

to meet this difficulty. In introducing it, he said (speaking of the recent decision of the Privy Council), "One of the enactments which were inconsistent with the legal decision, and with the principle on which this Bill was founded, was the Bill of 1819, in which it was enacted that a person ordained by a bishop not having episcopal jurisdiction over a defined district, should not be capable of holding any preferment within Her Majesty's dominions. But the majority of the bishops, it had now been decided, had no such jurisdiction, and therefore all the clergy ordained by them were subject to this disqualification. This was entirely at variance with the intention of Parliament in passing the statute. The consequence in respect of the clergy themselves was intolerable, and it was impossible to say how far it might extend in respect of marriages and other religious services which had, since the passing of the statute, been performed by these clergy. Obviously it would be necessary to repeal that disqualification."—(*Hansard*, N.S., vol. lxxxiii. p. 1032.) As it is presumed that such a Bill could not have been framed, nor such statements made by a Minister of the Crown, except with the concurrence of the Law Officers, the speech of Mr. Cardwell must be deemed to possess great authority in reference to the gravity of the doubts in question, and the necessity of removing them.

I venture to submit that the effect of this clause of the 59th George III. c. 60 is to saddle the Church in the Colonies with all the restrictions of an established religion, while it possesses none of the corresponding advantages; such restrictions, moreover, proceeding from the Legislature, and being beyond the powers of the Church itself to remove.

The Bill of Mr. Cardwell did not pass into law, owing perhaps to its embracing certain other questions, as to which much difference of opinion existed. Indeed, as I am advised, the manner in which that Bill professed to deal with the difficulty under 59 George III. c. 60 was scarcely the best suited to the necessity of the case.

It may probably be thought expedient to keep up some prohibition against bishops ordaining elsewhere than in the locality where they habitually exercise their episcopal functions, while at the same time it is necessary to provide that the possession of legal and coercive jurisdiction shall not be indispensable.

It is, therefore, respectfully suggested that it might be a proper course to confine the effect of any amending Act to an interpretation of the terms used in 59 George III. c. 60, s. 4, and to a declaration that they shall not necessarily impart legal jurisdiction or a legally assigned diocese.

In furtherance of such suggestion, I venture to submit a draft clause, prepared by a legal friend, who has largely studied the subject, for your Lordship's consideration.

After reciting sec. 4 of 59 George III. c. 60, and that doubts have arisen as to the effect thereof, the clause might proceed thus:—

"Now, therefore, be it enacted that the words 'possess an episcopal jurisdiction over some diocese, 'district, or place,' shall not of necessity be construed to imply the possession of coercive legal jurisdiction, but shall apply to the case of any such bishop who at the time of such ordination possessed consensual jurisdiction or authority, or who habitually exercised episcopal functions within such diocese, district, or place, as well as to a bishop possessing coercive legal jurisdiction. And that the word 'diocese' shall apply to a consensual or voluntarily created diocese, as well as to a diocese created or assigned by law."

"And be it further enacted, that this Act shall have retrospective operation in relation to any ordinations that have heretofore taken place to which the said recited Act might apply."

I have thus endeavoured to place before your Lordship, as succinctly as possible, our wishes in respect to the appointment of bishops, and our difficulties in respect to property, and the disability of certain of the Colonial clergy; and as these difficulties and disabilities will be greatly increased when sees now filled by bishops appointed under Letters Patent become vacant, I venture most respectfully to pray that early consideration may be given to the subjects of this letter, and that I may be enabled to return to my diocese with a distinct understanding what course Her Majesty's Advisers will be prepared to adopt, or to recommend the Church in the Colonies to pursue.

The Right Hon. the Earl of Kimberley,
Her Majesty's Secretary of State for the Colonies.

I have, &c.,
F. SYDNEY.

Enclosure 2 in No. 37.

MR. HERBERT to the BISHOP of SYDNEY.

MY LORD BISHOP,—

Downing Street, 27th January, 1872.

I am directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 10th instant, in which you call his Lordship's 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. I am to state that his Lordship has given careful consideration to these questions, which are of great importance, and have from time to time, since the judgment in the Bishop of Natal's case, been brought under the notice of successive Secretaries of State.

With respect to the first question, namely, the mode of appointment of Colonial bishops, it is stated in your letter that while on the one hand it seems necessary that Colonial Synods should nominate clergymen for consecration to vacant sees, on the other hand it is earnestly desired 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; that no coercive jurisdiction is thereby sought, but merely an identification of the see of the bishop; and that such a course would be extremely expedient for reasons connected with property.

I am in reply to inform you that Lord Kimberley is not prepared to recommend a departure from the course which has been adopted, after full consideration, under the advice of the Law Officers of the Crown. That course may be briefly summed up as follows:—Her Majesty will be advised to refuse, in conformity with the judgment of the Judicial Committee, to appoint a bishop in any Colony possessing an independent Legislature, without the sanction of that Legislature, but she will be advised, on the