

(No. 74.)



1892.

PARLIAMENT OF TASMANIA.

CONSTITUTIONAL PRACTICE:

CORRESPONDENCE.

Return to Orders:—Legislative Council. (Mr. Coote.)

House of Assembly. (Colonel St. Hill.)

Presented to both Houses of Parliament by His Excellency's Command.



Byron-street, 12th January, 1892.

DEAR MR. FYSH,

PLEASE find hurriedly written copies of my letters to the Governor on the subject of Royal Assent to Bills.

As he has thought proper not to acknowledge these letters, I intend sending them on to the press, and so raise a discussion on the point at issue.

I had intended letting the matter rest until we met next Session, but as it is now a question of courtesy, and not constitutional law, I shall let it go on to the press,—it will give them something to write about during this dull season.

I have searched the Constitution Act, but cannot find anything therein to set the matter right.

The only course now is for you to call Parliament together again and pass a short Act validating that day's sitting—how will you like that?

Yours faithfully,

AUDLEY COOTE.

The Honorable the Chief Secretary, Hobart.

Hobart, 20th December, 1891.

Sir R. G. C. HAMILTON, Governor, Hobart.

SIR,

I desire to draw your Excellency's attention to the House of Assembly's Standing Orders Nos. 26 and 27, which read thus:—

26. "The time for the ordinary meeting of the House shall be four o'clock, unless some other time shall have been agreed upon."
27. "If at a quarter past four o'clock one-third of the Members be not present, Mr. Speaker shall count the House, and if one-third of the Members be not there present, he shall adjourn the House, without a question first put, till the next sitting day."

These having been set aside on the evening of Friday, the 18th inst. On that day the House stood adjourned until 9 P.M.; at 9.15 P.M. there was not a quorum of Members present, and Mr. Speaker, instead of acting in accordance with the Standing Orders and adjourning the House until next day, refrained from taking the chair until 9.25 P.M.; all this irregularity being protested against at the time by the Hon. Member for North Hobart, Colonel St. Hill, who, however, was over-ruled by Mr. Speaker, and the business proceeded with.

I therefore, as a Member of the Legislature, respectfully submit to Your Excellency that the sitting of the House of Assembly on that day was an invalid one, and that consequently all Bills, &c., passed at that sitting must be considered as though not considered.

I respectfully pray Your Excellency to exercise your undoubted prerogative to withhold your assent from any Bills which came before the House of Assembly that evening, which, being the last sitting of the Session, finally dealt with them.

In the event of Your Excellency being advised by your present responsible Advisers that the sitting may be considered as valid, then I respectfully request Your Excellency will forward this letter for the decision of Her Majesty's Secretary of State for the Colonies.

I have the honor to be,

Sir,

Your most obedient Servant,

AUDLEY COOTE.

(No. 74.)

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Byron-street, Hobart, 4th January, 1892.

Sir R. G. C. HAMILTON, K.C.B., Governor, Hobart.

SIR,

I HAD the honor of addressing a communication to Your Excellency on the 20th December last, acknowledgment of which I have not yet been favoured with.

As a Member of the Legislature, I venture to respectfully express a hope that it is only necessary to bring this to Your Excellency's notice.

I have, &c.

AUDLEY COOTE.

Byron-street, Hobart, 12th January, 1892.

Sir R. G. C. HAMILTON, K.C.B., Governor, Hobart.

SIR,

I REGRET again to have to call Your Excellency's attention to a matter on which I addressed you so far back as the 20th December last, and again on the 4th instant, both of which communications have not up to date been vouchsafed the courtesy of acknowledgment.

By the *Hobart Gazette* of the 23rd December last, just three days after Your Excellency was in possession of my letter containing the protest, I observe Your Excellency gave the Royal Assent to the Bills which were the subject of my protest, and, on remonstrating with the Honorable the Premier this morning, I find that Ministers have not been placed in possession of my letter of protest.

The subject of the protest being a grave constitutional point, to which I immediately directed Your Excellency's attention, and no notice whatever taken of my protest, I desire again to bring the matter under the notice of Your Excellency, and to request that I may be favoured with Your Excellency's official views on this subject.

I have, &c.

AUDLEY COOTE.

Attorney-General's Office, 24th December, 1891.

MEMO. FOR HIS EXCELLENCY THE GOVERNOR.

In re Letter of the Hon. Audley Coote to His Excellency, dated 20th December, 1891.

THE facts stated in the Hon. Audley Coote's letter to the Governor of the 20th December instant are correct, but they do not affect the validity of any legislation in which the House of Assembly took part on the 18th day of December instant. The Standing Orders of the House are binding only within the House itself and during the pleasure of the House, and the question of any violation of them cannot be enquired into by any authority outside of the House.

The only statutory provision relating to the daily procedure of the House of Assembly is the 22nd Section of the Constitution Act (18 Vict. No. 17), which declares that "the House of Assembly shall not be competent to despatch business unless there shall be present, exclusive of the Speaker, one-third at least of the Members of the House."

