(No. 4.)

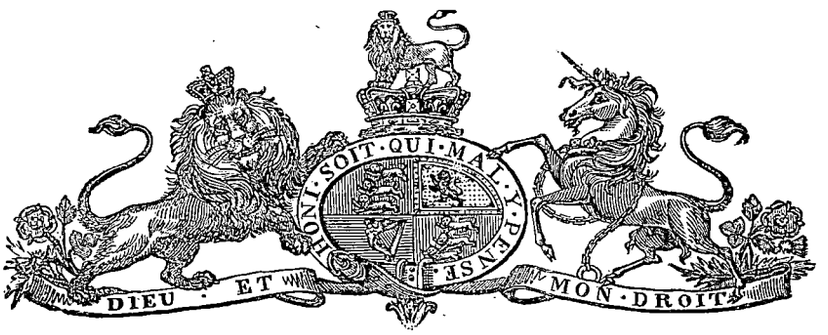
1860.

TASMANIA.

DESPATCHES

OF HIS EXCELLENCY THE GOVERNOR, TRANSMITTING FOR THE ROYAL ASSENT THE BILL TO ABOLISH STATE AID TO RELIGION, AND THE BILL TO AMEND THE CONSTITUTION OF THE LEGISLATIVE COUNCIL, TOGETHER WITH THE REPORTS OF THE ATTORNEY-GENERAL THEREON.

Laid upon the Table by Mr. Henty, and ordered by the Council to be printed, 25 July, 1860.



(No. 94.)
[LEGISLATIVE.]

Government House, Hobart Town, 4th October, 1859.

MY LORD DUKE,

WITH reference to the reservation of Act No. 43 for Her Majesty's assent, I have the honour to enclose the Report of the Attorney-General. I do not think that anything additional from me is necessary, except the expression of my own opinion upon the policy of the Act.

I regard it as making provision for a measure of Government support to the various Churches of the Colony, now in receipt of aid from the public Treasury, greater than is likely to be conceded by the Legislature in the event of future legislation; for I entertain a well-grounded apprehension that the withholding of Her Majesty's assent from the Act now submitted would be followed in a future Session by an Act for the cessation of all Ecclesiastical aid from the public Treasury.

The Act is what its title denotes it to be—an abolition, upon certain terms, of State Aid to Religion. The terms are, that the Clerical Officers shall be treated as reduced Civil Officers are treated, viz.—with Pensions or Retired Allowances; and also that the governing bodies of the various Churches shall have a permanent endowment as a means in aid of supplementing those voluntary or those self-imposed contributions of the adherents of their respective Communions (Church of England and Ireland, Roman Catholic, Presbyterian, Wesleyan, and Jews), on which they must henceforth depend for the maintenance of Religious Worship.

My opinion is that the Act now forwarded, as reserved for Her Majesty's assent, is the most favourable compromise of the question of State Aid to Religion which is likely to be obtained in Tasmania, if the question be left with the local Legislature.

I have, &c.
(Signed) H. E. F. YOUNG.

His Grace the DUKE OF NEWCASTLE.

(No. 97.)
[LEGISLATIVE.]

Government House, Hobart Town, 5th October, 1859.

MY LORD DUKE,

I HAVE the honour to transmit a Report by the Attorney-General, dated 29th ultimo, on the Act herewith enclosed, No 44, "An Act to amend the Constitution of the Legislative Council."

This Act has been reserved for Her Majesty's assent.

The Report fully sets forth the circumstances under which there has arisen a necessity to provide against irregular resignations of Members of the Legislative Council, enforcing the retirement of other Members out of their proper turn. The provision thus made secures the independence of the tenure of the seats of Legislative Councillors from being interrupted at the will of Members of their own body. The remedy proposed by this reserved Act is that, instead of a rotation which affords opportunity for the contrivance of involuntary retirements, each Legislative Councillor should have a permanent tenure of six years. The amended Act enacts also, that Judges of the Supreme Court of Civil and Criminal Justice should be ineligible to be popularly elected as Members of the Legislative Council.

Mr. Justice Horne, an elected Member of the Legislative Council, resigned his seat when this Amendment was proposed. His seat would have become vacant by rotation on the 25th September. The change in the Constitution, as affecting the tenure of the seats of Legislative

Councillors, was thus an opportune occasion for enacting that Judges should in future (that is, when Her Majesty's pleasure on the reserved Act is known) be ineligible for re-election.

I have, &c.

(Signed) H. E. F. YOUNG.

