



The New Zealand Gazette.

Published by Authority.

WEDNESDAY, JUNE 30, 1858.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

THE following Act passed by the General Assembly of New Zealand, in the Session held in the nineteenth and twentieth years of the Reign of Her Majesty Queen Victoria, intituled

“Land Orders and Scrip Act, 1856,”

having been laid before the Queen in conformity with the provisions of the Constitution Act, Her Majesty has been graciously pleased to leave the same to its operation.

E. W. STAFFORD.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

HIS Excellency the Governor directs it to be notified that a Writ, issued for the election of a Member to serve in the House of Representatives for the District of Akaroa, has been returned with a certificate to the effect that

WILLIAM SEFTON MOOREHOUSE, Esq.,
Superintendent of the Province of Canterbury, has been duly elected.

E. W. STAFFORD.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

HIS Excellency the Governor directs it to be notified that a Writ, issued for the election of a Member to serve in the House of Representatives for the Town of Lyttelton, has

been returned with a certificate to the effect that

CROSBIE WARD, Esq., of Lyttelton, has been duly elected.

E. W. STAFFORD.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

HIS Excellency the Governor has been pleased to appoint

JOSEPH BRITTAN, Esq., J. P.,
to be Acting Resident Magistrate during the absence of John Hall, Esq.

E. W. STAFFORD.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

HIS Excellency the Governor has been pleased to appoint

MR. JAMES MACDONALD,
to be Postmaster at Waiuku.

E. W. STAFFORD.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

HIS Excellency the Governor has been pleased to appoint

MR. R. MATTHEWS, M.R.C.S.L.,
to be Resident Vaccinator, and Secretary to the Central Board of Vaccination.

E. W. STAFFORD.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

NOTICE is hereby given that the following Tender has been accepted by the General Government for the six months commencing 1st July next:—

WEEKLY CONVEYANCE OF OVERLAND MAIL
BETWEEN AUCKLAND AND NEW PLYMOUTH.

W. J. Rees, at the rate of per annum £700 instead of £365, as stated on folio 77, Gazette No. 15, of the 15th May, 1858.

W. GISBORNE,
Under Secretary.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

THE following Acts passed by the Superintendent and Provincial Council of the Province of Nelson, intituled

- "Public Reserves Act," Session 5, No. 4
- "Auctioneers Act," Session 5, No. 5
- "Cattle Branding Act," Session 5, No. 6
- "Dog Nuisance Act," Session 5, No. 7
- "Appropriation Act," Session 5, No. 10
- "Nelson Improvement Amendment Act," Session 5, No. 11
- "Country Roads Act," Session 5, No. 12

having been laid before the Governor, in conformity with the provisions of the Constitution Act, His Excellency has been pleased to leave the same to their operation.

E. W. STAFFORD.

Colonial Secretary's Office,
Auckland, 28th June, 1858.

HIS Excellency the Governor directs the publication of the following judgment of their Lordships of the Judicial Committee of Her Majesty's Privy Council, on the appeal of Fenton and Fraser *v.* Hampton, from the Supreme Court of Tasmania.

E. W. STAFFORD.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Fenton and Fraser v. Hampton, from the Supreme Court of Tasmania; delivered February 17, 1858.

Present:

LORD JUSTICE KNIGHT BRUCE.
CHANCELLOR OF THE DUCHY OF CORNWALL.
LORD CHIEF BARON OF THE EXCHEQUER.
LORD JUSTICE TURNER.

THIS is an appeal from a judgment of the Supreme Court of Van Diemen's Land, given in favour of the respondent (the plaintiff below), who had brought an action against the appellants, Michael Fenton (the Speaker) and James Fraser (the Sergeant at Arms), of the Legislative Council of Van Diemen's Land.

The Colony is a part of Her Majesty's dominions, by occupation, and not by conquest.

The authority of the Legislative Council is derived from the British Parliament, under the 13th & 14th Vict. cap. 59. The Council consists of thirty-three Members, one-third of whom are nominated by the Crown, the other two-thirds are elected by the inhabitants.

The Council, no doubt, possess a Legislative authority; they may make Laws or Ordinances, which (on receiving the sanction required by law) become binding within the Colony. In this sense they possess supreme legislative power.

