

No. 37.

COPY of a DESPATCH from the Right Hon. the Earl of KIMBERLEY to
Governor Sir G. F. BOWEN, G.C.M.G.

(Circular.)

SIR,—

Downing Street, 6th March, 1872.

I have the honor to transmit to you a copy of a letter addressed to me Jan. 10, 1872.
by the Lord Bishop of Sydney, calling attention to certain questions affecting the
future appointments of Colonial Bishops, and the status of Priests and Deacons
who have been ordained in the Colonies, together with a copy of the reply thereto. Jan. 27, 1872.

I have, &c.,

Governor Sir G. F. Bowen, G.C.M.G.

KIMBERLEY.

Enclosure 1 in No. 37.

The Bishop of SYDNEY to the Earl of KIMBERLEY.

MY LORD,—

Stapenhill, Burton-on-Trent, 10th January, 1872.

In compliance with your Lordship's request, that I should communicate to you in writing, I have
the honor to address your Lordship on the future appointment of Colonial Bishops, and upon two
important points connected with this subject.

As representing in an official capacity a considerable portion of the Church in Australia, I am able
to state that there is a general desire to maintain, as far as possible, its connection with the Church in
England, of which it considers itself a branch. For this purpose, it is very desirous to keep up a link
with the mother country in regard to the appointment and consecration of its bishops; and while, on
the one hand, in the altered state of the Church, it seems necessary that the Colonial Synods should
nominate clergymen to be consecrated to vacant sees, on the other hand we earnestly desire that Her
Majesty may be advised to grant license to the Archbishop of Canterbury to consecrate and therein to
name the diocese to which the bishop is to be consecrated. No coercive jurisdiction is sought,
but merely an identification of the see of the bishop.

While such a course would tend to retain the union of the Colonial Church with the Church at
home, it would appear also to be extremely expedient *for reasons connected with property*.

In some dioceses, the bishops are corporations by virtue of Letters Patent (see Bishop of Cape
Town v. Bishop of Natal, 3 L. R. P. C. 1, for an analogous instance), and hold property as such.

It is apprehended that a succeeding bishop not appointed by the Crown would not be the successor
of the preceding bishop in a corporate sense, so as to be entitled to the property. A serious difficulty
might thus arise. It would seem that it was proposed to deal with this difficulty in a Bill introduced
into the House of Lords in 1867 by the Duke of Buckingham, then Secretary of State for the Colonies;
but as this Bill did not become law, its introduction is merely evidence of the recognition in the highest
quarters that the difficulty is real and not imaginary. The solution which the Bill purported to provide
was certainly open to exception.

This difficulty is felt, and has been expressed in various quarters; and as it results from a change
in the action of the Crown, it is respectfully submitted that every effort is due to the Church in the
Colonies to remove, so far as may be possible, the evils resulting from the change.

There is another independent point, yet resulting from the same change on the part of the Crown,
on which I desire respectfully to submit to the notice of Her Majesty's Government a serious difficulty
under which the Colonial Church labours.

By 59 George III. c. 60, sec. 4, it is enacted as follows:—"Provided always that no person who, after
the passing of this Act shall have been ordained a deacon or priest by a Colonial bishop, who at the
time of such ordination did not actually possess an episcopal jurisdiction over some diocese, district,
or place, or was not actually residing within such diocese, district, or place, shall be capable in any
way, or on any pretence whatever, of at any time holding any parsonage or any other ecclesiastical
preferment within Her Majesty's dominions, or of being a stipendiary curate or chaplain, or of
"officiating at any place or in any manner as a minister of the Established Church of England and
Ireland."

There seems no reasonable doubt that the whole object of this clause was, as stated by Lord
Bathurst in introducing the Bill (*Hansard*, 1st Series, vol. xl. page 801), in 1819, to provide that
Colonial bishops should not continue to ordain after leaving the sees to which they were appointed.

But since the decision of the Judicial Committee in *re* Bishop of Natal (3 Moore's P.C. Reports,
N.S., 115), that in a Colony with Legislative institutions the Crown has no power to confer any juris-
diction in the sense of coercive legal authority on a bishop, a very large number of bishops in the Colonies
must be considered to possess no "jurisdiction" in the strict sense of the term.

On some of them an attempt was made to confer it by their Letters Patent, but such attempt
must now be deemed unsuccessful, on the ground that the Colony already possessed Legislative institu-
tions. In the case of others more recently created, no such attempt even has been made.

In the latter class of instances, moreover, no certain dioceses or limited districts have in any way
been assigned by the Crown, the license for consecration being of a perfectly general nature, and
specifying no more than that the party is to be consecrated to be a bishop in such or such a Colony, or
sometimes in Her Majesty's Colonial Possessions, or to the like effect.

The result, therefore, it is humbly apprehended, is to throw doubts of a grave and most inexpedient
kind over the capacity of the clergy ordained by such bishops, and over the legal status of members of
the Church, in respect to rites and ceremonies performed by them.

Accordingly, so strongly was this felt shortly after the decision of "*In re* Bishop of Natal," that Mr.
Cardwell, then Secretary for the Colonies, in 1866, brought in a Bill designed (amongst other things)