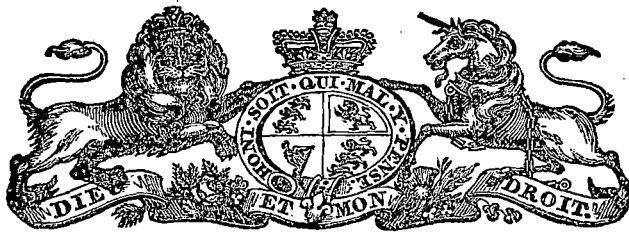


(No. 1.)



1877.

SESSION I.

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TASMANIA.

LEGISLATIVE COUNCIL.

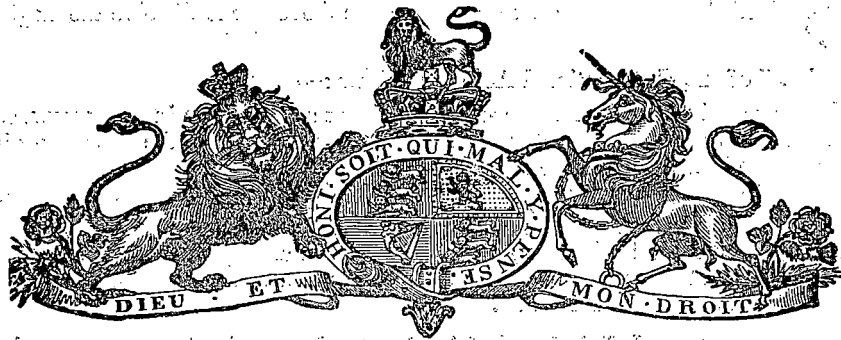
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MEETING OF PARLIAMENT:

CASE SUBMITTED TO JUDGES, AND OTHER PAPERS.

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Ordered by the Council to be printed, January 22, 1877.



## LEGISLATIVE COUNCIL.

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To His Excellency FREDERICK ALOYSIUS WELD, *Esquire*,  
Governor and Commander-in-Chief in and over the  
Colony of Tasmania and its Dependencies.

MAY IT PLEASE YOUR EXCELLENCY.

WE, Her Majesty's dutiful and loyal subjects the Members of the Legislative Council of Tasmania, in Parliament assembled, pray that Your Excellency will be pleased to cause the Special Case prepared by this Council and forwarded herewith, as to whether Your Excellency had the power to call Parliament together on the 18th January, notwithstanding the Proclamation proroguing Parliament to the 9th day of February next, to be submitted for the opinion of their Honors the Judges of the Supreme Court.

J. M. WILSON, *President*.

Passed the Legislative Council the 18th  
day of January, 1877.

E. C. NOWELL, *Clerk of the Council*.

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### *SPECIAL CASE from the Legislative Council for the Opinion of their Honors the Judges of the Supreme Court.*

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ON the 18th day of November, 1876, the Legislative Council adjourned for 3 months; that is until the 18th day of February, 1877.

On the 20th day of November, 1876, the Governor, by Proclamation dated that day, prorogued Parliament until the 9th day of February next. Copy of Proclamation hereunto annexed.

This Proclamation has never been revoked or cancelled, and in it no hour or place is fixed for the meeting of Parliament, which is not thereby summoned to attend on 9th February for the despatch of business.

By Proclamation, dated 5th January, 1877, the Governor fixed a Session of the Parliament of Tasmania to be holden for the despatch of business on Tuesday, the 16th day of January next, as per Proclamation annexed.

By Proclamation, dated 10th January, 1877, reciting, amongst other things, the said Proclamation of the 5th day of January, 1877, and setting forth that it was expedient to vary and alter the time so fixed by the said Proclamation for the commencement and holding of the Session of Parliament, the Governor did thereby vary and alter the time so fixed by the said Proclamation to Thursday, the 18th day of January instant, instead of at the time fixed by the said Proclamation of the 5th January, 1877. Copy of Proclamation hereunto annexed.

By the Constitutional Act, 18 Vict., No. 17, Section 4, it is enacted:—

“The Governor shall fix such times and places for holding the first and every other Session of the Parliament of the said Colony, and vary and alter the same respectively in

such manner as he may think fit, giving sufficient notice thereof, and also from time to time prorogue the said Parliament, and dissolve the said House of Assembly by Proclamation or otherwise, whenever he shall deem it expedient. Provided always that nothing herein contained shall be construed to empower the Governor to dissolve the Legislative Council."

Section 5 of the Constitutional Act is as follows:—

"There shall be a Session of the said Parliament at least once in every year, so that a period of twelve calendar months shall not intervene between the last sitting in one Session and the first sitting in the next Session."