The action brought by the respondent in the Supreme Court arose out of the following circumstances:—

During a session of the Legislative Council in the year 1855, the Council appointed (in accordance with their rules and orders) a committee of their own body, to inquire into certain alleged abuses in the Convict Department, and the Council resolved that the Committee should have leave to send for persons in order to prosecute the inquiry. The respondent, John Stephen Hampton, was deemed a material and necessary witness in the prosecution of the inquiries. Thomas George Gregson (who had been duly elected Chairman of the Select Committee) issued a summons to the respondent to appear personally before the Select Committee at a certain time and place, to be examined as a witness on the subject of the inquiry. The summons was duly served. The respondent (it must be assumed for the present purpose) wilfully, and without reasonable excuse, refused and neglected to appear, and in consequence the Select Committee was obstructed (so far as this was an obstruction) in the inquiries, and the Council was prevented from obtaining their report; thereupon the Legislative Council, being informed of these circumstances, resolved that the respondent be desired to attend at their bar, at the Council's House at Hobart Town, on a day and hour named.

The respondent was duly served with a summons to attend, but would not obey it, and wilfully and contemptuously, and without reasonable excuse, disregarded the summons and order, and refused to attend. The Council then resolved that the respondent was guilty of contempt in disobeying the resolution of the Council and the summons of the Speaker; and they further resolved, that the Speaker should issue his warrant for the apprehension of the respondent, to be held in the custody of the Serjeant-at-Arms during the pleasure of the Council.

In compliance with that resolution, the Speaker did issue his warrant, and the Serjeant-at-Arms executed it, and took the respondent into custody; and this is the trespass complained of in the Court below.

The defence to the action was founded on the circumstances above stated, which were respectively pleaded by the Speaker and the Serjeant-at-Arms, in due form, each of them professing to justify his interference by the authority of the Council to make the resolutions and to enforce them, by issuing the Speaker's warrant, and apprehending the respondent.

The plaintiff below demurred generally to these pleas, and the Supreme Court (probably acting on the authority of the case of *Kielly v. Carson*, decided in this Court in 1842: 4th Moore, p. 63), gave judgment for the plaintiff, holding that the facts set forth in the pleas of justification did not constitute a defence at law.

The question was argued before the Committee at considerable length, and many points were raised and discussed, upon which we think it unnecessary to form any opinion in order to decide the present question. The principal point is, undoubtedly, of great importance, involving, as it does, on the one hand, the constitutional rights and authority of the legislative bodies in various parts of Her Majesty's Colonial territories; and, on the other, the right to personal liberty (unless deprived of it by law), which Her Majesty's subjects take with them, as part of their birthright, to every portion of Her dominions. The subject is not new to this Court; it has been discussed before on more than one occasion. In the case of *Beaumont v. Barrett*, from Jamaica, (1st Moore, p. 59, A.D. 1836), it was decided that an Assembly possessed of Supreme legislative authority had the power of punishing contempts; that the power was inherent in such an Assembly, and incident to its legislative functions; and, according to the judgment in that case, every Colonial Assembly or Council possessed the same authority to punish for contempts which the House of Commons has exercised in this kingdom for a long series of years.

But, in the year 1842, the same question (in substance) came before this Committee on an appeal from Newfoundland, and was twice argued; the second time before the Lord Chancellor, two noble members of the Committee who had formerly held the great seal, the three chiefs of the Common Law Courts in Westminster Hall, two out of the four members of the Court who were present at the decision of the case of *Beaumont* against *Barrett*—the Vice-Chancellor and *Dr. Lushington*; and on that occasion (page 84, of 4th Moore), "Their Lordships were of opinion that the House of Assembly did not possess the power of arrest, with a view to adjudication, on a complaint of contempt committed out of its doors." They held that the power of the House of Commons in England was part of the "lex et consuetudo Parliamenti;" and the existence of that power in the Commons of Great Britain did not warrant the ascribing it to every Supreme Legislative Council or Assembly in the colonies. We think we are bound by the decision of the case of *Kielly v. Carson*, the greater authority of which, as compared with *Beaumont v. Barrett*, it is quite unnecessary to enlarge upon. An attempt was made to distinguish the present case from those cited; the authority of the Legislative bodies in those cases being derived from the Crown; whereas, the Legislative Council of Van Diemen's Land derives its legislative authority from a statute of the Imperial Parliament. We think there is no foundation for this distinction; and that

