

(No. 96.)



1863.

[SECOND SESSION.]

T A S M A N I A .

T H E J U D G E S .

C O R R E S P O N D E N C E .

Return to an Address. (Mr. Murray.)

Laid upon the Table by Mr. Colonial Treasurer, and ordered by the House to be printed, 14 September, 1863.



Executive Council Chamber, 27th August, 1863.

GENTLEMEN,

I AM instructed by His Excellency the Governor in Council to forward the accompanying Address, which has this day been received from the House of Assembly.

I am instructed, at the same time, to convey to your Honors the assurance that you continue to enjoy the respect and entire confidence of the Governor and Council.

I have the honour to be,
Gentlemen,

Your Honors' most obedient Servant,

(Signed) E. C. NOWELL, *Acting Clerk of the Council.*

Their Honors the Judges of the Supreme Court of Tasmania.

Chambers, Supreme Court, 31st August, 1863.

SIR,

WE have the honor to acknowledge the receipt of a letter from Your Excellency in Council of the 27th instant, forwarding an Address from the House of Assembly, by which Your Excellency is requested to inform us "that the Journals of the House contain no record of any charges having been preferred against us, and that we enjoy the respect and undiminished confidence of the House;" and also conveying to us the assurance that we continue to enjoy the respect and entire confidence of Your Excellency and Council.

We desire to thank Your Excellency and the Members of Your Council for the expression of respect and confidence which you have been pleased to cause to be conveyed to us. Neither are we insensible to the honor intended to be done us by the House of Assembly by their expression of respect and undiminished confidence. But we should be wanting in self-respect, and proper appreciation of what is due to the Judicial office, did we not frankly and emphatically express to Your Excellency, that we regard with feelings of disappointment and dissatisfaction the course which has been pursued by the House of Assembly.

When we addressed Your Excellency in the first instance, we sought the vindication of the Bench from calumnious charges and foul vituperation implying unfitness for the Judicial office.

We sought no expression of respect or confidence from the House, because we knew that we had done nothing to forfeit that respect and confidence.

We desired that the author of the calumny should be required to specify and substantiate his charges, in order that the opportunity might be afforded to meet and refute them.

We need not be told that the Journals of the House contain no record of these charges. We are well aware that that body, through their organ the Speaker, excluded such record, by refusing at the time to allow the language to be taken down, on the ground that it was not out of order: and we must be permitted to enter our indignant protest against such an inequitable anomaly, as first to prevent a record being made, and then to decline enquiry because there is none.

But, although there be no such record within the House, can it be fairly questioned that there has been a sanctioned circulation beyond its walls? The Reporters of the Press are present for the avowed purpose of giving publicity to the debates; they are allowed to be a medium of communication between the House and the public; there is ample power to rectify mistakes; and what is thus permitted to go forth unquestioned, ought not in justice to be repudiated.

If it is to be so, then but one conclusion remains, and that is, that the reputation of any one is exposed to privileged detraction.

We cannot, therefore, but look with the utmost concern upon the position of the Judicial Bench in this Colony ; for if such calumnious imputations may be made, and whilst unretracted the opportunity for their refutation is denied, we would respectfully ask Your Excellency what security is there for the judgment seat ?

The same imputations may be repeated with others at their back, and retributive justice is inaccessible.

In thus addressing Your Excellency, we have not been influenced so much by personal considerations as by our concern for the interests of the Court in which we preside. We are conscious that we possess the confidence of the community. But if the Judges for the time being are thus liable to be vilified and traduced with impunity before that body to which for the better preservation of their independence they are by law rendered amenable, the Supreme Court cannot fail to be lowered in public estimation, and the administration of justice seriously impaired.

As Your Excellency may think it right to forward a copy of this letter, with the other correspondence, to His Grace the Duke of Newcastle, we desire to add that we should hail with satisfaction our removal to some other sphere of action, where, whilst in the honest and upright discharge of our duty, we should feel that there existed some controlling authority for our protection.

We have the honor to be,

Sir,

Your Excellency's most obedient Servants,

(Signed) V. FLEMING, C.J.

FRANCIS SMITH, J.

His Excellency the Governor in Council.