

(No. 50.)



1891.

---

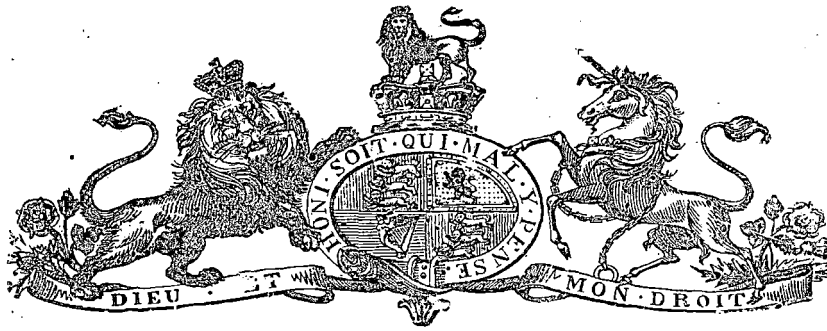
PARLIAMENT OF TASMANIA.

---

PROTEST IN REFERENCE TO THE AUDIT  
BILL, 1890.

---

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



To His Excellency SIR R. G. C. HAMILTON.

SIR,

I HEREWITH forward you copy of Protest of certain Members of the Legislative Council in reference to the Audit Bill, 1890.

The parties protesting are of opinion that the Bill is contradictory in its provisions, and trust that before you give your assent thereto you will be pleased to take the opinion of the Law Officers of the Crown thereon.

The Act 41 Vict. No. 16, which may be termed "The Audit Act," pointed out clearly the duties of the Governor, but when the Act 52 Vict. No. 43 was passed "the Minister" was inserted instead of "the Governor" in Regulation 18, and so superseded the proper functions of "the Governor."

I have to apologise for troubling your Excellency in this matter, but I consider myself justified in the importance of the interests involved.

Your obedient Servant,

ADYE DOUGLAS.  
*Legislative Council, Hobart.*

PROTEST against the passing into law of the Audit Bill, 1890, [No. 28]:—

The Audit Act (52 Vict. No. 43) repeals all former Acts of Audit, and embodies the Regulations of Act 41 Vict. No. 16, with the exception of the slight but important alteration of the word "Governor" in the last-mentioned Act to "Minister" in the first-mentioned Act.

By Section 10 of Act 52 Vict. No. 43, the duties of the Governor, Treasurer, and Auditor are defined, and the Warrant (Schedule 4) is directed to be signed by the Governor. This Section 10, Regulation 18, and the Warrant should be read together, and the introduction of the word "Minister" into Regulation 18 is contrary to and subversive of the meaning of this Act.

Regulation 11 of Schedule 3 appears to have been ignored, or at any rate not acted upon, whereas this Regulation provides for any omissions in the Warrant.

The Bill No. 28 of this Session alters the word "Minister" into "any Minister," thereby rendering it more objectionable.

The Audit Act and Bill being contradictory in their provisions, the latter ought not to be passed into law.

ADYE DOUGLAS.  
W. A. B. GELLIBRAND.  
W. CROSBY.  
WM. DODERY.  
ALEX. M'GREGOR.

Hobart, 28th October, 1890.

FOR Ministers.

R. G. C. H.

*The Auditor-General.*

BEFORE submitting this matter to the Law Officers of the Crown, the Chief Secretary desires that a statement may be prepared of the practice under the various Clauses of the Act and of the Regulations; and to be informed whether each Administration, including that of which the Hon. A. Douglas was Premier, has followed the practice, and whether any innovation has been introduced by this or any previous Government in the administration of the Audit Act. Also, what is the origin of the alteration of "Governor approves" to "Minister approves," and generally any explanation which the Auditor-General desires to offer for the adoption of the practice, and in what way his opinion differs from those of the protestors?

P. O. FYSH.  
31. 10. 90.

---

*Audit Department, Hobart, 3rd November, 1890.*

*Re questions from the Honorable the Premier as to points raised in the protest against the Bill to amend the "Audit Act:"*

From the date of appointment, viz., 8th July, 1873, during part of which time the Audit Acts, 22 Vict. No. 6 and 41 Vict. No. 16 were in operation, it has been the invariable practice to accept a Minister's signature as sufficient authority to Heads of Department for incurring expenditure chargeable to votes as being within the spirit if not the literal meaning of the provision of the section referred to. In no case has the Audit Department required the Governor's signature to be attached to such an authority. I may also add that, from personal knowledge, this practice was also observed during the term of office of the former Colonial Auditor the late Mr. E. J. Manley.

The alteration of the word "Governor" to "Minister" in the section was made at my suggestion when the Bill to amend and consolidate the several Audit Acts then in existence was under the consideration of the Government in the year 1888. This alteration was suggested advisedly, because it was felt that to carry out strictly the provision in the then existing section was an impossible task, as one person could not accomplish this in a satisfactory manner, besides other reasons for the practice which had obtained, and which need not be mentioned in this communication.