if the Legislative Council of Van Diemen's Land cannot claim the power they have exercised on the occasion before us, as inherently belonging to the supreme legislative authority which they undoubtedly possess, they cannot claim it under the statute as part of the common law of England (including the "lex et consuetudo Parliamenti"), transferred to the Colony by the 9th Geo. IV, cap. 83, sec. 24. The "lex et consuetudo Parliamenti" apply exclusively to the Lords and Commons of this country, and do not apply to the Supreme Legislature of a Colony by the introduction of the common law there.

It was argued, however, that as the Legislative Council had the power to make the inquiry out of which these proceedings arose, as inherently belonging to their supreme legislative authority, the Supreme Court had no authority to examine into the validity of the warrant; but we are of opinion that it sufficiently appeared by the pleas that this was an arrest with a view to punish for an act alleged to be a contempt, but committed away from the House of the Assembly. Their Lordships, therefore, are of opinion that it was not justified by the pleas, and that the judgment below ought to be affirmed, with costs, and we shall advise Her Majesty accordingly.

Treasury,

Auckland, 28th June, 1858.

HIS Excellency the Governor has been pleased to appoint the Native Chief
TOHI TE URURANGI,
of the Ngatiwhakane tribe,
to be a Native Assessor for the district of Rotorua.

C. W. RICHMOND.

Registrar-General's Office,

Auckland, 28th June, 1858.

PURSUANT to the provisions of an Act of the General Assembly of New Zealand, entitled "The Marriage Act, 1854," the following Name of an OFFICIATING MINISTER within the meaning of the said Act, is published for general information:—

FREE CHURCH OF SCOTLAND.

The Reverend William Johnstone,
(Port Chalmers.)

I, John B. Bennett, Registrar-General of Births, Deaths, and Marriages in New Zealand, do hereby certify that the foregoing Name of an OFFICIATING MINISTER within the meaning of "The Marriage Act, 1854," has been sent in to me, in addition to the Names in Lists published respectively in the "New Zealand Government Gazette" Number 2, of the 26th of January, Number 4, of the 11th of February, Number 8, of the 19th March, Number 12, of the 13th April, and Number 15, of the 15th May, in the present year.

Given under my hand, at Auckland,
this twenty-eighth day of June,
1858.

JOHN B. BENNETT,
Registrar-General.

GENERAL ABSTRACT, shewing the AVERAGE AMOUNT of the LIABILITIES and ASSETS of the ORIENTAL BANK CORPORATION, within the Colony of New Zealand, taken from the several Weekly Statements, during the Quarter ending 31st March, 1858.

LIABILITIES.				ASSETS.					
Notes in Circulation	{ Not bearing Interest .. ..	.. ..	£ 5,789 0 0	Coined Gold and Silver and other Coined Metals .. ..	.. ..	£ 17,838 15 3	s. d.
	{ Bearing Interest .. ..	.. ..	.....				
Bills in Circulation	{ Not bearing Interest .. ..	.. ..	44,325 16 2	Gold in Bullion .. ..	.. ..	364 14 6	
	{ Bearing Interest .. ..	.. ..	.....				
Balances due to other Banks .. ..	.. ..	.. ..	27,946 5 10	Bills and Notes of other Banks .. ..	.. ..	1,586 3 0	
Deposit Accounts	{ Not bearing Interest .. ..	.. ..	15,775 2 6	Balances due from other Banks .. ..	.. ..	5,207 16 2	
	{ Bearing Interest .. ..	.. ..	3,724 0 4	Amount of all Debts due to the Corporation, including Notes, and Bills of Exchange, excepting Notes and Bills and Balances due to the Corporation from other Banks .. ..	.. ..	81,045 17 3	
Total Amount of Liabilities				97,560 4 10	Total Amount of Assets				106,043 6 2
				£ s. d.					
Amount of Capital Stock paid up at date of the last advices from London				1,260,000 0 0					
Rate of the last Dividend declared to the Shareholders				10 pr.ct.pr.ann.					
And Bonus				2 per cent.					
Amount of the last Dividend and Bonus declared for the half year ending 31st December, 1856				88,200 0 0					
Amount of Reserved Fund after declaring such Dividend				252,000 0 0					

THE NEW ZEALAND GAZETTE.

