Her Majesty's Representative," page 57, Appendix B. Again, on page 59, the Committee speak of "constructing a Legislature, the constituent parts of which—the Governor, the Legislative Council, and the House of Assembly—bear as *close an analogy to the three estates of the British Parliament as circumstances will allow.*"

In 1854 the Select Committee of the Legislative Council appointed to prepare "a Bill to establish a Parliament in Van Diemen's Land, and to grant a Civil List to Her Majesty," "agreed to accompany the Bill which they had prepared," with a Report, from which the following is an extract:—"In proposing this departure" (prohibiting legislation on affairs of Imperial cognizance) "from the British Constitution, Your Committee have not acted without due consideration. They have endeavoured throughout to *preserve as close an analogy as the circumstances of the Colony would admit* of between the form of Government to be adopted in this Colony and that which prevails in Great Britain; and they have departed from their model only in cases in which it was impossible to preserve the analogy," page 61, Appendix B. On pages 62 and 63 the Report

says that "it is in the Constitution of the Upper Chamber that your Committee have been compelled to propose *the greatest departure from the British Constitution*, and they therefore deem it essential to dwell upon the circumstances which rendered that departure necessary, and the object they have kept steadily in view in the construction of the Legislative Council;" and on page 64 the Committee say that "they consider that nothing but an Elective Upper Chamber was open to their consideration. They have accordingly limited themselves to the devising of expedients *calculated to render the Legislative Council conducive to the end for which a Legislative Upper Chamber is usually recommended by political writers, namely, to guard against hasty and inconsiderate legislation, by securing due deliberation previous to the final adoption of any legislative measure.*" On page 65 the Committee say that "The instincts of the Assembly will be movement, progress, innovation; generally, it is to be hoped, of a useful character, but nevertheless subject to the defects incidental even to improvement, when suddenly introduced. The instincts of the more Conservative body *will be caution, deliberation, resistance to change if not fairly and fully proved to be beneficial.*" In a despatch from Downing-street, dated 2nd August, 1854, and addressed to the Lieutenant-Governor of Van Diemen's Land, the following paragraph occurs:—"I have to acquaint you in reply that Her Majesty's present Government are of opinion that, provided the Legislative Council is so constituted as to possess the respect and confidence of the community, and at the same time to be less directly liable than the Assembly to popular impulse, and to be capable of acting as a *salutary check against hasty legislation*, the particular mode of constituting it is not a matter of primary importance.

The Constitution Act, 18 Vict., No. 17, contains the following provisions:—

Section 1.—"There shall be, in place of the present Legislative Council of Van Diemen's Land, one Legislative Council and one House of Assembly in the said Colony, to be severally constituted in the manner hereinafter prescribed, and such Legislative Council and House of Assembly shall, after the dissolution as hereinafter provided of the existing Legislative Council, have and exercise all the powers and functions of the said existing Legislative Council."

Section 3.—"The Governor and Legislative Council and House of Assembly together shall be called "The Parliament of Van Diemen's Land."

Section 29 provides that the Legislative Council and House of Assembly shall make Standing Rules and Orders. Copies of the Rules and Orders made by the Legislative Council and House of Assembly respectively accompany this case. Appendices C and D.

Section 33.—"All Bills for appropriating any part of the Revenue, or for imposing any tax, rate, duty, or impost shall originate in the said House of Assembly, and it shall not be lawful for the said House of Assembly to originate or pass any vote, resolution, or Bill for the appropriation of any part of the Revenue, or of any rate, tax, duty, or impost for any purpose which shall not have been first recommended by the Governor to the said House of Assembly during the Session in which such vote, resolution, or Bill shall be passed."

By 49 Vict. No. 8, Sect. 6, it is provided that Members of the Legislative Council "shall, subject to the provisions of 'The Constitution Act,' and the Acts amending it, hold their seats for a period of six years, and shall then retire by effluxion of time;" but the Governor is not empowered to dissolve the Council. By Section 2 of 54 Vict. No. 58 it is provided that "Every Assembly hereafter to be summoned and chosen shall continue for three years from the day of the return of the writs for choosing the same and no longer, subject, nevertheless, to be sooner dissolved by the Governor."

