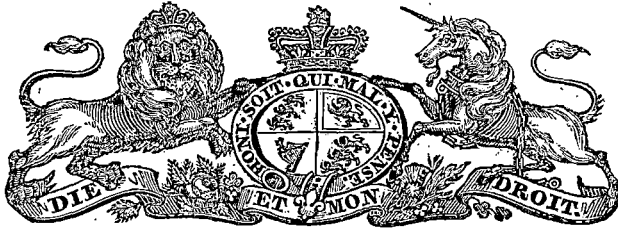


(No. 9.)



1856.

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T A S M A N I A.

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DESPATCHES.

RIGHT OF THE LEGISLATIVE COUNCIL TO COMPEL THE  
ATTENDANCE OF WITNESSES.

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Presented to the House, and ordered to be printed, 11 December, 1856.



(No. 178.)  
[EXECUTIVE.]

*Government House, Hobart Town, 6th December, 1855.*

SIR,

I HAVE the honor to report that the prorogation of the Council on the 18th September last to the 20th October following, as reported in my Despatch, No. 136, of the 26th September, was continued in the customary mode by Proclamation until the 28th ultimo, so as to admit of the Judgment of the Supreme Court on the legality or illegality of the Speaker's Warrant being pronounced before the opening of the second Session.

The Judgment was given on the 27th ultimo, as reported in my Despatch No. 176, 4th December, and the Council assembled the following day; and I now enclose copy of my Speech to the Legislative Council on the 28th ultimo at the opening of the second Session of this year, together with copies of the Address of the Council and of my Reply.

I have the honor, &c.

H. E. F. YOUNG.

*The Right Hon. SIR WM. MOLESWORTH, Bart.*

(No. 179.)  
[EXECUTIVE.]

*Government House, Hobart Town, 7th December, 1855.*

SIR,

WITH my Address to the Legislative Council at the opening of its second Session on the 28th ultimo, I deemed it my duty to introduce, with the advice of the Law Officers of the Crown, a Bill to render persons refusing to attend either at the Bar of the House, or before a Select Committee, liable to a certain and definite punishment.

2. The objects thus sought to be attained were, first, to obviate any future recurrence of the risk of a public disturbance, which in the previous Sessions the proceedings of the Council (as reported in my Despatch, No. 136, of the 26th September) rendered imminent, when they resolved to disregard both a Writ of *Habeas Corpus* and the opinion of the Law Officers of the Crown, that the Council did not possess power to arrest and punish a witness for non-attendance. Secondly, the aim of the Bill proposed by the Local Government was to enable the Council to do that in future legally, which in the instance referred to they had resolved to do *per fas aut per nefas*.

3. I regret to report that, although the judgment of the Supreme Court has confirmed the opinion of the Law Officers that the Speaker's Warrant was illegal, the Bill above mentioned has been rejected by the Council; and further, that a motion by the Attorney-General, "for leave to bring in a Bill to authorise the local Legislature of Tasmania to define from time to time the privileges, powers, and immunities to be enjoyed by such Legislature," was also unsuccessful, although it embodied a section of the Constitution Act of the Colony of Victoria.

The Legislative Council of Tasmania, as at present composed, maintain that, notwithstanding the judgment of the Chief Justice, and the concurrent opinion of the Law Officers of the Crown, they possess by inherent right all the powers and privileges which the Council may by its mere resolution deem applicable to the Colony.

4. The Select Committee to enquire into the Convict Department has been re-appointed by the Legislative Council; and it is within the bounds of possibility, although I trust not of probability, that the refusal of a witness to attend, and his punishment for this alleged contempt, may again place the Council in the impolitic and disreputable position of attempting to enforce its authority without legal power.

5. Should this deplorable contingency occur, I shall not be discouraged from renewing my proposition to the House to clothe itself by Legislation with the requisite power.

6. I annex a Copy of the Bill mentioned in my opening Address; and it will be readily perceived to be drawn carefully to provide simply for the punishment of contumacious witnesses, without compromising the opinion of the majority of the Council as to their supposed inherent powers and privileges.

7. By an extraordinary perversion of the real facts of the "Privilege" question, the conduct of the Executive in Tasmania has been recently described by the Council as antagonistic to Constitutional Government, and as calculated to bring the principles of a Representative Legislature into contempt and disrepute; and on the "Convict" question, as "sheltering criminals and palliating abuses."

8. It is probably owing to the intense unpopularity of the "Convict" system, and the desire to rid the Colony of it by every means, that the question of abuses in the Convict Department, however essentially distinct from that of "Privilege," has nevertheless become involved in it, and that views so erroneous and extravagant have been expressed by the present Council. The power to arrest and punish for non-attendance, it is to be observed, is directed against the head of the Convict Department. When time shall have allayed the strong party feeling and prejudice which have inspired the hallucination of the last days of the present Council, public opinion, ceasing to be morbid, will dispassionately recognize the truth that the Executive, on the question of abuses among the Convict Officers, rightly refused to regard the accused as "Criminals" (who even in that capacity would have been entitled to a judicial trial and freedom from the inquisitorial proceedings of the non-judicial Legislative Council); and that, so far from "abuses being palliated and truth disguised," their existence was enquired into, ascertained, disposed of by the Executive with censure for the past, and effectual prevention for the future, and the decision was publicly made known to the Legislature in reply to their motion of enquiry.

9. As respects the Privilege Question, the Executive, instructed by the advice of the Law Officers of the Crown, and justified by the decision of the Supreme Court, and by the respect and veneration due to the Writ of *Habeas Corpus* as a time-honoured legal protection and guarantee of personal freedom, is entitled to the gratitude of all true advocates of popular rights and privileges for adopting the constitutional means of prorogation, to prevent a disturbance of the public peace expected to arise from a violation of the liberty of the subject under an illegal warrant of arrest.