There were twelve Members of the House of Assembly present, exclusive of the Speaker, when he took the Chair on the 18th instant, and soon afterwards several additional Members came into the House.

A. INGLIS CLARK.

(No. 67.)

Government House, Hobart, 24th December, 1891.

MY LORD,

IN accordance with the request of the Hon. Audley Coote, Member of the Legislative Council, I have the honor to send you herewith a copy of his letter of 20th December last, together with a Memo. of the Attorney-General thereon.

I should add that I have given my Assent to the Bills which came before the House of Assembly on the evening of Friday, 18th December, which will be sent to you by next mail.

I have the honor to be,
My Lord,

Your Lordship's most obedient humble Servant,

R. G. C. HAMILTON.

The Right Honorable the Secretary of State for the Colonies.

[Copies of Mr. Cooté's Letter of 20th December and of the Attorney-General's Memo. of 24th December follow here.]

DEAR MR. FYSH,

I AM directed by His Excellency to inform you that the following letter is the whole of the correspondence from him to Mr. Cooté.

Yours faithfully,

H. W. B. ROBINSON.

DEAR MR. COOTE,

I AM directed by His Excellency to express his regret that your letter of 20th December was not formally acknowledged. It was forwarded by him in due course to the Secretary of State, in accordance with your desire.

Yours faithfully,

H. W. B. ROBINSON.

Byron-street, Hobart, 4th January, 1892.

SIR R. G. C. HAMILTON, *K.C.B., Governor.*

SIR,

I HAD the honor of addressing a communication to your Excellency on the 20th December last, acknowledgment of which I have not yet been favoured with.

As a Member of the Legislature I venture to respectfully express a hope that it is only necessary to bring this to your Excellency's notice.

I have, &c.

AUDLEY COOTE.

Government House, Hobart.

SIR,

I AM directed by His Excellency to express his regret that your letter of 20th December was not formally acknowledged.

It was forwarded by him in due course to the Secretary of State, in accordance with your desire.

I am, &c.

H. W. B. ROBINSON, *Private Secretary.*

The Hon. AUDLEY COOTE.

Byron-street, Hobart, 12th January, 1892.

SIR R. G. C. HAMILTON, *K.C.B., Governor, Hobart.*

SIR,

I REGRET again to have to call your Excellency's attention to a matter on which I addressed you so far back as the 20th December last, and again on the 4th instant, both of which communications have not, up to date, been vouchsafed the courtesy of acknowledgment.

By the *Hobart Gazette* of 23rd December last, just three days after your Excellency was in possession of my letter containing the protest, I observe your Excellency gave the Royal Assent to the Bills which were the subject of my protest, and on remonstrating with the Hon. the Premier this morning I find that Ministers have not been placed in possession of my letter of protest.

The subject of the protest being a grave constitutional point, to which I immediately directed your Excellency's attention, and no notice whatever taken of my protests, I desire again to bring the matter under the notice of your Excellency, and to request that I may be favoured with your Excellency's official views on the subject.

I have, &c.

AUDLEY COOTE.

Government House.

SIR,

I AM directed by His Excellency to acknowledge the receipt of your letter of 12th January, and to enclose a copy of letter sent you on 5th January, which apparently has not reached you.

I am, &c.

H. W. B. ROBINSON, *Private Secretary.*

The Hon. AUDLEY COOTE.

Premier's Office, Tasmania, 14th January, 1892.

SIR,

IN reference to your letter of the 12th instant, and to our conversation on the subject of your representations to His Excellency the Governor, respecting the proceedings in the House of Assembly on the evening of Friday, the 18th ultimo, I beg to express my regret at having misled you by stating that the matter in question had not been referred by His Excellency to Ministers. I now find that during my absence from town your letter of the 20th December was received and dealt with by the Attorney-General, but did not pass through the Premier's office for record in the usual manner.

From a copy of a letter addressed to you by the Private Secretary to the Governor, I learn that you have been informed that the communication above referred to was forwarded by His Excellency in due course to the Secretary of State for the Colonies in accordance with your desire.

I have, &c.

P. O. FYSH.

The Honorable AUDLEY COOTE, M.L.C., Hobart.

Byron-street, Hobart, 15th January, 1892.

SIR R. G. C. HAMILTON, *K.C.B., Governor, Hobart.*

YOUR EXCELLENCY,

I HAVE the honor to acknowledge two communications from your Private Secretary. Both these letters are without date, and, being delivered by private hand, bear no post-mark to establish a date, but which were delivered at my house on 12th and 13th inst. respectively.

As these replies inform me that your Excellency has been pleased to accede to my request to forward my protest to Her Majesty's Secretary of State for the Colonies, I assume that the protest in question is accompanied by some memo. from your Excellency's Responsible Advisers on the point.

