

(No. 10.)



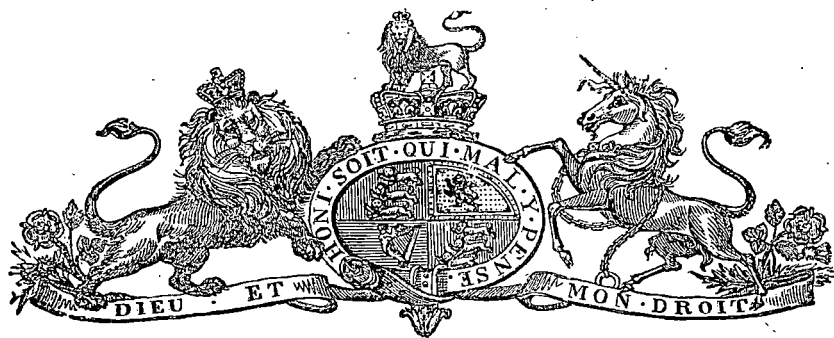
1860.

TASMANIA.

C O R R E S P O N D E N C E

Between the Honorable the Colonial Secretary and the Bishop of Tasmania, relative to the Petition to the Queen of certain Clergymen of the Church of England against the "Bill for the Abolition, upon certain Terms, of State Aid to Religion."

Laid upon the Table by Mr. Henty, and ordered by the Council to be printed, 31 July, 1860.



Colonial Secretary's Office, 14th February, 1860.

MY LORD,

I HAVE the honor, in returning the enclosed Petition which Your Lordship forwarded last month, to call your attention to the absence of the autograph signatures of the Petitioners, or of any evidence of authority having been given by them to the Rev. Mr. Ball to sign for them.

From this defect it would be impossible for me to forward such a document to His Excellency for transmission to England; and I have to request you will be good enough to inform Mr. Ball of the fact.

I have, &c.,

WM. HENTY.

The Right Rev. the Lord Bishop of Tasmania.

Bishopstowe, 16th February, 1860.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 14th instant, in which you inform me that it is "impossible" for you to forward to the Governor the Petition from the Rev. B. Ball and certain other Clergymen in my Diocese, which was entrusted to you by me for that purpose.

The reason assigned is, "the absence of the autograph signatures of the Petitioners, or any evidence of authority having been given by them to the Rev. Mr. Ball to sign for them."

You further request me to "inform Mr. Ball of the fact."

With this request I have complied, by forwarding your letter to him, without any remark or comment of my own.

Permit me to express a very strong opinion, that this impossibility on your part, if it legally existed, should have been discovered and pointed out at an earlier period. Presuming you to be correct in your objection, a single glance at the document would have been sufficient to apprise you of the fact.

The Petition was forwarded to you on the 6th of January, in ample time for the Mail of that month. You returned it to me on the 14th instant, the day on which this month's Mail was closed. By this suppression, and by this delay on your part, two Mails were lost, and the document rendered useless.

But, without desiring to argue the point with you, may I be allowed to express my inability to appreciate the grounds of the alleged impossibility?

The word of a Clergyman and a gentleman was pledged to the fact that he was authorised to sign on behalf of the Petitioners; the Bishop virtually certified his own admission of the fact, by forwarding the Petition without scruple or demur. Is such evidence inadmissible? Is such testimony so utterly untrustworthy, as—after more than five weeks' deliberation—to ensure the rejection of the document?

You must be aware that the records of the Parliament of Tasmania will show that Petitions similarly signed (in part at least) have been received by both Houses. I am unable,

therefore, to acknowledge the propriety of your taking upon yourself to reject a testimony, in the case before us, which would not have been rejected by the Parliament of the Colony.

But the view of the inadmissibility of this document, which you have taken, is a minor matter compared with the suppression of the document itself. I must, in the most emphatic terms that are consistent with the respect due to your office, protest against the authority that you have assumed, in constituting yourself the judge whether you are or are not to forward an official document to the Governor which has been entrusted to you for that special purpose, and so to suppress the free opinion of any portion of Her Majesty's subjects in this Colony.