10. The true dignity and efficiency of the Legislative Council are best promoted when the exertions of the Executive are directed, as in the case of the late prorogation, to prevent illegal violence; to uphold the sanctity of the Writ of *Habeas Corpus*; to preserve inviolate the liberty of the subject; to propose by legislation to remove all doubt or difficulty in the future mode of compelling the attendance of Witnesses; and to respect the judgment of the Supreme Court.

11. The present Council, acting on principles opposite to these, becomes extinct very shortly by the issue of writs for the general election of two entirely elective Houses; and I cannot doubt that the good of the public service, and the harmony which both duty and inclination will ever induce me to preserve between the Executive and the Legislature, will be promoted by the change to the New Constitution.

I have, &c.,

H. E. F. YOUNG,

*The Right Hon. SIR WILLIAM MOLESWORTH, Bart.*

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(No. 180.)

[LEGISLATIVE.]

*Government House, Hobart Town, 13th December, 1855.*

SIR,

At the request of the Legislative Council, I have the honour of transmitting their Address to the Secretary of State, bringing to notice certain official communications which have passed between the Governor and the Council arising out of proceedings during the first Sessions in the present year, on the questions of "Power and Privilege" and "Abuses in the Convict Department."

2. I enclose an entire copy of the Votes and Proceedings of the Council in which the Address is printed; and I append remarks on such of its statements as require comment.

"2. The circumstances which form the subject of this communication arose out of a Resolution on the part of the Legislative Council to institute an enquiry into certain alleged abuses in the Convict Department of this Island, which, from their nature and extent, the Council deemed to fall within the legitimate scope of their Legislative functions. To the appointment of a Select Committee for this purpose every objection and opposition was interposed by the Governor and his Executive advisers; and the proceedings resulting from this antagonistic attitude of the Government towards the Council we now desire to explain to you for Her Majesty's information, as explicitly and succinctly as the nature of the occurrences will admit."

The objection and opposition interposed in the Legislative Council by the Governor and his Executive Advisers were confined to the constitutional means of discussion, explanation, and debate in Council, with Messages and replies to Addresses. The result was that the Government was out-voted: then the Council appointed its own Select Committee; after which no interference with the Committee was attempted by or for the Governor, who relied on the sufficiency of the previous investigation in Executive Council, and on the report of the case to the Secretary of State, as one appertaining to an Imperial, and not a Colonial subject.

"4. It is unnecessary for us to remind you of the somewhat anomalous positions filled by His Excellency Sir Henry Fox Young, in being at the same time Governor of Tasmania and Head of the Imperial Penal Establishments in this Island; but it may be pertinent to the subject of this communication to remind you, that criminals convicted by the Juries of the Colony, and by Justices of the Peace, and undergoing what are termed Colonial sentences, are frequently included within the same prisons and penitentiaries as the transports who have reached this country under sentences passed upon them by English Courts. The necessity for this intimation will be found in the circumstance, that the resistance and obstruction to the exercise of the Council's right to investigate abuses in all Government Establishments within the Colony were supported by the Executive, upon the plea that the Council, as constituted for the purpose of Colonial Legislation, had no power or authority to institute enquiry into the administration of Establishments supported with Imperial funds, and designed for the punishment of Imperial prisoners."

The frequent confinement of criminals undergoing what are termed Colonial sentences within the same prisons and penitentiaries as the transports under sentences by English Courts, is a special convenience and economy to the Colony; the prisons of the Imperial Government serving for the reception and custody of Colonial offenders.

"5. Without granting the position assumed by this view of the subject, the Council, to prevent any further objection on this point, expressly confined the enquiries they requested at the hands of the Government to Prisoners undergoing Colonial sentences, and to charges solely affecting Colonial property."

It will be apparent from the terms of the motion for the appointment of the Select Committee that their enquiry was not confined to Colonial convicts; and indeed, from the system adopted for the convenience of the Colony of receiving Colonial prisoners into the Convict prisons, no enquiry into the management of Convicts exclusively Colonial could be entered upon without a general enquiry into the management of the Imperial Establishments.

In my Despatch, No. 132, of 10th December, 1855, was transmitted a Report, that no Prisoner and no material chargeable to the Colony was employed for private purposes.

"6. Thus much premised, we would state at once that certain Officers of the Convict Department were charged early in the present year with being guilty of fraud, peculation, and embezzlement by one of the Public Journals. These accusations were couched in clear and explicit terms; names, dates, and facts were set forth with a minuteness of detail that imperatively demanded an answer from gentlemen occupying such positions in the Colony. No notice, however, was taken by these Officials of the allegations preferred against them; and when, Sir, we inform you that the charges combined the illegal employment of convict labour for private purposes, the dishonest use of materials belonging to the Colony, and the entire subversion of the ends of justice by allowing Prisoners under sentence to work in private clothes in the erection of two houses belonging to Mr. May, Superintendent of the Penitentiary, and Lieutenant-Colonel Hamilton, the Officer in command of the Engineers, we need scarcely say it appeared necessary for us to institute an immediate investigation for the purpose of ascertaining whether such grave charges were based upon sufficient grounds."

So far from the charges, by one of the public journals, of fraud, peculation, and embezzlement, against the Officers of the Convict Department, being unnoticed, although preferred in clear explicit terms, with names, dates, and allegations specified, these publications were the precise subject of the enquiry which was at once instituted by the Governor aided by his Executive Council, including the Attorney-General; and the result of the enquiry was forwarded to the Secretary of State.