After careful reading of the present "Audit Act" Regulations and Instructions, I am of opinion that Section 10 of the Act provides for the issue from the Treasury chest of a certain amount of money to meet expenditure previously incurred and estimated for a defined period under the provisions of Section 18 of Schedule 2; and looking at the fact that the intention of this Regulation is named in Section 9 of the Act, also that it is really part of the Act and has the force of law, I cannot think the introduction therein of the word "Minister" to be subversive of the meaning of the Act, or that, although these two sections should perhaps be read together, that they are necessarily of the same effect.

Section 9 of the Act defines the intention of Schedule 3 to be "Instructions for the guidance of the Treasurer and Auditor in keeping and rendering the Accounts of Receipts and Expenditure;" therefore Section 11 of that Schedule has been looked upon as an instruction as to the mode in which authorities should be issued and passed through the different stages to the Audit Department, and in this respect its provisions have been carefully observed, and not ignored as suggested in the Protest.

It may not be considered necessary to remark in this Memo. upon the Bill to amend the "Audit Act" passed by Parliament, which I have not seen since it was amended, as the objections to the main question have been referred to in the above remarks.

W. LOVETT.

THE Chief Secretary will be glad to receive the opinion and advice of the Law Officers upon the questions raised in the protest of Members of Legislative Council, and upon the practice as set forth in the Auditor-General's Memo.

P. O. FYSH.  
4. 11. 90.

---

JOINT Opinion of Law Officers herewith.

F. STOPS, *Secretary.*  
27. 11. 90.

*The Hon. the Chief Secretary.*

Attorney-General's Office, Hobart, 27th November, 1890.

OPINION *re* AUDIT ACT AMENDMENT.

THE substantial allegation of the Protest made by the Hon. Adye Douglas and his co-signatories against the passing of the Bill to amend "The Audit Act" is that Section 10 of that Act and Regulation 18 should be read together and with the Warrant which the Governor is directed by the Act to sign, and that the introduction of the word "Minister" into Regulation 18 is contrary to and subversive of the meaning of the Act.

This allegation can only be correct if the authority referred to in Regulation 18 is the same thing as the Warrant referred to in Section 10. But it is evident that this is not so, and that there is not any such particular connection between Section 10 of the Act and Regulation 18 as to require them and the Warrant to be read together as alleged in the Protest. On the contrary, Section 10 and Regulation 18 refer to two totally different things, and relate to distinct stages in connection with payments of public money from the Treasury.

The nature of the Warrant and the object of it are made plain by the language of Section 10 and by the form given in Schedule (4). Section 10 defines the duties of the Governor, the Treasurer, and the Auditor-General in respect to the issue of moneys by the Treasurer out of the Consolidated Revenue Fund under the Governor's Warrant, and declares that "the said Form of Warrant, when approved and signed by the Governor, shall be the Warrant to the Treasurer for the issue of the sums of money out of the Consolidated Revenue Fund as therein mentioned, and such Warrant . . . must be filed in the Treasury."

Regulation 18 makes an additional and entirely distinct provision with regard to the expenditure of the moneys voted by Parliament for the Public Service, and its sole object is to prevent Heads of Departments incurring expenditure without having previously obtained Ministerial authority to do so.

Even if the word "Minister" had not been substituted in the present Regulation for the word "Governor" which occurs in the Regulation 18 to the repealed Audit Act, it would still be plain that the authority mentioned in the Regulation is not the same as the Warrant mentioned in Section 10.

There is only one Warrant issued to the Treasurer from time to time, to include many and very various items of expenditure in all the Departments of the Government, but there must, under Regulation 18, be a separate authority, either general or special, obtained by every Head of a Department for each distinct item of expenditure as the occasion for it arises. Again, the Warrant is filed in the Treasury, but the authority is in the possession of the Head of the Department, who is required by the Regulation to produce the authority or refer to it when forwarding to the Treasurer the account of the expenditure authorised by it.

The alteration in the Regulation by which the word "Minister" was inserted therein in place of the word "Governor," which occurs in the Regulation to the repealed Act, was adopted so as to make the practice which has been in existence for many years (*vide* Memo. of the Auditor-General of the 3rd instant) agree with the strict letter of the law; and on this point it may be pertinently observed that Regulation 11 of the Instructions in Schedule 2 of the repealed Act 41 Vict. No. 16 does not mention the Governor, but says that "special authorities will be issued as occasion may require by the Responsible Minister in charge of the Department." From the language of this Instruction it may be fairly inferred that a Ministerial authority, whether general or special, came within the term "the Governor's authority" used in the Regulation 18. Any difficulty on this head, however, is now removed by the amended Regulation. The amendment was certainly within the province of Parliament to make, and the opinion expressed in the Protest, "that the introduction of the word 'Minister' is contrary and subversive of the meaning of the Act," is totally unsupported by any provision contained in the Act, and it is quite evident that the business of the Country could hardly be carried on if it were necessary to obtain the Warrant signed by the Governor and countersigned by the Chief Secretary in respect of every trifling departmental expenditure. The Minister's authority, however, must be obtained by every Head of Department before incurring any expense, and as a final safeguard the money in respect of which the authority is given is included in the Governor's Warrant for the month, and such money cannot be paid by the Treasury unless and until the Warrant is duly issued.

A. INGLIS CLARK.  
ALFRED DOBSON.  
EDW. D. DOBBIE.