

(No. 27.)



1877.

SESSION II.

T A S M A N I A.

LEGISLATIVE COUNCIL.

EXTRADITION ACTS OF 1870 AND 1873:

DESPATCH FROM SECRETARY OF STATE.

Laid upon the Table by Mr. Crowther, and ordered by the Council to be printed,
April 24, 1877.



[CIRCULAR.]

Downing-street, 11th January, 1877.

SIR,

QUESTIONS having from time to time been raised in different Colonies, respecting the proper and legal manner for holding preliminary enquiries in cases under the Extradition Acts, 1870 and 1873; and as to the duty of the Governor under Section 17, paragraph 2, of the Act of 1870, I have ascertained that in some Colonies the enquiry has been taken, as in ordinary cases, by a Police Magistrate of the Colony; while in other Colonies the Governor has considered it his duty to examine the witnesses himself, or at any rate to preside while the examination is conducted in his presence.

2. The procedure in such matters must be determined by the language of the Section above referred to, and the Law Officers of the Crown have been consulted upon the question whether Governors of British Colonies are bound to discharge, with regard to extradition under the Act of 1870, all the duties discharged by the Police Magistrates in cases of Extradition from the United Kingdom, or whether they may depute Colonial Magistrates to discharge any of those duties.

3. Her Majesty's Government have been advised that there are in the Act no grounds which would authorise either the Secretary of State or the Police Magistrate to depute any persons to discharge their several duties in relation to the surrender of a fugitive Criminal, and that the Governor is bound to discharge with regard to extradition under the Act all the duties discharged by the Police Magistrate in cases of extradition from the United Kingdom, and that the Governors in British Possessions cannot depute Colonial Magistrates to discharge those duties.

4. You will therefore observe, in the event of any case arising in the Colony under your Government for the extradition of an alleged offender under the Act of 1870, that it will be your duty to conduct the preliminary examination yourself, or at least to have it conducted by some person in your presence and on your behalf, and that all Warrants should be signed by you, which in England would be signed by a Police Magistrate.

5. It is, however, competent to the Legislature of the Colony, as has already been done in the Colonies of New Zealand and Hong Kong, to provide by some law or ordinance for the discharge of these duties by a Magistrate or other Officer, in place of the Governor.

6. Upon this subject I refer you to the 18th Section of the Act of 1870, and in the event of its being thought advisable to relieve you of these duties, you may lay before your Government, for introduction to the Legislature, the enclosed Bill which, after consultation with the Secretaries of State for Foreign Affairs and for the Home Department, I have approved as sufficient for the purpose.

7. You will, however, observe from the 18th Section, above referred to, that such a law will not have complete operation even if assented to by you, and that an Order of Her Majesty in Council will be required to give to its provisions equal force with those provisions of the Act of 1870 which will be thus modified.

I have the honor to be,
Sir,

Your most obedient humble Servant,
CARNARVON.

The Officer administering the Government of Tasmania.