His Grace the DUKE OF NEWCASTLE.

REPORT upon Bills of 23 *Victoria, Nos.* 43 *and* 44, *reserved for Her Majesty's Assent.*

23 VICTORIA, No. 43. AN ACT to provide for the Abolition, upon certain Terms, of State Aid to Religion in the Colony of Tasmania.

IN this Colony, as in the other Australian Colonies, there has long been an agitation for the abolition of State Aid to Religion. It is believed that the sentiment in favour of its abolition is rapidly extending; and that a future Parliament would probably contain a majority of Members favourable to its discontinuance, if not pledged to effect it. Last year a Bill was introduced for the purpose by a Member unconnected with the Government, and was rejected. This year the same Member re-introduced the Bill; and many Members who voted against it last year, bearing in mind the progress which had been made by public opinion during the interval, considered that a question which had been the cause of much jealousy, dissension, and heart-burning—feelings which would grow in intensity the longer the question was agitated—should be settled at once by a compromise. Two plans were proposed,—one, that the existing grant should be continued to the present Incumbents and be discontinued as they died or retired; the other, the capitalising of the annual grant, and the distribution of the fund thus capitalised among the Churches receiving State Aid in proportion to the numbers of their members as shown by the last Census. The latter was adopted by a large majority in the Assembly, on the ground that it was more advantageous to the Churches than the former, in that it gave a fund to each Church which would become the nucleus of an endowment to be supplemented by a voluntary contribution. By the former plan no provision would have been made for the Churches,—it would only have secured the individual interests of the existing Ministers; and on their death or retirement the Churches would have been left wholly dependent on voluntary support. The Bill provides that the appropriation of £15,000 a year reserved for Public Worship by the *Constitutional Act* shall cease on the 31st December, 1860, and in lieu thereof that Debentures to the amount of £100,000 shall be issued on the 1st January, 1861, to the various Churches, in the proportions above mentioned, bearing interest at 6 per cent. and redeemable at various periods ending in the year 1873; an arrangement which amounts to the redemption of the annual charge by about ten years' purchase, and comes to the same thing financially as if the present reserve were continued for about ten years and then ceased. But to the Churches it is much more advantageous, inasmuch as the possession of the fund will materially assist them in making arrangements for their support from other sources. The Bill further provides that the principal sum secured by the Debentures issued to each Church shall form a fund for the benefit of such Church, and be vested in Trustees to be appointed by each Church with powers of investment; and that the annual income shall be applied for the benefit of each Church in the Colony as the governing body of such Church may direct. A clause is inserted providing a remedy for breach of trust or misapplication of the fund by the Trustees. The salaries of the present Bishops of the Churches of England and Rome are secured by being made a primary charge on the annual income of the fund, which is of course amply sufficient. The interests of existing Ministers are protected by the 13th Section, which preserves their admitted right to compensation or retiring allowance in accordance with the Rules applicable to Civil Officers in the service of the Government; such compensation or retiring allowance to be computed as if the Ministers retired at the period fixed for the cessation of the present annual reserve of £15,000 and the issue of the Debentures.

23 VICTORIA, No. 44.—AN ACT to amend the Constitution of the Legislative Council.

THE material provisions of this Bill are contained in the first and fifth Sections,—the one securing a certain tenure of his seat to every Member of the Legislative Council, the other rendering the Judges of the Supreme Court ineligible as Members of that Council.

The necessity of the enactment contained in Section 1 was rendered apparent by the irregular and premature resignation of certain Members of the Council in August last, the effect of which showed that it was in the power of Members whose period of retirement by rotation was approaching, by resigning instead of awaiting their retirement, to cause other Members to vacate their seats before their proper period of retirement arrived; thus shortening the tenure of their seats by three or six years, as the case might be. In order to understand this it is necessary to refer to the clause (Section 9) of the *Constitutional Act* prescribing the order in which Members are to retire. By that clause it was enacted, that after the first election the names of Members should be entered, in order to be determined by lot, on a list called the Members' Roll; that at the expiration of three years from the date of the issuing of the Writs for the first election, and thenceforward at the expiration of every