J. S. OLIVER, Manager.
DAVID HEAN, Accountant.

I, JOHN STEPHEN OLIVER, declare that to the best of my knowledge and belief the foregoing Abstract is a true and faithful Account of the Average Amount of Assets and Liabilities of the Oriental Bank Corporation, within the Colony of New Zealand, during the period specified; and that the same was made up from the Weekly Statements thereof.

J. S. OLIVER:

Declared before me at Auckland, New Zealand, }
this twenty-ninth day of May, 1858. }

THOMAS BECKHAM,
Resident Magistrate.

LAUGHLIN O'BRIEN, ESQUIRE, RECEIVER OF INTESTATE ESTATES for the Northern Division of the Colony of New Zealand, in account with the Estate of **WILLIAM TRUSTED**, deceased intestate.

1857.	£	s.	d.	1857.	£	s.	d.
January 19—By cash amount Bill of Exchange	12	10	0	January 27—Paid Postage	0	0	6
February 5th—Ditto from Connell & Ridings, balance of account	12	9	8	“ Ditto Advertizing Notice to Creditors	0	4	6
“ Ditto Sale of Effects	5	5	6	“ Ditto Advertizing Balance Sheet	0	7	6
June 2nd—Ditto amount B. in Brown & Campbell	20	0	0	March 31—Ditto Letters of Administration	3	0	0
1858.				“ 23—Ditto Postage	0	0	2
March 29—Ditto Sale of Sundries	1	7	0	April 19—Ditto ditto	0	0	6
				June 7—Ditto ditto	0	0	6
				1858.			
				Feb. 2—Ditto ditto letter to England... ..	0	1	0
				April—Ditto Administrator's commission	2	11	7
				“ Ditto Ireland	5	9	3
				“ Ditto P. Dignan	0	7	6
				“ Ellis	1	0	4
				“ C. O. Davis	38	8	10
	£51	12	2		£51	12	2

I, **LAUGHLIN O'BRIEN**, do swear that to the best of my knowledge and belief the above is a just and true account of the Receipts and Disbursements on account of the above Estate of **William Trusted**,

L. O'BRIEN.

Sworn at Auckland, this third day of }
May, 1858, before me,

GEORGE ALFRED ARNEY, C. J.

I do hereby certify that I have examined, and allowed this account of the Official Administrator, of the above Estate. Dated the third day of May, 1858.

GEORGE ALFRED ARNEY,

Chief Justice.

LAUGHLIN O'BRIEN, ESQUIRE, RECEIVER OF INTESTATE ESTATES for the Northern Division of the Colony of New Zealand, in account with the Estate of **JOHN COMMONS**, deceased intestate, (Supplemental Account).

1857.	£	s.	d.	1858.	£	s.	d.
July 7—By cash from Union Bank balance to deceased's credit... ..	12	18	9	March 31—Paid Mrs. Miller's account ..	6	4	0
Ditto Treasury, amount of Judge's order	33	4	10	By amount paid creditors,— Brown and another v. O'Brien and another, per order of Court dated 24th March, 1857	26	12	6
Ditto amount received for Mullins' promissory note	1	10	0	Ditto Advertising Balance Sheet	0	7	6
				Ditto Balance	14	9	7
	£47	13	7		£47	13	7

I, **LAUGHLIN O'BRIEN** do swear that to the best of my knowledge and belief the above is a just and true account of the Receipts and Disbursements on account of the above Estate of **John Commons**.

L. O'BRIEN.

Sworn at Auckland, this fourteenth day of }
June, 1858, before me

GEORGE ALFRED ARNEY, C. J.

I do hereby certify that I have examined and allowed this Account of the Official Administrator of the above Estate. Dated the fourteenth day of June, 1858.

GEORGE ALFRED ARNEY,

Chief Justice.