Questions have from time to time arisen between the Legislative Council and the House of Assembly with respect to the power of the Legislative Council to alter or amend Money Bills and Bills imposing taxation. The power of the Legislative Council to *reject* a Bill of this kind is not denied by the House of Assembly, and the power of *directly to originate* such a Bill is not claimed by the Legislative Council; but the power to *alter or amend* is not only claimed but has been exercised by the Legislative Council on various occasions, the contention being that, except so far as its powers are limited by the Constitution Acts, it has powers co-ordinate with those of the House of Assembly, and that, as the only provision with regard to Money Bills is that contained in Section 33 of 18 Vict. No. 17, providing that such Bills are to *originate* in the House of Assembly, the Legislative Council is within its powers in altering or amending such Bills.

The House of Assembly contends that the Legislative Council may, and often does, so alter a Money Bill as in effect to *originate* a new financial or taxing measure, and that such action is beyond the powers of the Legislative Council.

Some indications of the powers claimed by the Legislative Council, and the extent to which those powers are exercised, may be obtained from the Votes and Proceedings, Appendix E, which contain a record of the most recent case in which the Legislative Council has amended a Money Bill or Taxing Measure.

During the Session of 1898, "A Bill to further Amend 'The Rural Police Rate Act,'" Appendix F, was passed by the House of Assembly and sent to the Legislative Council for its concurrence. Section 3 of the said Bill was as follows:—

3. For the purpose of raising a sum of money in aid of the maintenance of the Police Force of Tasmania, the Governor in Council may make and levy in and for the year one thousand eight hundred and ninety-nine, and in each of the two years succeeding that year, a Rate of Four Pence in the Pound upon the annual value of property throughout Tasmania, as shown by the Assessment and Valuation Rolls in force in the City of Hobart and the City of Launceston, and for every Rural Municipality and every Municipal District in Tasmania; and all the provisions of the "Rural Police Rate Act" and of the "Rural Police Rate Act, No. 6," shall apply to the making, collecting, and recovery of such Rate as aforesaid.

On the 26th August the Legislative Council returned the Bill with certain Amendments. Among others the Council proposed to amend Clause 3, after "ninety-nine" by striking out the words "and in each of the Two years succeeding that year." The Amendment of the Legislative Council to Clause 3, in proposing thus to reduce the term during which the tax should be levied, appeared to the House of Assembly to be a direction by the Legislative Council as to the form which taxation should take, and as such, an exercise of powers which the Legislative Council does not possess. The effect would be to make the maintenance of the Police during the two years succeeding 1899 a charge upon the Consolidated Revenue and not upon the Special Fund proposed by Ministers and approved by the House of Assembly.

The House of Assembly being desirous to maintain harmonious relations with the Legislative Council, on the 15th September returned the Bill to the Legislative Council with the following message:—

The House of Assembly having taken into consideration the Amendments of the Legislative Council to the Bill, intituled "A Bill to [further amend the 'Rural Police Rate Act'] (provide for the maintenance of the Police Force of Tasmania,)" doth agree to the Council's Amendments to Clause 1, new Clause A, to the Schedule, and to the Title.

The House of Assembly hath felt it to be its duty to disagree to the Amendment to Clause 3 for the following Reasons:—

"Because during this Session relief from taxation upon wealth will, under Ministerial proposals, exceed £28,000 per annum, while all purpose to remit taxation upon the necessities of the people by a remission of Customs duties must be delayed until the Financial Estimates of the Government for 1899 are nearer realisation, when such remission of Customs duties and the entire removal of the Police Rate will be simultaneously considered."

On the 15th September the House of Assembly received the following Message from the Legislative Council insisting upon its Amendment to Clause 3:—

The Legislative Council hath felt it to be its duty to insist on its Amendment to Clause 3 of the Police Rate Bill, 1898, for the following Reasons:—

"Because the Government have intimated their intention to revise the taxation of the Colony during the year 1899, and therefore there is no necessity to provide for a Police Rate beyond the end of next year."

"Because the Council desire that the Police Rate should come under review during the year 1899."

The House of Assembly then requested a Free Conference with the Legislative Council on the subject, and, the Council agreeing, the Conference was held, and the Managers, on the part of the Assembly, reported that the Conference had agreed to recommend to their respective Houses that the Rate be levied and collected in and for the year 1899 and the succeeding year. To this compromise the House agreed rather than imperil the passing into law of the Police Regulation Bill, which was dependent on the passing of the Police Rate Bill.