“On the 24th of the next month—the Legislative Council having been assembled in the interim—Mr. Wedge, the Member for Morven, asked the Colonial Secretary the following questions in Council :—

1. Whether the charges that had been preferred against some of the Officers of the Convict Department by one of the public newspapers (*The Daily News*) have come under the notice and consideration of the Government? and if so—

2. Whether any investigation has taken place? if so—

3. What has been the result of it?

Previous to putting the question, he wished to remark that he should not have thought it necessary to do so simply from what had appeared, but a statement had appeared in the papers that His Excellency had issued an order in consequence. He wished to make no comment, except that such being the case was an additional reason for an investigation. He was actuated by no hostile feeling either of person or party; he did not even know one of the Officers so charged by sight. He understood from the Colonial Secretary that it was the intention of the Government, in breaking up the Department, to appoint those discharged Officers to Government situations.

The COLONIAL SECRETARY explained that he had spoken in reference to the Launceston Convict Officers.

Mr. WEDGE then put his question. He considered it highly important that if those gentlemen were to receive government appointments, the whole matter should be thoroughly and publicly understood.”

The Colonial Secretary has explained to me that this obscure allusion means, that discharged Officers of the Convict Department at Launceston would be retained in the service of the Colonial Government if eligible.

“When therefore, in reply to some further questions asked in the House by Mr. Wedge on the same subject, the Colonial Secretary declared that his previous answer was designed to be “final and conclusive to all questions upon this topic,” we felt that the moment had arrived when the Council must act for itself, and do its duty irrespectively of the previous decisions formed by the Executive. We deem it advisable to insert here the Colonial Secretary’s reply in Council from which the above sentence is quoted :—

#### ABUSES BY OFFICERS IN THE CONVICT DEPARTMENT.

Mr. WEDGE, pursuant to notice, asked the Colonial Secretary the following questions :—

1st. Whether it has been ascertained how far the “*great abuses*” admitted to have taken place by the Officers in the Convict Department have extended by the unauthorised employment of Convict labourers, and in obtaining stone in the Government quarry, contrary to the Lieutenant-Governor’s Order of the 18th September, 1854, and other building materials from the settlement at Port Arthur.

2nd. Whether the number of Convict labourers employed “without authority” by the respective Officers who have come under censure have been ascertained?—and how long were they so employed?

3rd. How many of those Convicts were under *Colonial sentence*?

4th. Whether the *value* to each of those Officers who have used “without authority” the labour of Convicts under sentence has been ascertained?

5th. Whether repayment has been demanded from those Officers who have so misappropriated Convict labour “without authority?”

6th. Whether land on which were built the “*private houses*” alluded to in the reply to my questions had not been purchased from the Comptroller-General?

7th. Whether it had, or had not, been ascertained in the enquiry instituted by the Executive Government that the Comptroller-General was aware of the “*great abuses*” referred to?

8th. Whether it had not been ascertained by the enquiry that the Comptroller-General had also availed himself “in the use of Convict labourers without authority?”

9th. Whether some of the stone worked at Port Arthur contrary to the Lieutenant-Governor’s Order of the 18th September, 1854, had not been sent to Hobart Town for the Comptroller-General?

10th. How many constituted the Board of Enquiry?—and by whom was it composed?

11th. What evidence had the Board to guide them in the conclusion they came to—in other words, was it from an *ex parte* statement of the parties accused, or had the parties preferring the charges an opportunity afforded them of substantiating them?

The COLONIAL SECRETARY said the communication which he had made to the Honourable Gentleman and the House on the 24th of July last he intended to have been a final and conclusive answer to all questions on this topic. He had then stated that the enquiry in question had not taken

place before an ordinary Board, but before the Governor and Executive Council, the constituted authorities for trying official delinquencies. If, therefore, he answered the questions of the Hon. Member for Morven, he (the Colonial Secretary) would be admitting the right of that House to review the proceedings of the Executive,—a right which neither His Excellency was disposed to recognize, nor for which he was sure would any Member desire to contend.

Mr. KERMODE would like to say a word before the question was disposed of.

The SPEAKER reminded the Hon. Gentleman the question having been answered nothing more could be said on the subject."

It will be obvious that before this period the Governor had forwarded his Despatch, No. 132, dated 10th September, before alluded to, and consequently awaited the receipt of the reply.

"On the 14th of August, the Legislative Council resolved upon the appointment of a Select Committee on the Convict Department. This Resolution was supported by Eighteen Members, of whom Sixteen Members were elective. They were opposed by Six, of whom Five were Officers of the Government, and One was a non-elective or nominated Member.

The object of the appointment of this Committee will best appear from an Address voted immediately afterwards to the Governor, requesting His Excellency to direct the attendance of the Officers of the Convict Department to give evidence before the Committee.

We would call your particular attention to the three following documents; viz.—the Address to the Governor, His Excellency's Message (No. 12) in reply; and the Resolutions adopted by the Legislative Council with reference to that Message.

*To His Excellency the Governor SIR H. E. F. YOUNG, &c., &c.*

MAY IT PLEASE YOUR EXCELLENCY.

WE, Her Majesty's dutiful and loyal subjects the Members of the Legislative Council of Van Diemen's Land, in Council assembled, beg to inform Your Excellency that on Tuesday last, the 14th instant, a Select Committee was appointed by this Honourable House to enquire into and ascertain,—

1. Whether Convicts under Colonial sentence have been employed "without authority" by the Comptroller-General, Lieutenant-Colonel Hamilton, Mr. Boyd, Mr. May, or by other Officers in the Convict Department, "for their own benefit in the construction of private houses," or for any other purpose; and to ascertain the number of men so employed "without authority,"—the period of their being so employed,—and at what rate of wages?

