(No. 33.)

1871.

TASMANIA.

HOUSE OF ASSEMBLY.

ACTS: RESERVATION OF, FOR THE QUEEN'S PLEASURE.

Laid upon the Table by the Colonial Treasurer, and ordered by the House to be printed, November 8, 1871.

Downing-street, 9th January, 1871.

TASMANIA.
No. 2.

SIR,

I HAVE to acknowledge the receipt of your Despatch, No. 46, of 19th October, forwarding copies of the Speech with which you prorogued the Session of the Parliament of Tasmania.

I observe that you stated in your Speech that the Bill amending the Electoral Franchise had been necessarily reserved for the signification of Her Majesty's pleasure.

I have to point out to you that Section 32 of "The Australian Colonies Government Act" only requires the reservation of any Bill passed by the Legislative Council created under that Act for the purpose of making certain alterations in the Constitution; but it did not make any similar provision respecting Bills passed by the Council and House of Representatives, the establishment of which the Imperial Act contemplated, and which are now in existence. 13 & 14 Vict. c. 59.

Nor am I aware that there is any provision in "The Tasmanian Constitution Act" which makes it necessary to reserve Bills passed subsequently to the establishment of a Council and Assembly. 18 Vict. No. 17.

I have the honor to be,
Sir,
Your most obedient humble Servant,

KIMBERLEY.

Governor DU CANE.

FOR the Ministers.
C. D. C.
17. 3. 71.

FORWARDED to the Honorable the Attorney-General for an expression of his views on the question which forms the subject of this Despatch.

J. M. WILSON.
21 *March*, 1871.

RETURNED to the Honorable the Colonial Secretary with my written Opinion upon the question raised in the within Despatch.

W. R. GIBLIN.
4. 5. '71.

OPINION.

I HAVE perused Lord Kimberley's Despatch of the 9th January last, in which he pointed out to His Excellency the Governor that "The Australian Colonies Better Government Act," 13 & 14 Victoria, cap. 59, by its 32nd Section, "only requires the reservation of any Bill passed by the Legislative Council created under that Act;" and His Lordship in the same Despatch intimates his opinion that no such reservation is required in Bills passed by such a "Legislative Council and House of Assembly" as are now in existence in Tasmania.

His Lordship correctly states that there is no special provision in the Tasmanian Constitutional Act (18 Victoria, No. 17,) making it necessary to reserve for the Royal Assent Bills passed by the Parliament it created: but I, notwithstanding, venture to think, with every deference to the opinion expressed by His Lordship, that the course taken by the Governor, in reserving the Bill to amend "The Constitutional Act" passed last year for the signification of Her Majesty's pleasure

thereon, was not only in accordance with the precedents set by His Excellency's predecessors, but was that prescribed by the Imperial enactments.

The Act for the Government of New South Wales and Van Diemen's Land (5 & 6 Vict. cap. 76), by its 31st Sect., requires a Bill of the nature of that under consideration to be reserved for the Royal Assent, if passed by the Council to be established under that Act. The provisions as to reserved Bills were somewhat altered by the Act 7 & 8 Vict. c. 74; but the provisions of both the Acts referred to were by the 33rd Section of 13 & 14 Vict. cap. 59, declared to be applicable to all Bills which might be reserved under the provisions of the last-named Act.

The 32nd Section of 13 & 14 Victoria, cap. 59, authorised any Legislative Council established under that Act to establish in the stead of such Legislative Council a "Council and a House of Representatives," and further "to vest in such Council and House of Representatives" "*the powers and functions of the Legislative Council* for which the same may be substituted."

This power was exercised in Tasmania by the passing of the local Act, 18 Vict. No. 17, "The Constitutional Act." This Act in its preamble recites the section just quoted; and by its 1st section enacts that "there shall be in place of the present Legislative Council of Van Diemen's Land one Legislative Council and one House of Assembly, "and that such Council and House of Assembly" shall have and exercise *all the powers and functions of the said existing Legislative Council.*"

It is, I think, quite clear that a Body having only limited powers and functions, and being empowered by Statute to confer those powers and functions upon a successor, cannot under such an authority lawfully confer upon such successor any greater or other "powers and functions" than it possesses. It is equally evident that the former Legislative Council had by the 32nd Section of 13 & 14 Victoria, cap. 59, only restricted powers as to Bills to amend the franchise; and I venture to think that it necessarily follows that the old Legislative Council conferred upon its successor the "Legislative Council and House of Assembly" as at present constituted only such restricted and limited powers as were theretofore enjoyed by the preceding Council.

If my view be correct, then the disallowing clause as to Bills altering the franchise is still in force as to Tasmania, and His Excellency in following the course indicated by his Responsible Advisers was acting in conformity with the existing law.

But if in the opinion of Her Majesty's Advisers the time has come when the grant or refusal of the Royal Assent to any Bills (except those specified in His Excellency's instructions) may be safely entrusted to the discretion of the Governor of the Colony without incurring the delay involved in a reference to England, I should advise the preparation of a measure to be submitted to the Tasmanian Parliament for the purpose of removing those disabilities as to legislation under which, in my judgment, that Parliament at present lies; and there can be no doubt that such measure, if passed and assented to, would not only facilitate future legislation, if it should be again required in this direction, but would be acceptable to the Colonists, and favorable to the growing feeling of self-dependence which it appears to be the policy of Her Majesty's Advisers to strengthen and encourage in these Colonies.