The questions now submitted for consideration are—

1. Does "The Constitution of Tasmania" confer on the Legislative Council the power exercised by it with respect to the "Bill to further Amend the Rural Police Rate Act?"
2. Has the Legislative Council power to alter or amend a Money Bill or Taxing Measure; and if so, to what extent?
3. Does the Legislative Council possess co-ordinate powers with the House of Assembly with regard to Money Bills and Taxing Measures except so far as those powers are limited by Section 33 of 18 Vict. No. 17?

APPENDICES.

- A. The Constitution Act of Tasmania, and Amendments thereof.
- B. Acts, Reports, Petitions, and Proceedings of Legislative Council relating to introduction of The Constitution Act of Tasmania.
- C. The Standing Orders of the Legislative Council.
- D. The Standing Orders of the House of Assembly.
- E. Extracts from the Votes and Proceedings of the Legislative Council relating to the said Bill.  
Extracts from the Votes and Proceedings of the House of Assembly relating to the same matter.
- F. The Police Rate Bill.

We humbly pray that Your Majesty will be graciously pleased to refer this case for the opinion and report of Your Majesty's Most Honourable Privy Council.

E. N. C. BRADDON, *Premier,*  
*for self and Colleagues.*

(*In continuation of Paper No. 42.*)

*Government House, Hobart, June 17, 1899.*

SIR,

I HAVE the honour to inform you that my Ministers are desirous of obtaining the opinion of the Judicial Committee of the Privy Council upon questions which have arisen here with reference to the right of the Legislative Council to alter or amend Money Bills, and taxing measures which have received the approval of the House of Assembly.

The Prime Minister has forwarded to me a case which I now have the honour to transmit to you with the request that it may be referred to the Judicial Committee of the Privy Council for their opinion.

I have, &c.,

J. S. DODDS.

*The Right Hon. J. CHAMBERLAIN.*

*Downing-street, 27th October, 1899.*

MY LORD,

I HAVE the honour to acquaint you that I have had under my consideration His Honour Chief Justice Dodds' Despatch, No. 33, of the 17th of June, forwarding a case on which your late Ministers desired to obtain the opinion of the Judicial Committee of the Privy Council upon questions which have arisen with reference to the right of the Legislative Council to alter or amend money bills and taxing measures which have passed the House of Assembly.

The questions submitted are, I need scarcely observe, really questions as to the constitutional powers and rights of the two Houses rather than questions as to the interpretation of the Constitution Act, and, except in and so far as they are defined or limited by Statute, each House claims to have the sole right to decide the scope and extent of its powers and privileges.

The consideration of such questions is outside the scope of the usual functions of the Judicial Committee, and its decision would not be authoritative and binding on the parties unless they agreed beforehand to accept it as final and conclusive.

The case submitted is, I presume, prepared by your late Ministers, and however much they may have been entitled to speak for the Assembly, it can scarcely be said that they represented the Legislative Council, and it would be impossible, in a matter so closely affecting the two Houses of Parliament, to ask for a decision on a statement of case which has not, so far as I am aware, been prepared or accepted by either of the parties interested.

The only occasion upon which a reference of such a nature has been made was in the case of the difference between the two Houses of the Queensland Legislature in 1885.

You will see from the enclosed parliamentary paper that the two Houses of that Legislature then adopted a Joint Address to her Majesty praying that the questions at issue between them should be referred for the opinion of Her Majesty's Privy Council, and that they were considered, not by the Judicial Committee, but by a committee, *ad hoc*, in which the Lord Chancellor and some other members of that body were included.

If the two Houses of the Parliament of Tasmania desire to obtain a similar decision on the points of difference between them, and will prepare a Joint Address, setting forth their several claims and the grounds upon which they are based, I shall be prepared to advise Her Majesty to follow the course adopted in the Queensland case.

I shall be glad if you will lay this Despatch and that to which it replies before both Houses of the Legislature.

I have the honour to be,

My Lord,

Your Lordship's most obedient humble Servant,

J. CHAMBERLAIN.

*Governor The Right Honourable VISCOUNT GORMANSTON, G.C.M.G., &c.*