2. Whether the Colonial Government has been obliged to hire free labourers for the construction or repair of public works; and to ascertain the number of free persons so employed,—for what period,—and at what rate of wages?

3. Whether any materials belonging to the Colonial Government have been made use of,—to what extent,—and of what value?

4. Whether Vessels belonging to the Government, or those chartered by the Government, have been made use of for the transit of stone or other building materials from Port Arthur, or from any other part of Tasman's Peninsula, to Hobart Town, for the private use of the Comptroller-General, Lieutenant-Colonel Hamilton, Mr. Boyd, Mr. May, or of any other Officer in the Convict Department; and whether the said stone and other building materials, when landed at Hobart Town, were removed to the "private houses" or premises "of the several Officers impugned," or some of them, by gangs of Convicts under Colonial sentence, and under the superintendence of Government overseers?

5. Whether any repayment for the value of the labour of Convicts under Colonial sentence, or the value of building materials made use of contrary to orders, has been made or demanded?

6. And to make such other enquiries into the abuses in the Convict Department which may appear to affect the Colonial interest?

That, in order to conduct the enquiry above referred to, it is necessary for the Committee to have all available evidence.

We, therefore, respectfully request that Your Excellency will be pleased to direct the attendance of all officers and others of the Convict Department, or under the Colonial Government, who may from time to time be summoned by the said Committee to give evidence; and to require the said officers and others to provide all books, papers, and records in their keeping, to enable the Committee to arrive at a just conclusion."

It is only necessary to observe, that the precise course taken by the Executive on this motion for the appointment of a Select Committee is indicated by the amendment proposed previously by the Solicitor-General, on the 14th August, as set forth in the Votes and Proceedings, page 102, of the first Session of 1855, viz:—"That this House do postpone any further enquiry into the abuses in the Convict Department which have been recently censured by the Governor, until sufficient time has elapsed for the receipt from the Home Government of the Despatch conveying intelligence of such abuses and censure to the Secretary of State.

This course necessarily guided the subsequent course pursued by the Executive.

"H. E. F. YOUNG,  
Governor.

## MESSAGE No. 12.

THE Governor will transmit the Address of the Legislative Council on the Convict Department to the Right Honourable the Secretary of State, and on the receipt of directions to comply with it, or any other answer, the Legislative Council will be informed accordingly.

2. The Governor meanwhile refers to the answers given on the 24th July by the Colonial Secretary in the Legislative Council, on the subject-matter of the present Address.

The six points contained in this Address differ in scope, but they involve the same consequences as the renewed enquiries made in the Legislative Council on the 3rd August;—those enquiries related to all Convicts. The present Address purports to be limited to Convicts under Colonial sentences, and the abuses in the Convict Department which may appear to affect the Colonial interests; but the reply of the 24th has been already announced as final, and related to all Convicts.

It cannot with propriety be subjected to any local review, appeal, or alteration by a non-judicial body like the Local Legislature, unless the Governor is so directed by Her Majesty's Government, to whom application has already been made to signify a decision with the least possible delay.

To the Local Legislature belongs perfect liberty of intervention over all matters exclusively Colonial; but Her Majesty's Penal Establishments for Transported Offenders are erected on Crown Land, maintained by the British Treasury. For their management and discipline the British Government at present are exclusively responsible to the British Parliament,—not to the Tasmanian Legislature; and these duties are now confided to Officers paid from Imperial funds, and subordinate in this Colony to the Governor alone, whose decision, after consultation with the Executive Council, has been pronounced, acted upon, and communicated to the Secretary of State.

3. So long as Her Majesty's Penal Establishments are under the exclusive control of the Imperial authorities, the interference of any non-judicial body, such as is the Legislative Council, is inadmissible without the express sanction of the Secretary of State.

In the event, however, of the Legislative Council being disinclined to entrust the discipline and management of Colonial Convicts to Imperial Officers and Establishments, it may be competent for the Council to enact in due form of law that Convicts under Colonial sentence shall be removed from or kept in penitentiaries other than those now maintained and controlled by Imperial authority,—a change which, the Governor does not hesitate to say, would be inadvisable for the present."

It is to be observed that the Council had been made aware, during the debate on Mr. Wedge's motion of the 14th August, that a Despatch, reporting the disposal by the Governor in the Executive Council of the charges against the Convict Officers, had already been sent to the Secretary of State; and this information formed the ground of the Solicitor-General's amendment already mentioned.

4. "The Governor, therefore, under all the foregoing considerations, declines to direct the attendance of Officers, and the production of papers, in order to facilitate the re-opening of an inquiry into charges which have, by the Governor in the Executive Council, been disposed of, subject to the approval or otherwise of Her Majesty's Government."

It will be seen that the same reason which compelled the Executive to oppose the appointment of the Committee, pending the receipt of the Secretary of State's reply to the Governor's Despatch, necessitated a refusal to direct the attendance of Officials of the Imperial Convict Establishments.

"We are at a loss, we confess, to imagine the reason that could have dictated His Excellency's refusal to instruct these Officials to attend. If they were innocent, it was only just to them to give them an opportunity of proving their innocence; if they were guilty, it was certainly not the duty of the Governor of a British Colony to shield them from the consequences of that guilt. In accordance, however, with the Resolutions brought before the House by the Hon. Member for Morven, our Select Committee proceeded to examine witnesses.

