(No. 66.)

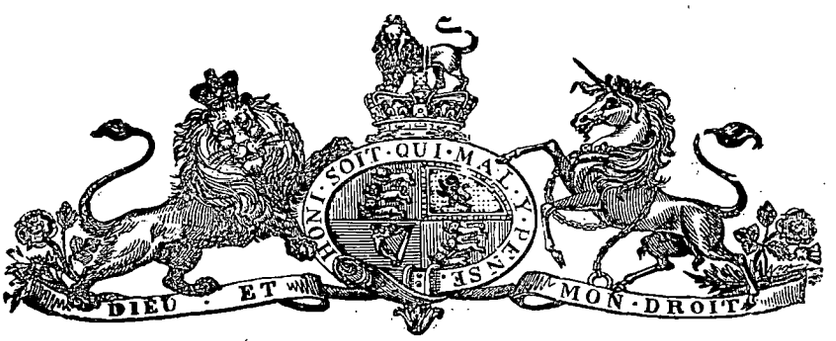
1887.

PARLIAMENT OF TASMANIA.

RABBITS DESTRUCTION BILL, 1886, (No. 3):

CORRESPONDENCE AS TO AMENDMENTS.

Presented by the President, and ordered by the Legislative Council to be printed,
July 13, 1887.



Legislative Council, Hobart, July 13, 1887.

SIR,

I HAVE the honor to place in your hands copy of a letter which, by your direction, I addressed to the Clerk of the House of Commons on the question of Parliamentary practice which arose in the course of last Session in regard to the striking out of Clause 17 from the Rabbits' Destruction Bill, together with the careful and elaborate reply with which Mr. Palgrave was kind enough to favour me.

It will, I think, be generally admitted that that reply contains information which is of much value as regards the regular transaction of business between the two Houses of Parliament in this Colony.

I have the honor to be,
Sir,
Your most obedient Servant,
E. C. NOWELL.

The Hon. the President Legislative Council.

Legislative Council, Hobart, Tasmania, 16th December, 1886.

SIR,

BY the Standing Orders of this Council, "In all cases not specially provided for by the Standing Rules and Orders of the Council, or by Sessional or other Orders, resort shall be had to the Rules, Forms, and Usages of the Commons' House of the Imperial Parliament, which shall be followed so far as the same can apply to the proceedings of the Council." In the Session of 1886, just closed, there was a difference of opinion on the part of the two Houses of Parliament in this Colony as to an amendment to the Rabbits' Destruction Bill, the circumstances being as follows:—

The Bill was passed by the House of Assembly, and sent up for the concurrence of the Legislative Council. It provided that the whole expense of destroying rabbits on Crown land (Clause 7), and half that of their extirpation on Crown land occupied for pastoral purposes (Clause 17), should be defrayed out of the Consolidated Fund. The Council proposed to amend these Clauses by omitting "the Consolidated Fund" and inserting "Funds to be hereafter provided by Parliament." The House of Assembly disagreed to the amendment in Clause 7, and, "being unable to agree" to the amendment in Clause 17, struck out the whole Clause. The Council did not insist on its amendment to Clause 7, but disagreed to the Assembly striking out the whole of Clause 17, for the reasons assigned (*vide* enclosures). The position taken up by the Council was in effect this—That, as the Council did not propose to amend any part of Clause 17 beyond the words "the Consolidated Fund," it had agreed to all the other words of the Clause, and these, therefore, having been agreed to by both Houses, it was contrary to Parliamentary usage for the originating House to make any amendment in them; and that the only part of the Clause open to amendment by the originating House was the words proposed to be amended by the other House. It was, however, contended in the Assembly that the meaning of the authorities cited by the Council was that, as the Council had "touched" Clause 17, the whole of that Clause was open to further amendment by the Assembly; while the position of the Council was, that any amendment made by the Assembly to the Clause at this stage must be confined to the words objected to by the Legislative Council. No exception was taken by the Assembly to the Council's amendments on Constitutional grounds: the difference between the two Houses turned solely upon the question whether the Assembly had the power to deal at that stage with a part of their own Bill, to which no amendment had been proposed by the other House.

With a view of maintaining correct principles of Parliamentary procedure in the Australasian Colonies, which form so important a part of the Empire, I would ask you to be kind enough to inform me whether the course taken by the House of Assembly in regard to Clause 17 of the Bill referred to was in accordance with, or whether it was in contravention of, the law and practice of the House of Commons? I enclose copy of the Bill and documents referring thereto.

