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SESSION II.

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PARLIAMENT OF TASMANIA.

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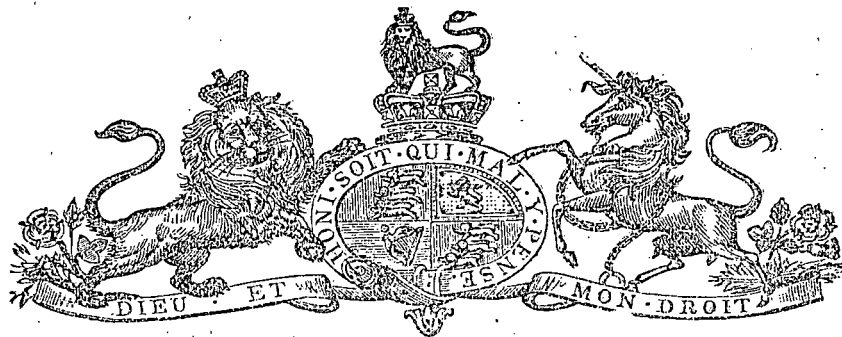
APPLICATION OF THE CLOSURE IN THE  
HOUSE OF ASSEMBLY, TASMANIA:

CASE FOR OPINION OF SIR REGINALD PALGRAVE, K.C.B.,  
CLERK OF THE HOUSE OF COMMONS, TOGETHER WITH  
REPLY THERETO.

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## APPLICATION OF CLOSURE IN TASMANIAN HOUSE OF ASSEMBLY.

### CASE FOR OPINION.

A QUESTION having arisen upon the legality of a certain Ruling given by Mr. N. E. Lewis when acting as Deputy Chairman of Committees in the Tasmanian House of Assembly, it has been agreed to refer it to Sir Reginald Palgrave, K.C.B., Clerk of the House of Commons.

The facts are as follows :—

Facts.

1. On the 29th October, 1896, when "The Great Western Railway and Electric Ore-reduction Bill" was in Committee, an avowed attempt to stonewall the measure was commenced, and it was openly stated by those opposing the Bill that they would continue the stonewalling until the 31st December, 1896, when the House expired by effluxion of time.
2. The stonewalling was continued during the whole night, and about 7 A.M. on the morning of the 30th October, Mr. J. G. Davies, the Chairman of Committees of the House, having been in the Chair all night, and desiring to be relieved for a time, progress was reported, and in the House it was resolved, on the Motion of Sir Edward Braddon (Premier and Leader of the House), "That the Honourable Member for Richmond (Mr. Lewis) be appointed Deputy Chairman of Committees to-day during the proceedings in Committee of the Great Western Railway and Electric Ore-reduction Company's Bill."—(See Votes and Proceedings of the House of Assembly, p. 327, and Standing Orders of the House of Assembly, No. 319.) The Votes and Proceedings for the day are annexed hereto and form part of this case, and a copy of the Standing Orders also accompanies the case.
3. After Mr. Lewis was appointed Deputy Chairman, the Committee was resumed, and during the morning sometimes Mr. Davies occupied the Chair and at other times Mr. Lewis was in the Chair, this being arranged between these two gentlemen to suit their mutual convenience.
4. During the morning of the 30th the stonewalling continued, and Mr. Lewis had occasion to appeal to one Honourable Member not to weary the House, and at the same time informed him that if he continued his wilful obstruction there were other remedies for his conduct, and they would be put in force if he continued his behaviour. (See Votes and Proceedings, p. 329.)
5. Later on when the same Member persisted in debating irrelevantly after having been repeatedly remonstrated with, Mr. Davies, who was at the time in the Chair, ruled that he must cease speaking. (See Votes and Proceedings, pages 328 and 329.)
6. The stonewalling having continued from 7 A.M. till 12 noon on one clause, Mr. Dobson moved, "That the Question be now put." Mr. Lewis, who was then in the Chair, ruled that the Question could be put in that form without discussion, and it was put accordingly, and carried. (See Votes and Proceedings, p. 329.)

A.—Mr. Lewis contends, in support of his ruling, as follows :—

Contentions.

1. That the Standing Orders of the House of Assembly passed on the 17th August, 1892, and approved by His Excellency the Governor on 30th September, 1892, provide in the first Order that "In all cases not provided for hereafter or by Sessional or other Orders resort shall be had to the rules, forms, and practice of the Commons House of the Imperial Parliament of Great Britain and Ireland, which shall be followed as far as they can be applied to the proceedings

of this House," and that in interpreting this Standing Order all rules, forms, and practice of the House of Commons which were in existence on the 30th September, 1892, are applicable so far as they can be applied to the proceedings of the House of Assembly in cases not otherwise provided for. (See *Barton v. Taylor*, 11 App. Cases 197.)

2. That the Standing Order of the House of Commons passed in 1888 and set out in the 10th Edition of *May*, page 828, is therefore applicable to the House of Assembly under the circumstances of the case now under consideration, such being a case not otherwise provided for in the Standing Orders of the House of Assembly.