The evidence of the Colonial Secretary, who had himself filled the office of Comptroller-General of Convicts,—of Mr. Kirwan, a Police Magistrate, and Dr. Hall, who had been a Medical Officer at more than one of the Penal Settlements in the Colony, disclosed matters and circumstances which led the Committee to deem the evidence of the Convict Officials essential to the thorough discharge of their duties.

Accordingly the Comptroller-General and the Medical Officer in charge of the Nurseries were required to come before the Committee, and furnish such information and produce such documents as might conduce to a complete elucidation of the subject under investigation. The conduct of the Officers so summoned, and that of the Executive Government, and of the Legislative Council, will appear from the subjoined documents:—

*Comptroller-General's Office, 6th September, 1855.*

SIR,

I HAVE to acknowledge the receipt of a document signed by you, and dated this day, summoning me personally to be and appear before a Select Committee of the Legislative Council to enquire into the state of the Convict Department, and to inform you that I decline to comply with such Summons.

I am, Sir,

Your obedient Servant,

T. G. GREGSON, Esq.,  
Chairman of Committee."

J. S. HAMPTON, Comptroller-General.

## "DR. HAMPTON.

The SPEAKER said he had the honor to report that, in accordance with the orders of the House, he had issued a Warrant for the apprehension of Dr. Hampton; that the Sergeant-at-Arms had accordingly proceeded to Dr. Hampton's residence, and had had an interview with him, and subsequently presented the following Report, which he would read to the House:—

MR. SPEAKER,

I HAVE the honor to report for the information of this Honourable House, that, in accordance with your Warrant, issued to me this day, to take into my custody the body of John Stephen Hampton, I proceeded to his Office this forenoon, and learned that he was at his own residence. I accordingly went there, and was admitted to his presence, when I produced my Warrant for his arrest; which after he had read, he gave me the following reply, and which I have not the least doubt, from the preparations I witnessed in his house, he will carry out to the shedding of blood, as he told me he would rather die than suffer himself to be deprived of his liberty by such an illegal act as this Warrant of the Speaker. The exact words of Dr. Hampton's reply were noted by me at the moment, and are as follows:—

'Dr. Hampton says—that the Warrant is illegal, and that he will forcibly resist to the utmost of his power any attempt to execute that Warrant, and deprive him of his liberty; and further, that he will regard any person coming upon his premises for the purpose of executing that Warrant as trespassers, and deal with them accordingly.'

I have the honor to be,

Sir,

Your most obedient humble Servant,

JAMES FRASER, *Sergeant-at-Arms L. C.*

*Legislative Council Chamber,  
12th September, 1855.*

*"Council Chamber, 14th September, 1855.*

MR. SPEAKER,

I HAVE the honor to report for the information of this Honorable House that, in accordance with your Warrant issued to me this day to take into custody the body of John Stephen Hampton, I waited upon the Chief Police Magistrate and read to him your Warrant, and requested him to furnish me with Constables to carry this into effect. His answer was, 'I do not consider myself warranted to act without receiving further instructions upon it.' He then left me for the Executive Council, and I said that I would return in an hour for his answer.

I then waited upon the Sheriff, and read to him your Warrant, and received the following reply:—

'The Sheriff says that it is his earnest desire, and he also considers it is his duty, to obey every legal order which he may receive from the Legislative Council; but that he is unfortunately a feeble man, in the 76th year of his age, and that it is therefore utterly impossible for him to act personally in this matter, and that he has no officers or men of any description under his control whom he can depute to act; that his javelin men have been so reduced in numbers by the Executive Council that he has now barely sufficient for the protection and safe keeping of the prisoners in her Majesty's gaol; and that he is even obliged to apply to the Police for Constables to attend the Supreme and other Courts to do the duty of javelin men.'

With respect to raising the *posse comitatus*, I am at a loss to know whether I could legally do so.'

At 2 P.M., I addressed the following note to Mr. Burgess:—

*'14th September, 1855.*

SIR,

THE Speaker of the Legislative Council requests you will furnish him with an answer by 3 o'clock, whether not you will grant the Police Force to aid in the arrest of John Stephen Hampton.

I have, &c.

J. FRASER.

F. BURGESS, *Esq., Chief Police Magistrate.'*

I received the following reply:—

'SIR,

BEFORE I answer your requisition it will be necessary for me to obtain the opinion of the Law Officers of the Crown for my guidance. Will you, therefore, in order to enable me to do this, furnish me with a copy of the Speaker's Warrant?

I have, &c.

F. BURGESS.

*To the SERGEANT-AT-ARMS.'*

'SIR,

IN a matter of so much importance I don't feel justified in acting upon my own judgment and responsibility; and must, therefore, obtain legal advice, which I fear I cannot have without a copy of the Warrant, and which, under any circumstances, will require some little time.

I have, &c.

F. BURGESS.

*To the SERGEANT-AT-ARMS.'*

J. FRASER, *Sergeant-at-Arms.'*

## "DR. HAMPTON'S LETTER.

*Boa Vista, 14th September, 1855.*

SIR,

I HAVE declined hitherto to allow myself to be arrested under your Warrant, because I believed, and still believe, that such Warrant is illegal; but observing from the further proceedings of the Legislative Council, that it is the intention of the Council to employ force in the execution of its assumed right to punish my alleged contempt in not attending as a witness before a Select Committee of the House, I am now desirous to adopt such a course as will, without compromising my right as one of Her Majesty's subjects, prevent the possibility of any breach of the peace. With this view I beg you to express to the Council my willingness to allow the Sergeant-at-Arms, unaccompanied by any other person, to enter my house and remain there, holding me to be his prisoner there, until my legal advisers shall have sued out a writ of *habeas corpus*, and the necessary return shall have been made thereto,



and the judgment of the proper tribunal upon the legality of the Warrant and arrest shall have been given. I make this suggestion from the earnest desire that the maintenance of my rights, which I hold in common with my fellow-subjects, may not lead to unnecessary disturbance.