W. R. GIBLIN.

Attorney-General's Office, Hobart Town,
4th May, 1871.

MEMORANDUM.

Mr. Wilson has the honor to return to the Governor Lord Kimberley's Despatch, under date 9th January, 1871, on the subject of the reservation for the signification of Her Majesty's pleasure thereon of the Bill of last Session amending the Electoral Franchise, accompanied by an Opinion on the legal bearing of the question by the Attorney-General.

His Excellency's Advisers entirely adopt the views expressed by the Attorney-General in the closing paragraph of his Opinion; and consider it desirable that, if possible, the views of the Secretary of State on the course proposed should be obtained before the next meeting of Parliament, which the Governor will, probably, be advised to call together in October.

J. M. WILSON.
Colonial Secretary's Office,
May, 1871.

His Excellency the Governor.

No. 22. *Government House, Tasmania, May* 15, 1871.

My Lord,

I have the honor to forward a Memorandum addressed to me by the Colonial Secretary, enclosing an opinion by the Attorney-General of this Colony in reference to your Lordship's Despatch of the 9th of January, 1871, in which your Lordship pointed out to me that "The Australian Colonies Better Government Act, 13 & 14 Victoria, cap. 59, by its 32nd Section only requires the reservation of any Bill passed by the Legislative Council created under that Act;" and that in your Lordship's opinion no such reservation is required in the case of Bills passed by such a Legislative Council and House of Assembly as are now in existence in Tasmania.

2. Your Lordship will observe that the Attorney-General gives it as his opinion that by the Constitution Act of this Colony only such powers were vested in the Legislative Council and House of Assembly as were previously exercised by the Legislative Council. Should your Lordship concur in this view, and think it desirable that the grant or refusal of the Royal Assent to any Bills (except those specified in my instructions) should be entrusted to my discretion without incurring the delay involved in a reference to England, I recommend that the further suggestions of the Attorney-General should be acted upon. I also endorse the opinion expressed by my Responsible Advisers that it is desirable that I should be informed as to your Lordship's views on this subject before the next meeting of the Parliament of this Colony, which will in all probability take place in October next.

I have the honor to be,
My Lord,
Your Lordship's most obedient humble Servant,

CHARLES DU CANE.

The Right Hon. the Earl *of* Kimberley.

Tasmania.
No. 22. *Downing-street,* 11 *August,* 1871.

Sir,

I have received your Despatch, No. 22, of 15th May, enclosing an opinion of the Attorney-General of Tasmania upon the point whether the reservation of the Bill amending the Electoral Franchise was or was not necessary.

I referred the question to the Law Officers of the Crown, and I am advised by them that the restriction imposed upon the Legislative Council of Van Diemen's Land by the 12th Section of the Act 13 and 14 Vic., c. 59, remains in force upon the bodies which that Council was authorised to create in substitution for itself, and that it is an Imperial restriction which can only, the Law Officers think, properly be removed by an Act of the same authority which imposed it, that is, the Imperial Parliament.

Her Majesty's Government will always be willing, in the case of a Colony under responsible government, to ask Parliament to remove any disabilities which may be found to present a serious obstacle to legislation, if, as in the present instance, there is no constitutional objection to such a course; but as it is desirable to avoid the introduction of measures into the Imperial Parliament without actual necessity, and it does not appear that any serious practical inconvenience has arisen from the present state of the law on this subject, I do not propose to take any further steps in the matter, unless I hear from you that in the opinion of your Advisers Imperial legislation is urgently needed.

I have the honor to be,
Sir,
Your most obedient humble Servant,

KIMBERLEY.

Governor Du Cane.

MEMORANDUM.

Mr. Wilson begs to return to the Governor Lord Kimberley's Despatch of the 11th August last.

His Excellency's Advisers observe with satisfaction that the Law Officers of the Crown adopt and confirm their construction of the legislative enactments which regulate the reservation for the signification of Her Majesty's pleasure thereon of Bills affecting Constitutional amendments and altering the Electoral Franchise.

The Governor's Advisers are not prepared to express an opinion that "Imperial legislation is urgently needed" for the removal of the Statutory restrictions which now, in the case of the class of measures under consideration, "involve the delay of a reference to England." But His Excellency's Ministers entertain a confident expectation that, in compliance with the wishes of the Governments and Legislatures of all the Australasian Colonies, expressed in the Resolutions of Conferences and in recent enactments, Her Majesty's Government will shortly introduce into the Imperial Parliament a Bill for the removal of all the existing disabilities and restrictions which now fetter the free fiscal legislation of these self-governed Dependencies of the Crown.

Ministers would suggest that a clause might be appropriately introduced into such a Bill repealing those Sections of the 13th & 14th Victoriæ, Cap. 59, which necessitate the reservation of legislative amendments of the Constitutional Act, and of the Electoral Franchise, in any or all the Australian Colonies, for the signification of Her Majesty's pleasure.

J. M. WILSON.

Colonial Secretary's Office,
25th October, 1871.

His Excellency the Governor.

JAMES BARNARD,
GOVERNMENT PRINTER, TASMANIA.