Parliament, on the 20th Nov., 1876, was, by Proclamation, prorogued until the 9th day of February, 1877. The Proclamation dated 5th January, 1877, called Parliament to meet for despatch of business on the 16th day of January *next*, which would be in 1878. More than twelve months would then elapse between the Session of Parliament in 1876 and that to be holden in 1878.

The 37 Geo. 3, ch. 127, intituled "An Act to shorten the Time now required for giving Notice of the Royal Intention of His Majesty his Heirs and Successors that the Parliament shall meet and be holden for the Despatch of Business, and more effectually to provide for the Meeting of Parliament in the Case of a Demise of the Crown," is as follows:—

Whereas it is expedient to shorten the time now required for giving notice of the Royal Intention of His Majesty, his Heirs or Successors, that the Parliament shall meet and be holden for the despatch of business: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that whenever His Majesty, his Heirs or Successors, shall be pleased, by and with the advice of the Privy Council of His Majesty, his Heirs or Successors, to issue his or their Royal Proclamation giving notice of his or their Royal intention that Parliament shall meet and be holden for the despatch of business on any day being not less than Fourteen days from the date of such Proclamation, the same shall be a full and sufficient notice to all persons whatever of such the Royal intention of His Majesty, his Heirs and Successors, and the Parliament shall thereby stand prorogued to the day and place therein declared, notwithstanding any previous Prorogation of the Parliament to any longer day, and notwithstanding any former law, usage, or practice to the contrary.

The 39 and 40 Geo. 3, ch. 14, intituled "An Act for empowering His Majesty to shorten the Time for the Meeting of Parliament in cases of Adjournment," is as follows:—

Whereas by an Act passed in the 37th year of the Reign of His present Majesty provision is made for empowering His Majesty, His Heirs and Successors, to shorten the time required for giving notice of the meeting of Parliament for the despatch of business in the case of a Prorogation of Parliament: And whereas it is expedient that a like power should be given to His Majesty, His Heirs and Successors, in cases of the Adjournment of Parliament: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same: That in all cases where both Houses of Parliament shall stand adjourned for more than 14 days from the day of the date of the Proclamation hereinafter mentioned, it shall and may be lawful for His Majesty, His Heirs and Successors, to issue his and their Royal Proclamation, by and with the advice of his and their Privy Council, thereby declaring that the said Parliament shall meet on a day, being not less than 14 days from the day of the date of such Proclamation, and the Houses of Parliament shall thereupon stand adjourned to the day and place declared in such Proclamation, notwithstanding any previous adjournment of the Houses of Parliament to any longer day, and notwithstanding any former law, usage, or custom to the contrary.

In May's Parliamentary Practice, Sixth Edition, 1868, at Page 46:—

When Parliament stands prorogued to a certain day, Her Majesty is empowered by Act 37 Geo. 3, ch. 127, to issue a Proclamation giving notice of her Royal Intention that Parliament shall meet for the despatch of business on any other day, not less than 14 days from the date of the Proclamation, and Parliament then stands prorogued to that day notwithstanding the previous prorogation.

The 33 and 34 Vict. Chap. 81, intituled "An Act to amend the Acts of the 37th year of King George the Third, Chapter 127, and the 39th and 40th years of King George the Third, Chapter 14," is as follows:—

Whereas in pursuance of two Acts passed, the one in the 37th year of the reign of King George the Third, Chapter 127, intituled "An Act to shorten the time now required for giving notice of the Royal intention of His Majesty, his heirs and successors, that the Parliament shall meet and be holden for the despatch of business, and more effectually to provide for the meeting of Parliament in the case of the demise of the Crown," and the other in the Session held in the 39th and 40th years of the reign of King George the Third, Chapter 14, intituled "An Act for empowering His Majesty to shorten the time for the meeting of Parliament in cases of adjournment," Parliament

may be summoned by Royal Proclamation to meet on any day not less than 14 days from the day of the date of such Proclamation, notwithstanding that Parliament was prorogued or both Houses of Parliament stood adjourned to some later day, and it is expedient to shorten the said period of 14 days: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The Meeting of Parliament Act, 1870."

2. Parliament may be summoned by a Royal Proclamation in manner provided by the recited Acts to meet on any day not less than 6 days from the day of the date of such Proclamation; and the recited Acts, so far as they relate to such summoning of Parliament, shall be construed as if 6 days were therein substituted for 14 days.

Mr. Gladstone's Speech in moving for leave to bring in the above Bill is reported in Hansard, Vol. 203, 1870, Page 1146.