I have the honor to be,

Sir,

Your obedient Servant,

JOHN S. HAMPTON.

*The Hon. the Speaker of the Legislative Council.*"

The Council had determined that the Comptroller-General should be arrested and brought down to the Bar of the House, and was in process of considering the proper means to attain that result when, at the last moment, when the Speaker had been authorised to employ Counsel to make a return to the Writ of *habeas corpus*, and to plead in action for false imprisonment, His Excellency the Governor was announced, and delivered the following Speech:—

"MR. SPEAKER AND GENTLEMEN OF THE LEGISLATIVE COUNCIL,

It is with great reluctance that I feel compelled to interfere between the assertion and the practical enforcement of powers and privileges which you have thought proper to assume.

The Law Officers of the Crown have advised the Governor and the Legislative Council that the Speaker's Warrant is illegal.

It would be satisfactory that the legality or the illegality of the Speaker's Warrant were disposed of by the Judges of the Supreme Court of Justice; but, as your votes and proceedings are directed so as not to abide that issue, now pending, there is no alternative left to me. The Speaker's Warrant to the Sergeant-at-Arms, Sheriffs, Bailiffs, Constables, and *Posse Comitatus* to deprive a subject of Her Majesty of his liberty, is an act which, unless warranted by Law, is the supremacy of Tyranny over Law.

In order, then, to enable the Judicial Tribunals to pronounce judgment on the legality of a Warrant affecting the liberty of the subject, I hereby, by virtue of the power and authority in me vested, prorogue this Council to the twentieth day of October next.

H. E. F. YOUNG.

*Government House, Hobart Town,  
18th September, 1855.*"

It is against the line of conduct adopted towards us by the Governor at this particular point that we deem ourselves especially called upon to remonstrate and protest.

We regret to observe an obstructive tone in all the communications which we received on this subject from the Governor and from the Officers of Government occupying seats amongst us in Council. We cannot believe that an evident wish on the part of the Legislative Council to investigate serious abuses in the most important Department in the Colony was met with the dignified attention it should have demanded from the Governor and his Executive advisers. Nor are we desirous, Sir, of believing that Sir Henry Fox Young, in adopting a course so utterly opposed to Representative Institutions, was carrying out the instructions of Her Majesty's Secretary of State, or fulfilling Her Majesty's most gracious wishes for the happiness and good government of Her subjects in this portion of Her Majesty's dominions."

The statement of the Council, that they were at a loss to imagine the reason which could have dictated the Governor's refusal to direct the Officials to attend, is contradicted on the very face of the documents.

The Officials were not shielded from the consequences of guilt, but were, by the Governor in Executive Council, exonerated from the Criminal charges published in one of the Public Journals, severely censured for an abuse of the regulations of the Service, and the regulations which were abused were disallowed for the future.

Before any attempt had been made to exercise the power assumed by the Council to compel the attendance of Witnesses, Mr. Gregson, on the 29th August, being Chairman of the Select Committee, moved for power to send for persons, papers, &c. On this occasion, at the request of the House, the Attorney and Solicitor Generals stated their opinion on the powers of the Council, and gave such opinion most distinctly that the House had no power to issue summons and to compel the attendance of witnesses.

The House, though they had requested the opinion, refused to be bound by it.

The opinion was reiterated over and over again; and every step on the assumption of this power, which the Supreme Court has declared the Council did not possess, was constitutionally opposed.

It is almost superfluous to remark on the necessity of the Executive acting on the opinion of the Law Officers of the Crown on a purely legal question, and at the same time preserving the public peace and refraining from all interference until the Council resolved not to await the decision of the Supreme Court on the *Habeas Corpus*, but with an appeal to the *Posse Comitatus* to wrest Mr. Hampton out of the protection of the Court,—a proceeding which, if practically fulfilled, would infallibly have caused an alarming public disturbance.

“The obstructive tone in all communications from the Governor and Officers of the Government,” was the constitutional opposition of which mention has been already made, and none other was ever offered.

“Whether we regard the character of the secret enquiry into the abuses alleged against the Convict Department, and admitted as established by the Colonial Secretary’s reply read to us in Council; the denial of our right to investigate for ourselves the abuses of the system, thus admitted by the highest authority in the Colony; the attitude of the Law Officers of the Crown acting as Advocates for the Comptroller-General against the authority of the Council; or the unseemly interposition of the prerogative of Prorogation at a time and in a manner calculated to lower the estimation of the Legislature in the opinion of the Country, and to thwart the duties of the Council and defeat the ends of justice;—we are equally at a loss to conceive on what principles, either of duty to his Sovereign or of deference to the Constitutional Representatives of Her people, the Governor of this Colony has grounded his reasons and his policy.”

The Law Officers of the Government not having been retained by the Council, but having retainers tendered to them by Mr. Hampton as a private individual, the sanctity of whose house and whose liberty were attacked, felt bound to accept these retainers by the rules of their profession, and did so without the slightest communication with the Head of the Executive, and were in fact retained by Mr. Hampton’s private Solicitor, a Member of the Council, and a supporter of Mr. Wedge’s motion for the Committee.