succeeding three years, the first five Members on the Roll should vacate their seats, and five new Members be elected to supply their places; and in the event of vacancies caused otherwise than by retirement in rotation, the Members elected to supply such vacancies should be placed last on the Roll; the intent being that one-third of the whole number of Members, consisting of the five who had held their seats for the longest period, should vacate their seats every three years, leaving ten Members in office. The effect of this enactment is, that the five Members whose names stand first on the Roll at the triennial period of retirement vacate their seats. It follows that if the five Members who are about to retire, resign, instead of retiring, they cause the names of the next five Members on the Roll to be pushed up, as it were, and so to become the first five names on the Roll at the period of retirement, and they shorten the tenure of the seats of those Members by three years; and if these five again should choose to adopt the same course and resign before the day of retirement, the names of the remaining five Members would become the first five on the Roll, and when the period of retirement arrived they would vacate their seats and the Council be dissolved. It is therefore obvious that by combination one set of Members may compel the vacation of the seats of another set. That the tenure of the seats of Members of a Legislative body, and especially of a body which was designed to be independent of all direct influence, whether of the Crown or the people, should be dependent on the will of other Members of the same body, is an anomaly unparalleled in the Constitution of any country, and gives opportunities for intrigue and political manœuvring very detrimental to the welfare and good government of the country. Such a state of things was never contemplated by the framers of the Constitution. It is clear that their intention was, that only one-third of the whole number of Seats should become vacant at any one time; and yet at this moment, in consequence of the irregular resignations of six Members, there are eleven seats vacant, and instead of ten Members remaining in office there are only four. The remedy proposed by the Bill is to secure to each Member a permanent tenure of six years. It would be difficult to devise a scheme of retirement by rotation which did not afford an opportunity for the same contrivance. It was suggested that the object might be attained by enacting that a Member elected to supply a vacancy caused otherwise than by rotation should take the place of his predecessor. But it is obvious that even under such a system, if the resignation of a retiring Member took place so shortly before the period of his retirement as to leave his seat vacant at that period, another Member would be brought within the category of retiring Members out of his proper turn. The provision in the Bill has the advantage of simplicity, and effectually secures the seat of every Member from being vacated by the contrivance of any other Member. It was objected that under the proposed plan many seats might become vacant at the same time. But that such a contingency is highly improbable will be manifest if it is considered how many changes from natural causes, such as resignation, death, acceptance of office, &c., are likely to happen in the course of six years. Experience has shown how frequent such changes are. Since the first Election of the fifteen Members of the Council, no less than seven vacancies had occurred from such causes before the recent resignations in less than three years. In the House of Assembly again, consisting of thirty Members, no less than seventeen vacancies have occurred in the same time, and several others are shortly anticipated; moreover the probability of vacancies happening at the same period will be constantly diminishing.

With regard to the clause rendering Judges ineligible as Members of the Legislative Council, the conviction has long forced itself upon the generality of thinking men that the number of Members is too limited, and the community altogether too small, to admit of a Judge taking part in political questions without detriment to the reverence and dignity which should attach to the judicial office. A very large majority of the House of Assembly expressed that opinion in the Session of 1858, on the occasion of the introduction by the Government of a Bill to render certain Civil Officers ineligible as Members of the Legislature, by carrying an amendment by which the provisions of the Bill were extended to the Judges; and a majority (nine at least) of the Members of the Council were also known to be of the same opinion, though the Council declined to entertain the Bill on a point of privilege; viz., that the Bill originated in the Assembly, whereas, inasmuch as it affected the constitution of the Council, it, as was alleged, ought to have originated there. It is of vital importance to the well-being, especially, of a young community, that the Supreme Court of Judicature should command the respect, confidence, and reverence of the people; and to this end it is essential that the Judges should be withdrawn from a political arena, so limited as to render it almost impossible for them to avoid personal conflicts, tending seriously to derogate from the sanctity of the judicial office. Another objection to the continuance of the Judges in the Legislature, is the liability of questions affecting the constitution, powers, and privileges of either House to be brought before the Supreme Court for decision. An instance has recently been furnished, where a point, which is known to have been adverted to, if not suggested, by one of the Judges in his capacity as a Member of the Council, was formally submitted to his judgment as a Judge on the Bench of the Supreme Court, by motion for a *mandamus* to compel the Governor to issue Writs for the election of Members of the Council, on the allegation that the first Writs were improperly issued. No man ought to be placed in so embarrassing and ambiguous a position.

The Judge, who was a Member of the Legislative Council, was one of those whose seat would have become vacant, by rotation, on the 25th instant; and it was considered that no more favorable time could be chosen for so desirable a change in the Constitution, as when the tenure of the seat, sanctioned by that Constitution, was about to expire.

FRANCIS SMITH.

29*th September*, 1859.

JAMES BARNARD,
GOVERNMENT PRINTER, TASMANIA.