The Questions upon which the Legislative Council desire the opinion of their Honors the Judges are as to the true interpretation of the 4th and 5th Sections of "The Constitutional Act:—

1. Does the 4th Section authorise the Governor after proroguing Parliament to a certain day, to fix a Session of Parliament for an earlier day?

2. Can the Governor fix a Session of Parliament for an earlier day than that to which one Branch of the Legislature has adjourned?

3. Can the Governor, by Proclamation, vary and alter the time and place for holding a Session of Parliament without first having fixed such time and place?

4. Was the Proclamation proroguing Parliament till the 9th day of February, 1877, a fixing of the time and place for the Session of Parliament?

5. Do the words "January next" in the Proclamation of the 5th January, 1877, necessarily mean "January, 1878;" and if so, was the Proclamation valid?

6. If the Proclamation of the 5th January was not valid, is the Proclamation of the 10th January, 1877, varying and altering the time fixed by the Proclamation of the 5th January, 1877, valid?

7. Were not the Powers of the Governor as to the meeting of Parliament on his issuing the Proclamation proroguing Parliament to the 9th day of February next virtually exhausted until that day?

8. With the whole of the above facts in view, and that the Crown of England did not possess the power of proclaiming the meeting of Parliaments before the days to which they were prorogued had arrived, until invested with that power by the Statutes cited, has the Governor the power to proclaim a meeting of Parliament before the day to which it has been prorogued by His Excellency, and thus to constitute a Parliament the Acts of which shall be legal and binding?

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#### PROROGATION OF PARLIAMENT.

*By His Excellency* FREDERICK ALOYSIUS WELD, *Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Tasmania and its Dependencies.*

##### A PROCLAMATION.

WHEREAS it is expedient that the Parliament of Tasmania should be prorogued: Now therefore I, FREDERICK ALOYSIUS WELD, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief as aforesaid, in pursuance of the power and authority in that behalf vested in me, do hereby prorogue the said Parliament until the Ninth day of February next.

Given under my hand at Hobart Town, in Tasmania aforesaid, this twentieth day of November, one thousand eight hundred and seventy-six.

FRED. A. WELD, *Governor.*

By His Excellency's Command,  
THOS. REIBY, *Colonial Secretary.*

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## PROCLAMATION.

*By His Excellency* FREDERICK ALOYSIUS WELD, *Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Tasmania and its Dependencies.*

WHEREAS by "The Constitutional Act" it is provided that the Governor shall fix the times and places for holding every Session of the Parliament of Tasmania: Now therefore I, FREDERICK ALOYSIUS WELD, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief as aforesaid, in exercise of the power in me vested, do hereby announce and proclaim that a Session of the Parliament of Tasmania shall commence and be holden for the despatch of business on Tuesday, the sixteenth day of January next, at two o'clock in the afternoon, in the Chambers provided for the said Parliament in the Custom House Building, situated in the City of Hobart Town; and the Members of the said Parliament are hereby required to give their attendance at the said time and place accordingly.

Given under my hand at Hobart Town, in Tasmania aforesaid, this fifth day of January, One thousand eight hundred and seventy-seven.

FRED. A. WELD.

By His Excellency's Command,  
THOS. REIBEX, *Colonial Secretary.*

## PROCLAMATION.

*By His Excellency* FREDERICK ALOYSIUS WELD, *Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Colony of Tasmania and its Dependencies.*

WHEREAS by my Proclamation dated the fifth day of January instant I did announce and proclaim that a Session of the Parliament of Tasmania should commence and be holden for the despatch of business on Tuesday, the sixteenth day of January next, at two o'clock in the afternoon, in the Chambers provided for the said Parliament in the Custom House Building situated in the City of Hobart Town, and the Members of the said Parliament were thereby required to give their attendance at the said time and place accordingly: And whereas by "The Constitutional Act" it is provided that the Governor shall fix the times and places for holding every Session of the Parliament of Tasmania, and shall vary and alter the same respectively in such manner as he may think fit: And whereas it is expedient to vary and alter the time so fixed by my said Proclamation for the commencement and holding of the Session of the said Parliament: Now therefore I, FREDERICK ALOYSIUS WELD, Esquire, Companion of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief as aforesaid, in exercise of the power so in me vested, do hereby vary and alter the time so fixed by my said Proclamation as aforesaid for the commencement and holding of the Session of the said Parliament; and in further exercise of the power so in me vested I do hereby announce and proclaim that a Session of the said Parliament of Tasmania shall commence and be holden for the despatch of business on Thursday, the eighteenth day of January instant, at two o'clock in the afternoon, in the Chambers provided for the said Parliament in the Custom House Building situated in the City of Hobart Town; and the Members of the said Parliament are hereby required to give their attendance at the said last-mentioned time and place accordingly, instead of at the time fixed by my said Proclamation dated the fifth instant.