If this be so, I must once more trouble your Excellency by respectfully requesting I may be favoured with a copy of any Ministerial remarks on the protest submitted to the Secretary of State.

I have, &c.

AUDLEY COOTE.

Hobart, 21st January, 1892.

DEAR SIR,

I send you herewith a further instalment of my correspondence with His Excellency the Governor on the subject of his giving the Royal Assent to Bills.

In doing so, I wish to call your attention to the fact that I have not yet received any acknowledgment of my last letter to His Excellency.

I have, &c.

AUDLEY COOTE.

To the Hon. the Chief Secretary, Hobart.

[Copy Mr. Coote's Letter of 15th January follows here.]

WILL the Hon. the Attorney-General enable Chief Secretary to reply to this?

P. O. FYSH.

I HAVE advised the Governor that there is no precedent for acceding to Mr. Coote's request, and that the standing rule in regard to communications made to a Governor by his responsible Ministers is that they are never published until they have been received and acknowledged by the Secretary of State, and I presume that Mr. Coote has been so informed by the Private Secretary.

A. INGLIS CLARK.
23rd June, 1892.

Attorney-General's Office, Hobart, 20th January, 1892.

MEMO. re the Hon. Audley Coote's letter to His Excellency the Governor of 15th January, 1892.

IN reference to Mr. Coote's request that His Excellency should favour him with a copy of any Ministerial remarks on the protest mentioned in Mr. Coote's letter, I have to state that there is no precedent for such a request being granted, and that the uniform rule with regard to communications made by a responsible Minister to the Officer Administering the Government of a Colony and forwarded by him to the Imperial Government is that they should not be published until they have been received and acknowledged by the Secretary of State (see Todd's Parliamentary Government in the British Colonies, page 98):

A. INGLIS CLARK.

Government House, 21st January, 1892.

SIR,

I AM directed by His Excellency to acknowledge the receipt of your letter of 15th instant.

I am, &c.

H. W. B. ROBINSON, *Private Secretary.*

Byron-street, Hobart, 2nd February, 1892.

SIR,

HIS Excellency the Governor in his reply to my request for a copy of the Honorable the Attorney-General's reasons for advising the Royal Assent to certain Bills against which I have protested not having thought fit to take any notice of such request, I have the honor to request you will be good enough to furnish me with a certified copy of the same.

I shall be glad if you will let me have this information by the post reaching my house not later than Friday morning next, the 5th instant, as I shall be absent from Hobart for a month after that date.

Yours faithfully,

AUDLEY COOTE.

To the Honorable the Chief Secretary, Hobart.

Chief Secretary's Office, 4th February, 1892.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 2nd instant, requesting that you may be furnished with a certified copy of the Honorable the Attorney-General's reasons for advising the Royal Assent to certain Bills against which you have protested.

In reply I have to inform you that advice tendered by Ministers to His Excellency the Governor for his consideration in matters connected with questions affecting his responsibility as Her Majesty's Representative is not communicable to anyone until after the Secretary of State for the Colonies shall have received it and taken such action thereon as he may deem fit.

I have, &c.

P. O. FYSH.

The Hon. AUDLEY COOTE, M.L.C., Byron-street, Hobart.

TASMANIA.

No. 8.

Downing-street, 9th February, 1892.

SIR,

I HAVE the honor to acknowledge the receipt of your Despatch, No. 67, of the 24th December last, enclosing a communication addressed to you by Mr. Audley Coote, drawing attention to the alleged invalidity of Bills passed by the House of Assembly of Tasmania on the 18th of that month.

I request that you will inform Mr. Audley Coote that the matter to which his letter relates is not one upon which the Secretary of State is called upon to give any opinion.

I have, &c.

KNUTSFORD.

Governor Sir R. G. C. HAMILTON, K.C.B., &c.

17th March.

DEAR MR. FYSH,

Before I communicate this Despatch to Mr. Coote I should like to know whether there is any objection to his seeing the Attorney-General's Minute?

Yours faithfully,

R. G. C. HAMILTON.

MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

Premier's Office, 23rd March, 1892.

THE Premier has the honor to return to Your Excellency the Secretary of State's Despatch, No. 8, of the 9th ultimo, in reference to the Honorable Audley Coote's representations as to the invalidity of Bills passed by the House of Assembly on the 18th of December last.

Ministers are of the opinion that the terms of the Attorney-General's Memorandum upon this subject, of the 20th January last, should not be communicated to Mr. Coote until all the correspondence can be laid before Parliament.

Government House, 25th March, 1892.

SIR,

I AM directed by His Excellency the Governor to inform you that he has received a reply from the Secretary of State in reference to your communication of the 20th December, 1891, which was forwarded to His Lordship on 24th December last.

Lord Knutsford requests His Excellency to inform you that the matter to which your letter relates is not one upon which the Secretary of State is called upon to give any opinion.

I have, &c.

H. W. B. ROBINSON, *Private Secretary.*

The Hon. AUDLEY COOTE.