“The abuses alleged were of the most serious and reprehensible character. They implicated the Comptroller-General, Mr. Hampton,—the Civil Commandant at Port Arthur, Mr. Boyd,—and the Visiting Justice of Penal Establishments, Lieut.-Colonel Hamilton,—the Superintendent of the Penitentiary, Mr. May; and they were admitted to have been substantially proved by the Executive Council of the Colony, and their continuance was forbidden by a Government Order.”

The Officers of the Convict Department mentioned in this passage are the identical Officers whose conduct was investigated and made the subject of enquiry and of report to the Secretary of State.

“The evidence of the witnesses examined by our Select Committee was of such a nature as to prove that the abuses were more serious than those which formed the subject of the Government enquiry. If we may trust the testimony of Mr. Hall, a medical man of considerable experience, and one who has been long an Officer in the Department, there has been a wanton and inhuman sacrifice of the lives of the infant offspring of female prisoners, resulting from reckless neglect and mismanagement.”

The testimony of Mr. Hall, a Medical man formerly in the service of the Government in the Convict Department, of a wanton and inhuman sacrifice of the infants of female prisoners from reckless neglect and mismanagement of the Medical Department under the charge of the Principal Military Medical Officer and his subordinates in this Colony, was satisfactorily and conclusively disposed of by the evidence enclosed with my Despatch, No. 168, 12th November; but the charges of Mr. Hall were known neither to the Governor nor to the Select Committee at the time of the publication in the public Journals of the specific acts of malversation which formed the subject of enquiry by the Executive.

“We consider the mode and the fact of our Prorogation under the circumstances which marked that event as calculated to impair the good understanding which ought to exist between the Governor and the Legislative Council of the Colony, as tending necessarily to bring either the Governor or the Council, and possibly both, into contempt and disrepute with the people, and even as likely to shake public confidence in the justice of the Crown, and weaken the attachment which at present exists between the Colony and Great Britain.

Impressed with these convictions, Sir, we have felt it incumbent upon us to address you; and we request that you will devote your most serious attention to the facts of the case we have recorded. Its gravity, its importance, and the anxiety with which the decision of the authorities in Great Britain is looked forward to, not only by ourselves but the whole body of the Australian Colonies, demands serious consideration. We would further ask you to present to our Most Gracious Sovereign the humble and loyal Address which accompanies this communication.

We desire to record our firm loyalty to Her Majesty, and our earnest desire to maintain the connection with the British Crown, which is at once our protection and our pride. It is to evince that loyalty and uphold that connection that we have now remonstrated against the proceedings of our Governor. We owe a duty to our Sovereign, to our Constituents, and to ourselves. That duty we have endeavoured to fulfil honestly and conscientiously; and in the discharge of that duty we have received obstruction from the Governor, to remedy which we appeal at once to the Throne.

We have no fears for the impartiality of the tribunal before which we have pleaded our cause,—no apprehension of not receiving justice from the Gracious Sovereign to whom we have addressed our Remonstrance.

That you will lay our Protest with as little delay as possible before Her Majesty we feel convinced; and we trust that, at the same time, you will convey to our Sovereign the devotion of the people of Tasmania to their Queen.

For the Legislative Council of Tasmania,

*Speaker.*

*To the Right Honourable  
Her Majesty’s Principal Secretary of State for the Colonies.”*

The mode and fact of the prorogation; under the circumstances which marked that event, are stated by the Council to have a tendency to bring either the Governor or the Council, or possibly both, into disrepute.

The freedom of the Governor from any merited inculpation in the dilemma thus propounded is, as far as he is concerned, satisfactorily established by reference to his prorogation Speech and Messages to the Council, contained in the accompanying Address.

Having thus commented on the various paragraphs of the Address of the Legislative Council to the Secretary of State,—an Address which appears to me remarkably laconic or deficient in any adequate exposition of its own proceedings,—and having made such remarks as appeared to be necessary for me to offer on its statements, I am reluctantly compelled, in order to convey an idea of the violence of the views which have been tolerated in the present Council during the last year of its existence, to mention that the Chief Justice, in a debate in Council, and of course therefore without opportunity of personally contradicting the degrading imputation, was described as “owing his promotion to corruption—the foulest corruption;” and also in Mr. Hampton’s case, an influential Member and Chairman of the Select Committee intimated his readiness, were it necessary, “to wade up to his neck in blood” in order to execute the Speaker’s Warrant; words which, however metaphorical, were sufficient indication of a lawless spirit.

I have, &c.

H. E. F. YOUNG.

*The Right Hon. Sir W. MOLESWORTH, Bart.*

(No. 181.)

[LEGISLATIVE.]

*Government House, Hobart Town, 14th December, 1855.*

SIR,

I HAVE the honor to transmit an Address from the Legislative Council to Her Most Gracious Majesty, protesting against the policy, time, and manner of the prorogation of the Council at its first Session of this year, on the 18th September last, and of the Government opposition to the Legislative Council on the Convict question.

2. All the circumstances of which the Council complain are stated in the Address to Her Majesty to be comprised in another Address to the Secretary of State, which is enclosed with my Despatch, No. 180, dated 13th December, 1855.

3. I request reference to the above quoted Despatch, which, with previous ones on the same subject, noted in the margin, contains explanations of the measures it was my duty to take for promptly and successfully anticipating, and thus preventing, an imminent risk of an alarming disturbance of the public peace, the actual occurrence of which, had it happened, must necessarily have been otherwise suppressed by the Civil and Military force which, without unnecessary display, I directed to be held in readiness.

4. I regret to add, that the risk in question arose from proceedings which the Attorney and Solicitor Generals, on the 29th of the previous month, had informed the Council it had no power to adopt.