3. That the 14 Members who voted in the majority in the House of Assembly composed of 37 Members was proportionally a greater majority than the 200 Members required by the House of Commons' Standing Order of 1888 above referred to.

4. That, as a Deputy Chairman duly appointed by the House for the day under Standing Order 319, he had, while in the Chair, all the powers of the Chairman, and that he was not merely in the position of one of the Acting Chairmen in the House of Commons, and that he therefore had the necessary power to apply the Closure. (See Mr. Speaker Brand's Decisions, *Hansard*, vol. 271, pp. 1622-3<sup>a</sup>.)

5. That, apart from the Standing Orders of the House of Commons, there exists the inherent right of the House to control its own rules and not permit them to be notoriously abused, and that the person for the time being in the Chair has all necessary power to suppress irrelevant speaking and manifest obstruction. (See Todd's Parliamentary Government in the Colonies, 2nd edit., p. 70, Mr. Speaker Brand's Decisions, *Hansard*, vol. 235, pp. 1809-26<sup>b</sup>, and *Hansard*, vol. 257, pp. 2032-3<sup>c</sup>.)

B.—On the other hand, it is contended as follows :—

1. That the Standing Orders of the House of Commons passed in 1888, and usually known as the Closure Orders, cannot be applied to the House of Assembly of Tasmania, as they provide that before closure in debate can be enforced a majority of 200 must vote in the affirmative. This names a specific number, and to make the Standing Order of the House of Commons apply in a House where the total number of Members is only 37, and 13 form a quorum, the precise words of the Standing Order must be altered. The words "Two hundred" must be struck out and other words or word substituted to suit the smaller House. The substitution of other words for the words "Two hundred" is unwarranted. The rule must be read literally as it stands, in which case it cannot apply to a House of 37 Members, and therefore cannot be used under the first Standing Order of the House of Assembly.

2. That even if applicable, Mr. Lewis, as Deputy Chairman, could not apply the Closure, such power being reserved to the Speaker and Chairman of Committees of Ways and Means.

3. That the Standing Order No. 188 sets out the circumstances under which a Debate may be interrupted, and it must be implied that a Debate can be interrupted in no other manner.

4. That the House of Assembly of Tasmania has never discussed the question of introducing Closure Rules such as those of the House of Commons, and had it been intended that they should have force in the House of Assembly a clear Standing Order should have been introduced and passed setting forth in specific terms what majority in a House of thirty-seven Members should vote in the affirmative before Closure was enforced. This has not been done.

Questions.

The questions for decision are the following :—

1. Does the first Standing Order of the House of Assembly warrant the Speaker, Chairman of Committees, or Deputy Chairman of Committees in enforcing Closure under the Standing Orders of the House of Commons?

2. Was Mr Lewis right or wrong in putting the question, "That the Question be now put," without allowing debate thereon?

## OPINION.

*House of Commons, S.W., 29th June, 1897.*

DEAR SIR,

It is with some hesitation that I attempt to comply with the wish of the Right Honourable Sir Edward Braddon, as expressed by you, for the matter on which he honours me by asking my opinion exceeds the bounds of ordinary Parliamentary Practice.

To a certain extent, however, appeal may be made to a historical parliamentary precedent. It will be remembered that on Wednesday, 2nd February, 1881, after a sitting begun on the previous Monday, Speaker Brand took, to use his words, the "new and exceptional course" of closing

<sup>a</sup> Cited in Denison's and Brand's Decisions by E. S. Blackmore at page 102.

<sup>b</sup> " " " " " 182.

<sup>c</sup> " " " " " pages 201 and 202.

debate on the introduction of the Protection of Person, &c. (Ireland) Bill, by interposing in the debate by putting the Question thereon from the Chair.

The propriety of the Speaker's action, though unauthorised by precedent or Standing Order, is beyond dispute. If so, considering the similarity of circumstances between events in the House of Commons during February, 1881, and the proceedings in the Tasmanian House of Assembly on 29th and 30th October, 1896, the acceptance by the Deputy Chairman, pursuant to Standing Order 1 of the motion "That the Question be now put," and its enforcement on the lines of our Standing Order 25 (Closure of Debate) was the right course; a vindication of the authority of the House of Assembly, in accordance with the common law of Parliament and of all Legislative Assemblies.

Nor can it be argued that the principle on which our Closure Standing Order is based did not, on that occasion, receive due compliance. The speciality of a majority of not less than one hundred Members, required by our Standing Order, No. 26, was, under the circumstances, fully met; and as the Deputy Chairman was appointed by a Resolution of the House of Assembly, he was endowed with authority analogous to the powers possessed by our Chairman of Ways and Means.

Still, it may not be amiss to remind the Tasmanian House of Assembly of the warning to the House of Commons uttered by Speaker Brand at the close of the proceedings of 2nd February, 1881, that "it would be necessary either for the House itself to assume more effectual control over its debates, or to entrust greater authority to the Chair."

Believe me to be,  
Yours faithfully,

REGINALD F. D. PALGRAVE.

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*5, Victoria-street.*