Given under my hand at Hobart Town, in Tasmania aforesaid, this tenth day of January, one thousand eight hundred and seventy-seven.

FRED. A. WELD,  
*Governor.*

By His Excellency's Command,  
THOS. REIBEX, *Colonial Secretary.*

FRED. A. WELD, *Governor.*

The Legislative Council having presented an Address praying that the Special Case prepared by the Council, and forwarded therewith, as to whether the Governor had the power to call Parliament together on the 18th January, notwithstanding the Proclamation proroguing Parliament to the 9th day of February next, may be submitted for the opinion of the Judges of the Supreme Court, the Governor now transmits a letter from their Honors the Judges, dated this day, in which they respectfully decline to advise upon the question submitted by the Special Case.

*Government House, 22nd January, 1877.*

*Judges' Chambers, Supreme Court, 22nd January, 1877.*

SIR,

WE have the honor to acknowledge the receipt of a Special Case prepared by the Legislative Council for the opinion of the Judges, and transmitted to us by Your Excellency.

We desire to assure Your Excellency, and through you the Legislative Council, that if we could, consistently with our office, render the Council assistance by giving our opinion upon the questions raised we would gladly do so. But we think that it would be a departure from our duty as Judges to give such an opinion upon the occasion which has arisen, and in the manner requested. The power and duty of the Judges of the Supreme Court are limited to the declaring of the law in the course of judicial proceedings regularly depending before them in the Supreme Court. It is improper for them to deliver extra-judicial opinions upon questions of law. Such opinions can have no binding force or validity, and may be disregarded with impunity.

The Council itself can alone, in their present stage, dispose of the questions which have been raised; and, were the Judges to affect to decide those questions in the manner requested, they would overstep the limits of their authority, and infringe the Constitutional principle so essential to the orderly government of a people,—that the legislative, executive, and judicial powers ought to abstain, each, from interfering with, or assuming the functions of, the others.

Moreover, it would be highly inconvenient for Judges to give, *ex parte*, an opinion upon questions which might afterwards come before them for judgment in due course of law.

For these reasons we are compelled, respectfully, to decline to advise upon the questions submitted by the Special Case.

We have the honor to be,  
Sir,

Your Excellency's most obedient humble Servants,

FRANCIS SMITH, *C.J.*

W. L. DOBSON, *P.J.*

*His Excellency the Governor.*

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#### PROTEST.

ALTHOUGH a Member of a Committee appointed by this House for the purpose of obtaining the opinion of the Judges of the Supreme Court as to the validity of the present Parliament, as called into existence by the Proclamation of His Excellency Governor WELD, dated January 10th, 1877, and holding as I do that the Parliament so appointed is legally constituted,—for by the 4th Section of "The Constitution Act," ample power is given to the Governor to call Parliament together at any time, and as often as he may think fit, or State necessity demand,—I consider the question raised ought to have been decided by the ruling of the President, the Parliament of Tasmania, of which this Council is an integral portion, being a Tribunal superior to, and possessing powers independent of, the Courts of this Colony, and does not, in any question affecting its prerogatives or functions, require reference to, or an opinion from, any Judge sitting in an inferior Court. I therefore dissent from the course adopted in the present instance, as being calculated to lessen the respect for, and detract from the dignity of, Parliament as a Court competent to deal with all matters affecting the making, interpretation of, and giving effect to the laws of this Colony.

WILLIAM LODEK CROWTHER.

*January 20, 1877.*

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*PROCEEDINGS of the Select Committee appointed by the Legislative Council on January 18, 1877, to draw up a Special Case, to be submitted to their Honors the Judges, in regard to the powers of the Governor to summon Parliament under "The Constitutional Act."*

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## MEMBERS OF THE COMMITTEE.

THE PRESIDENT.  
MR. CROWTHER.  
MR. CHAPMAN.

MR. AIKENHEAD.  
MR. GRUBB.

## DAY OF MEETING.

JANUARY 19.

The Committee met in the Legislative Council Chamber at 11 o'clock A.M.

All the Members were present.

Sir James Milne Wilson in the Chair.

Mr. Grubb proposed draft of Case.

The Question being put—That the Case, as read, be agreed to;

The Committee divided.

AYES 3.  
Mr. Grubb.  
Mr. Aikenhead.  
Mr. Chapman.

No 1.  
Mr. Crowther.

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