5. The inviolability of the liberty of the subject under the protection of a Writ of *habeas corpus*,—the preservation of the public peace,—the advice given by the Law Officers of the Crown of the illegality of the Speaker’s Warrant,—and the ratification of that advice by judgment of the Supreme Court,—constitute the vindication of my policy and conduct on the prorogation; and a previous enquiry, decision, and report to the Secretary of State on the Convict Question satisfactorily dispose of that subject.

6. The act of prorogation last September, although not appreciated by the majority of the Council, was of immediate utility to it, in saving the local Legislature from the actual forfeit of its appropriate attributes of dignity and calmness, and of respect for the Judicature of the Colony. The prorogation obviated also the disrepute and scandal which must have been indelibly recorded against the present Council in the future annals of the Colony, had its outrageous proceedings, instead of being arrested in time by the exercise

No. 119, 16th  
Aug.; No.  
126, 27th Aug.;  
No. 132, 10th  
Sept.; No. 136,  
26th Sept.;  
No. 178, 6th  
Dec.; No. 179,  
7th Dec.

of the constitutional prerogative of prorogation,—been signalised on the near advent of the New Constitution by the enforcement of an illegal warrant, and a consequent public disturbance of the peace and bloodshed.

7. I submit with confidence that the delegated prerogative of prorogation was exercised justifiably and commendably; that the language of it was brief, deliberate, and unexceptionable; that previous intimation of the intention to prorogue in person would have enabled the majority of the Council to frustrate the object; that a prorogation by Proclamation would not have been published and circulated in common form in time to be of use; and that the period of the prorogation was fitly chosen, at the precise moment when the discussions of the Debate were fully ended, and when the course resolved on by the Council was in effect the supremacy of tyranny over law.

8. In concluding the present Despatch, I beg to report that I have not found either my personal or my official intercourse with the members of the present Council to be at all more difficult or embarrassing than before the adoption of the Addresses now transmitted. I regard the Addresses in the light of political manifestoes designed to vindicate, as best they may, its recent extraordinary pretensions to inherent rights and privileges, greater and more numerous than those which the *lex et consuetudo Parliamenti* have given to the British House of Commons, and which are supposed by the present Council to be their legacy to the future Colonial Parliament, not to be impaired in value by derivation from, or subjection to, any legislation.

9. I have no reason to anticipate that the mutual respect and confidence in each other which should prevail between the Legislature and the Executive will be at all lessened or affected by the probable return of the majority of the present Council to the new Colonial Parliament; but I reckon that the substitution of the two Elective Houses for the present single one will be very conducive to the good of the Public service.

I have, &c.

H. E. F. YOUNG.

*The Right Hon.* SIR W. MOLESWORTH, *Bart.*

(No. 54.)

*Downing-street, 3rd May, 1856.*

SIR,

I HAVE received your Despatches of the numbers and dates noted in the margin, in which you report the re-opening of the Legislature, and the several proceedings which had ensued in connection with the pending difference respecting the right of the Legislative Council to compel the attendance of witnesses; and you also transmit an Address of the Legislative Council to the Secretary of State, and a subsequent Address to Her Majesty, complaining of the course which has been pursued by you upon this subject.

No. 178, 6th  
Dec.; No. 179,  
7th Dec.; No.  
180, 13th  
Dec.; No.  
181, 14th  
Dec., 1855.

You will acquaint the Legislative Council that their Address to Her Majesty has been duly laid at the foot of the Throne.

With respect to the main subject of discussion, you will have learned from my previous Despatches, and you will inform the Legislative Council, that Her Majesty's Government consider that their right of enquiry into alleged abuses in the Convict Department should have been admitted. On the other hand, Her Majesty's Government are satisfied that, in the course which you adopted on this question, you were actuated by motives of public duty; and they fully recognise the difficulty of your position in regard to so peculiar an Institution, which is mainly supported by the expenditure of large sums from the Imperial Treasury.

The chance of a recurrence of dispute on the principal question at issue being thus removed by the decision of Her Majesty's Government, I am unwilling to refer, more than is absolutely necessary, to the consequences which followed; but I feel bound to express to you the opinion of Her Majesty's Government that, in the circumstances in which you found yourself placed, and entertaining an apprehension of the disturbance of the public peace, you were justified in exercising the constitutional right of proroguing the Legislature, with a view to gain time for reflection at a moment of considerable excitement, and to allow of an opportunity for obtaining the expected judicial decision on the legal question which was pending.

With regard to the Convict Establishment, it can scarcely be necessary to say that Her Majesty's Government can have no other desire, and assuredly no other interest, than that it should be administered on sound principles, and with perfect integrity and correctness. So long as the management of it involved a large and indefinite amount of Imperial expenditure, it could not but remain under Imperial control; but the number of Convicts has greatly diminished, and if the Local Authorities are willing and desirous to undertake the task upon equitable terms, Her Majesty's Government will be prepared readily to agree in the transfer of the Department, upon such conditions as shall at once protect the revenue of this Country, and afford the benefit of a vigilant and efficient local control of the Establishment. I shall take another opportunity of entering more into the details of this branch of the subject.

In conclusion, I have only to express my earnest hope that, no practical subject of controversy remaining, the differences of opinion which have arisen between the several authorities of the Colony—Executive, Legislative, and Judicial—may soon subside, and not be allowed to interfere with that spirit of harmony and moderation which is essential to the good working of all Free Institutions, and which is the more especially to be desired at the moment when Tasmania is entering upon a new career of Constitutional Government.

I have, &c.

H. LABOUCHERE.

Governor SIR H. E. F. YOUNG,  
*Tasmania.*

*Ordered to be printed, 11 December, 1856.*