Your duty, as it seems to me, is to transmit to the Governor such papers as are confided to you for transmission,—respectfully pointing out to His Excellency any irregularities that may appear to you to exist therein. It is for His Excellency *alone*, and not for the Colonial Secretary, to decide whether any irregularities exist at all, and whether such papers are or are not to be forwarded to Her Majesty.

I have the honor to be,
Sir,

Your obedient Servant,

F. R. TASMANIA.

The Hon. the Colonial Secretary.

Colonial Secretary's Office, 23rd February, 1860.

MY LORD,

I HAVE to acknowledge the receipt of Your Lordship's letter of the 16th instant, referring to the Memorial forwarded by the Rev. Mr. Ball, which I had been under the necessity of returning to that gentleman,—as, under the circumstances, the Government were unable to advise His Excellency to forward it, from want of due authentication of the signatures.

Your Lordship has remarked on the doubts which you hold as to the existence of any legal or proper objection to receive signatures coming in the form of those in question.

Your Lordship has also made objection to this Office declining to forward the document, as assuming a responsibility beyond the province of the Government.

The inference conveyed by Your Lordship, that the decision of these questions rested with myself, or with this Office, is one that I desire to correct. All questions having a legal character are, according to the practice of Governments, invariably determined by the Law Officers of the Crown, and not by the Colonial Secretary; and Your Lordship's experience has, no doubt, made you acquainted with this rule, although on the present occasion it appears to have escaped you.

In answer to the further observation, that the document should, under any circumstances, have been forwarded to the Governor for his own decision on the course to be pursued,—although this, as strict official routine, may be conceded, it does not appear to the Ministry that that form is always necessary, when the steps could be shortened by deviating from it as in the present case.

If forwarded to His Excellency with the note that the Ministry could not advise its being transmitted without further authentication, His Excellency would, as a matter of course, have returned it for the opinion of the Attorney-General, and thus delay without any gain would have been incurred.

That circumstances should have led to delay in returning the Memorial, is what myself and any others who were concerned must regret, more particularly if the delay should (as appears from the tenor of Your Lordship's remarks) be the cause of its not obtaining the requisite signatures.

I have, &c.,

WM. HENTY,

The Right Rev. the Lord Bishop of Tasmania.

Campbell Town, 5th March, 1860.

SIR,

I AVAIL myself of an hour of uninterrupted rest in order to pass some comments on your letter of the 23rd ultimo, which reached me on Monday last, on my return from Sorell.

You intimate, that the rule "appears to have escaped me," that "all questions having a legal character are, according to the practice of Governments, invariably determined by the Law Officers of the Crown, and not by the Colonial Secretary."

The rule has not escaped me: I am perfectly aware of its existence;—but I am unable to perceive its application to the subject in hand.

Your letter of the 14th ultimo could not lead any person to suppose that you had consulted the Law Officers of the Crown as to the impossibility of forwarding the rejected Petition to the Governor: nor do you now explicitly state that you did so.

You spoke in your *own* name, and *not* in that of the Government. Your words were, "it would be impossible for *me* to forward such a document to His Excellency for transmission to England." You did not urge legal, but, simply, technical objections.

Permit me, further, to express my belief, that, had you consulted the Law Officers of the Crown upon the subject, they could not have advised you to take the unprecedented and, as it appears to me, unconstitutional act, of suppressing a Petition to Her Majesty for the space of five weeks: they could not have counselled you to return the document as inadmissible, after the lapse of two Mails,—at an hour when it was impossible to communicate your decision to the subscribers in sufficient time to enable them to take action upon it before the coming Mail of March.

The remaining portion of your letter would seem to imply, that the Governor is no longer empowered to exercise his own free discretion as to the transmission of a Petition to Her Majesty. You state, that, if the "Ministry could not advise its being transmitted without further authentication, His Excellency would, as a matter of course, have returned it for the opinion of the Attorney-General," who, as you appear to forget, would, as a Member of the Ministry, *have already given his opinion.*

Against such a theory of Government, I must, as a Colonist, take the liberty of entering my most serious protest. My belief is, that the "Constitutional Act" has not deprived the Governor of the power to exercise his own independent judgment in all such matters, unchecked by any dictation on the part of the Ministry. It is unquestionably their privilege, as well as their duty, to *advise.* But it does not, surely, follow, as a matter of course, that His Excellency is bound invariably to follow their advice; neither is he, in all cases, compelled to resign his own judgment to their opinion, however carefully formed or conscientiously rendered.

