

(No. 24.)



1877.

SESSION III.

T A S M A N I A.

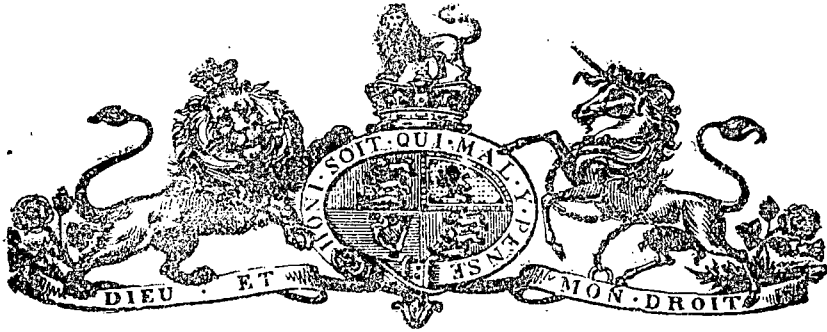
LEGISLATIVE COUNCIL.

SUMMONING OF PARLIAMENT, 1877:

DESPATCHES AND OTHER PAPERS.

Return to an Address dated July 26, 1877. (Mr. Chapman.)

Laid upon the Table by Mr. Crowther, and ordered by the Council to be printed,
July 31, 1877.



LEGISLATIVE COUNCIL.

To 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.

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 to be laid on the table of the Council copies of all despatches addressed to the Right Honorable the Secretary of State for the Colonies in reference to the summoning of Parliament for the despatch of business in the month of January last, together with copies of all papers relating to that subject; and also that Your Excellency will be pleased to cause to be laid on the table of the Council a copy of any despatch and other papers that may have been received by Your Excellency from the Right Honorable the Secretary of State for the Colonies in reply thereto.

J. M. WILSON, *President*.

PASSED the Legislative Council the
26th day of July, 1877.

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

I HAVE no objection at all to give the despatches if Ministers concur, and I accordingly enclose copies. The "extract" from my despatch of 10th February contains everything in that despatch relating to the subject referred to.

FRED. A. WELD.
30th July, 1877.

(COPY.)

No. 3.

MY LORD,

A DEFECT having been discovered in the "Jury Act, 1876," 40 Victoria, No. 6, passed last Session, and it having been ruled by the Supreme Court that under it, whilst the late Act is repealed, no fresh jury list can be made out till the 1st January, 1878, my responsible Advisers recommended me to summon Parliament, which stood prorogued till 9th February, to meet on 16th January. By a clerical error, however, the word January next was substituted for January instant, and to obviate any difficulty, and because, owing to the sitting of the Supreme Court, the 18th was a more convenient day, Ministers advised that a fresh Proclamation should be issued, summoning the Parliament to meet on the 18th January, and advised it being opened by Commission with the accompanying Speech.* Parliament accordingly met, and in both Houses the legality of the Proclamation was contested, mainly on the ground that the Governor has no power to anticipate the date on which Parliament had been summoned. Precedents here, however, are against this view, and the Constitution Act expressly gives him power to "alter and vary," and it can hardly be contended that those words signify simply to postpone. I will in a future despatch, when the question has matured, give your Lordship the views of my Advisers upon the minor and more technical and verbal objections.

I have carefully considered them, and do not attach much weight to them. My responsible Advisers are of opinion that they cannot be sustained.

2. The Legislative Council at its meeting declined to proceed to ordinary business, and passed an Address requesting me to obtain the opinion of the Judges of the Supreme Court upon a Case submitted by the Legislative Council, comprising several grounds of objection to the legality of the Session. Both Houses adjourned, pending the reply. In courtesy to the Legislative Council, I

* Copy of Speech enclosed.

have forwarded their requests to their Honors the Judges, though I have not made any request on my own behalf, as I believe that my Constitutional duty is to rest upon the opinion of the Law Advisers of the Crown and my own; and I am inclined to think it probable that the Judges will think that to give the opinion required would be inconsistent with their judicial position; whilst the representative of the Ministry informed me of his intention to enter a protest on the Journals of the Council, on the ground that the action taken is derogatory to the position and Constitutional status of Parliament.

3. As the reply of the Judges can hardly be received before the mail closes, I will continue this report by next mail.

I have, &c.

(Signed)

FRED. A. WELD.

The Right Honorable the Secretary of State for the Colonies.

(COPY.)
Extract.
No. 10.
MY LORD,

*Government House,
10th February, 1877.*

* * * * *

2. In my despatch, No. 3, of 20th January, I reported to your Lordship that a case had been submitted to the Judges through me by the Legislative Council, regarding the legality of the meeting of Parliament. The Judges, as I anticipated, declined to reply: business was then proceeded with. It will therefore be unnecessary for me to trouble your Lordship further on the question.

* * * * *

I have, &c.

(Signed)

FRED. A. WELD.

The Right Honorable the EARL OF CARNARVON.

(COPY.)
SIR,

Downing-street, 14th March, 1877.

I AM directed by the Secretary of State to acknowledge the receipt, on the 12th instant, of your despatch of the number and date noted in the margin.*

I have, &c.

(Signed)

ROBERT G. W. HERBERT.

The Officer Administering the Government of Tasmania.

*MEMORANDUM by the Governor regarding the Legality of the Summons of Parliament,
20th January, 1877.*

THE only point I attach importance to is, whether, supposing the Proclamation of January 5th (clerical error next for instant proroguing for more than a year) to be void, the Proclamation varying it be not also void?

Does a Proclamation fixing date, &c., *ipso facto* vary all other existing Proclamations? I think it does, even if it does not recapitulate them. I take it that even an Act would *ipso facto* repeal previous Acts contradictory to it, although it may omit to recapitulate them. (I understand it to have been so ruled.) It is clear that the Constitution Act gives power to "alter and vary" (not only to "postpone," a very different thing), and that we must be guided only by our Constitution Act.

It is also clear that if Parliament cannot legally meet, it cannot pass an Act to legalise itself (though if it considers itself legally assembled, it may pass a declaratory Act to stay doubts).

Parliament, therefore, if not legally called, must stand over till 9th February, unless a new Proclamation be issued varying the date of 9th February. The Proclamation of 20th November, 1876, fixing 9th February, I hold to be undoubtedly valid. No Act orders the words "despatch of business" to be used, or the hour to be fixed; such words are not essential, and may be supplemented by *Gazette* notice if necessary.

(Signed)

FRED. A. WELD.

* No. 3, 20th January, 1877.