

(No. 6.)



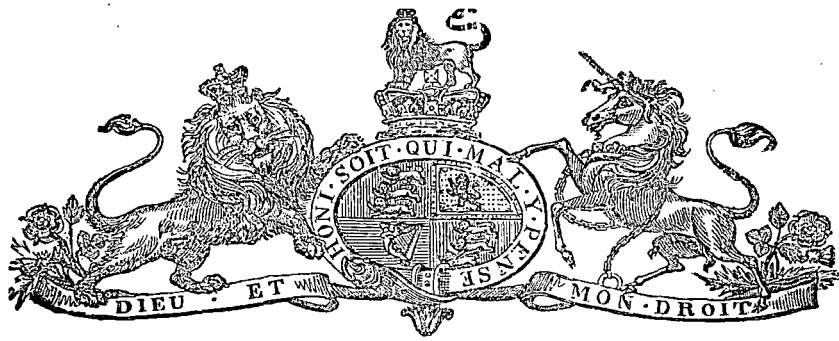
1863.

TASMANIA.
LEGISLATIVE COUNCIL.

DESPATCH FROM SECRETARY OF STATE.

JUDGES—APPOINTMENT.

Laid on the Table by Mr. Innes, and ordered by the Council to be printed,
24 February, 1863.



[TASMANIA.—SEPARATE.]

SIR,

Downing-street, 14th May, 1862.

SIR Henry Young, in his Despatch, No. 124, of 6th of November, 1860, notified to me, and submitted for Her Majesty's confirmation, the provisional appointment of Mr. Smith as Puisne Judge of the Supreme Court of Tasmania; and my Despatch of the 26th February, 1861, conveyed the Royal approval of this appointment.

My attention, however, has been drawn to the circumstance that, under the Charter of Justice, the Chief Justice and Puisne Judge of Van Diemen's Land ought to be appointed by Letters Patent under the Seal of the United Kingdom of Great Britain and Ireland.

To this course, which is not now pursued in any other of the Australian Colonies in which Responsible Government is established, there are two objections.

In the first place, it imposes on the Judge an unnecessary expense of One hundred Pounds or more.

In the second place, I do not consider it at all fitting that Her Majesty should be called upon to ratify, under the Great Seal of the United Kingdom, an appointment which She makes, not at the suggestion of the Government of the United Kingdom, but at the suggestion of the Local Government.

If it is the desire of the Colony that the Secretary of State shall fill up, from time to time (and not necessarily from the Colonial Bar), any vacancy which may occur in the Supreme Court of Tasmania, then I should be perfectly prepared to advise at once the issue of the proposed Letters Patent to Mr. Smith, and hereafter to such person as Her Majesty's Government (not necessarily acting on a suggestion from the Colony) may think most fitted for any vacant seat on the Bench. And without the slightest desire to adopt this responsibility, I must not shrink from expressing my opinion, that such an arrangement would present some important advantages,—and, in particular, that it might obviate some inconvenience not unlikely to arise from the growing practice of making political success the road to the Bench.

If, however, the Colonists are of a different opinion, and consider that the appointment to these Judgeships should be made, like other Colonial appointments in Tasmania, by the Governor with the advice of his Executive Council, it will be the duty of your Government to submit a Law for the consideration of the Legislature, repealing so much of the Charter as provides for the appointment of the Judges by Imperial Letters Patent, and substituting such form of appointment, under the Public Seal of the Colony or otherwise, as may appear to them most consonant with the dignity of the office.

Till one of these courses is taken,—that is to say, till Mr. Smith is either appointed by Letters Patent in conformity with the Charter, or declared Puisne Judge by a Local Act, or appointed by some Colonial Instrument in pursuance of such an Act,—he will continue to perform the duties of his Office under Sir Henry Young's provisional appointment; to the efficacy of which, under the concluding provisions of 9 Geo. IV., C. 85, Sec. 1, nothing, I conceive, was added in point of law by the notification of Her Majesty's approval conveyed in my Despatch of 26th February, 1861.

The question appears to be one with which the Executive Government could not properly deal, without the express or implied concurrence of the Legislature; to whom, therefore, you are at liberty to communicate a Copy of this Despatch, explaining to them distinctly that, while I conceive it perfectly within their competence to place the appointment of Judges in the hands of the Governor acting with the advice of his Executive Council, I shall, after this notice, consider that, by omitting to take this step, they are leaving the power of appointment practically to the Home Government.

I should also wish you to ascertain whether there are in the Colony any other Officers besides the Judges of the Supreme Court whom it is usual to appoint by Imperial Letters Patent, or by Royal Sign Manual, as I am of opinion that these modes of appointment are inappropriate in the case of Offices in respect of which the patronage is practically vested in the Colonial Government.

I have the honor to be,
Sir,

Your most obedient humble Servant,
NEWCASTLE.

Governor GORE BROWNE, C. B.,
&c. &c.

JAMES BARNARD,
GOVERNMENT PRINTER, TASMANIA.