I have, &c.

E. C. NOWELL, *Clerk of the Council.*

R. D. PALGRAVE, *Esquire,*
Clerk of the House of Commons.

P.S.—I should be thankful for any information in regard to the procedure on Amendments to Bills as between the two Houses, whether after Conference or otherwise, beyond the point to which the text-books extend, as I have but a few of the volumes of the Journals of the House of Commons to refer to.

E C. N.

Enclosures.

Bill No. 3, as amended, (Rabbits Destruction); Extracts from Votes, Legislative Council;—Message of House of Assembly, 1st Dec.; proceedings of the Legislative Council thereupon, with Reasons; Message to House of Assembly, 2nd December.

House of Commons, 9th February, 1886. *Sic in orig.*

SIR,

I BEG to inform you, in answer to your letter of the 16th December, that Parliamentary practice regarding the interchange of amendments between the two Houses, when a Bill is before them for their joint concurrence, is in accordance with the Reasons transmitted by the Legislative Council of Tasmania to the House of Assembly regarding the omission by that House of Clause 17 in the Rabbits' Destruction Bill.

The omission of that clause could not, as the clause stood, be justified, save as a consequential amendment to the Bill; but no such amendment can be made to a Bill, whilst it is undergoing amendment by the two Houses of Parliament, at a point where the Bill is untouched by either House, except where a new point of departure has been created by the concurrence of both Houses in an amendment,—*i.e.*, by the agreement of one House to an amendment by the other House.

To base a consequential amendment on a disagreement to an amendment would not be permitted here.

The nearest approach to the course taken by the House of Assembly regarding Clause 17 that has occurred in our Parliamentary procedure took place during the passing of the Parliamentary, &c. Elections Bill,—the Ballot Act of 1872.

The Commons sent the Bill to the Lords, and the Lords inserted words to secure the traceability of each ballot-paper by a scrutiny. That amendment was agreed to by the Commons, and they proposed to base on that agreement, as a consequential amendment to the Bill, the omission of Clause 25, being a clause which dealt, not directly, but incidentally, with the subject of a scrutiny. That clause, however, had not been touched by the Lords, and therefore Lord Cairns excepted to the omission of the clause, and, in the first instance, he thus shaped the reason to be urged against it:—

> "Because Clause 25, having already passed both Houses, cannot now be amended or omitted; and the question of agreeing to the Commons' amendment cannot, according to the practice of Parliament, be put."

To a reason so worded Sir T. Erskine May objected, as in effect contradicting all right to make a consequential Amendment; and Lord Cairns substituted for it the following form of reason:—

> "Because this clause has already passed both Houses, and its omission is not necessarily consequential to the amendments of this House to which the Commons have agreed."

Upon the receipt of this reason for disagreeing to the omission of Clause 25, the Commons gave way, and did not insist on the amendment.

I have sought anxiously to comply with your request for information in regard to the procedure on amendments to Bills as between the two Houses, and I consulted thereon Mr. Malkin, of the House of Lords, whose ability and exceptionally large official experience render him a leading

authority in this class of procedure; and we concur in the opinion that copies of the formal documents which contain the messages, reasons, &c. by which the contention between the two Houses over a Bill is carried on would, taken by themselves, afford only fruitless and perplexing study.

Without a complete knowledge of the immediate purport of each step, compelled by the exigencies of the negotiation that is being sought after, the intention and gist of those proceedings are unintelligible.

The general course of procedure on such occasions will be found in the examples given in May's Practice. The underlying principle on which such a contention between the two Houses is carried on is this:—If a compromise over a Bill is possible, then constant care is taken, and resort is made to every expedient, to avoid being pushed into the being obliged to give the checkmate in the game of Amendment,—to avoid being compelled to take the fatal fourth move, *i.e.*, to insist on disagreeing to an Amendment.

Each House therefore strives to gain its end by pushing to the furthest the power of amending amendments, or by the surrender of one point, in order to gain advantage in another; and undoubtedly in this process Parliamentary procedure is occasionally strained to the uttermost, between the necessities of each case, and the observance of the technical rules of the contest.

Believe me to be,
Sir,
Your obedient Servant,
REGINALD F. D. PALGRAVE.

E. C. NOWELL, *Esq.*, *Clerk of the Legislative Council of Tasmania.*

WILLIAM THOMAS STRUTT,
GOVERNMENT PRINTER, TASMANIA.