

(No. 1.)



1860.

T A S M A N I A.

MARRIAGE LAW.

**DESPATCH (No. 12, February 15, 1860) FROM HIS GRACE THE
DUKE OF NEWCASTLE.**

Laid on the Table by Mr. Attorney-General, and ordered by the Council to be
printed, 25 July, 1860.

(No. 1.)



(No. 12.)

Downing-street, 15th February, 1860.

SIR,

I HAVE had under my consideration an Act passed by the Legislature of Tasmania, and enclosed in your Despatch, No. 93, of the 4th October last, intituled "An Act to amend the Laws regulating Marriage."

The Act amended is 2 Vict. No. 7. Under this Act the Clergy of the Churches of England, Scotland, and Rome may solemnize Marriages after publication of Banns, or in virtue of a Licence from their Ecclesiastical Superiors, or on the production to them of a Certificate of twenty-one days' notice having been given to the Deputy Registrar. (§§ 1, 2. 5. 9.)

Ministers of registered Buildings not belonging to one of the three privileged Communions might celebrate Marriages after the above Notice to the Deputy Registrar or under licence from him dated seven days previous to the celebration of the Marriage (§§ 5. 9), but not after Banns or by Licence from their own Superiors. And all Ministers who wilfully solemnize Marriages without the prescribed period of notice are guilty of felony. (§§ 12. 27.)

The Attorney-General states that this distinction between the Clergy of different persuasions was felt to be invidious, and that the present Act is passed to remove it.

It enacts that those whom I will call the unprivileged Ministers may solemnize Marriages "without such licence, dispensation, or certificate being first obtained as is required by such Law," (namely, 2 Vict. No. 7.)

Now, it appears to me at least very doubtful whether this clause will not abolish the necessity of Notice to the Registrar, together with the documents which form the evidence of that Notice. If so, the Act is open to the strongest objection.

The policy—and, I think, the wise policy—of this Country is to require in all Marriages, first, that, except in cases of special dispensation, persons entitled to object to any Marriage should, through the publication of Banns or other public notice, have the opportunity of doing so; secondly, that the contract should be public and unequivocal; and, thirdly, that complete evidence of it shall be preserved in the custody of a Public Officer.

On the second and third point the Marriages celebrated under the present law will remain subject to the provisions of the local Act, No. 2 Vict. cap. 7, of which, though not precisely coincident with those of the English Law, I do not doubt the adequacy.

But with regard to the first point, namely that of previous notice, the effect of the proposed change (if I understand it aright) will be as follows:—The Ministers of the Churches of England, Scotland, and Rome will remain under their existing obligations. But any other Minister attached to a place of Worship frequented by twenty householders may, on application from that number of persons and on payment of ten shillings, register the building for the solemnization of Marriages (2 Vict. No. 7, § 15; 23 Vict. No. 11, § 13); and may then, without any other formality than receiving a declaration prescribed by the Act, celebrate Marriage between any two persons who may require it of him either in the registered place of Worship or in any private house, and at any hour between 8 A.M. and 4 P.M. It is plain that every effectual precaution against a sudden or clandestine

Marriage is, by these provisions, entirely destroyed. A person, for example, who is entrapped or frightened into a thoughtless promise of Marriage may be called upon to fulfil that promise on the spot, if only a Minister of a registered place of Worship is present, without more time for consideration than is necessary to make the required declaration and pronounce the prescribed form of words, without power of communicating with any natural adviser, or the possibility of notice to those who may have a right to forbid the Marriage. Indeed it is hardly too much to say, that the single remaining precaution against such a transaction is to be found in that clause of the original Act which requires Marriages to be celebrated at a time of day when people are seldom intoxicated.

As the law of Marriage is one of institutions which, though provided for by local enactments, really affect the interests of the community at large, and it is very desirable that important differences in it should not prevail in different portions of the Empire, I have to instruct you to submit these observations to the Legislature, with a view to the reconsideration of the Act, before the pleasure of Her Majesty upon it is taken. And I have no hesitation in adding, that if it is necessary to establish a minute equality in this respect between the different Religious Communion in Tasmania, I think it would be far safer to enforce notice to the Registrar in all cases than to dispense with adequate notice in any.

I have the honour to be,

Sir,

Your most obedient humble Servant,

NEWCASTLE.

Governor SIR HENRY YOUNG, C.B.,
Tasmania.