I have the honor to be,

Sir,

Your obedient Servant,

F. R. TASMANIA.

The Honorable the Colonial Secretary,

Colonial Secretary's Office, 9th March, 1860.

MY LORD,

I AM in due receipt of Your Lordship's letter of the 5th instant, and shall have the honor of forwarding a reply at the earliest opportunity; but as my absence from town during part of this week, and part of the next, leaves me much pressed by engagements, and but little master of my time, I trouble your Lordship with this hasty note, to express my hope that you will not allow any publication of the correspondence without including in it my reply to the remarks contained in your last communication.

Whatever may be the difference between us, it seems hardly right that Your Lordship should endeavour to impugn my veracity. Yet I find such a charge not very ambiguously expressed in your letter; a charge which I assert to be groundless, and from which I desire to clear myself.

I may add here, that I have had the opportunity of seeing the Memorial of the three Clergymen which Your Lordship has now forwarded to His Excellency, and the attached Memorandum of Your Lordship attesting the authenticity of the signatures, and copy of which I append at foot.

(No. 10.)

6

This Memorandum comprises everything that was wanted from the first; and, could it have been forwarded with the original Memorial to this Office, would have saved all the interruption and delay which has unfortunately occurred.

I have, &c.,

WM. HENTY.

The Right Rev. the Lord Bishop of Tasmania.

(Copy of Memo.)

MEMO.

"I certify to have seen the original signatures attached to the rough draft of this Petition."

F. R. TASMANIA.

March 5, 1860.

Quamby, 12th March, 1860.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 9th instant, which reached me this afternoon.

One portion of its contents caused me, I must confess, considerable surprise and regret.

You say, "it seems hardly right that Your Lordship should endeavour to impugn my veracity. Yet I find such a charge not very ambiguously expressed in your letter,—a charge which I assert to be groundless, and from which I desire to clear myself."

Nothing was further from my intention than an "endeavour to impugn your veracity." On reperusing my letter, I am at a loss to discover on what grounds you rest this accusation. I must, therefore, request you to be more explicit on this point, and must call upon you to state distinctly wherein I have questioned your truthfulness.

Your desire, that I should not "allow any publication of the correspondence without including in it your reply to the remarks contained in my last communication," is perfectly just and reasonable. So far as it may rest with me, your wishes shall be complied with.

I may, perhaps, be allowed to take this opportunity of saying, that I am neither directly nor indirectly concerned in, or answerable for, any observations on the subject which may have already appeared in the newspapers.

I have the honor to be,

Sir,

Your obedient Servant,

F. R. TASMANIA.

The Honorable the Colonial Secretary.

Colonial Secretary's Office, 5th April, 1860.

MY LORD,

PRESSING official engagements have prevented my acknowledging at an earlier period Your Lordship's communication of the 12th ultimo; and it is satisfactory to me, in now doing so, that I am freed from the necessity of addressing Your Lordship at the length which I anticipated would have been incumbent when I wrote my note to you of the 9th ultimo,—Your Lordship, in the communication now acknowledged, having offered me the emphatic assurance that "nothing was further from your intention than to impugn my veracity." After this ample disclaimer, I feel that it would be engaging in a mere war of words were I to respond to Your Lordship's challenge, to state distinctly wherein you have questioned my truthfulness, further than by adverting to the general spirit and tenor of your Letters, the painful impression produced on me by which I desire to banish from my mind, not more from consciousness of self-respect, than of respect for Your Lordship.

To recur to the original ground of the present correspondence; viz.—the delay in the transmission to England of the Petition forwarded to me through Your Lordship by the Rev. Mr. Ball. I can but express my regret at the occurrence in so far as that delay was protracted by an oversight on my part. I accept the full measure of blame which my oversight attaches to me, protesting only against an accident of the kind—occurring, too, shortly after a Session of the Legislature, and before time had elapsed for clearing off the arrears accumulated in the Session—being magnified into an attempt to suppress a Petition, and animadverted on in terms which, if they do not expressly state, suggest that I was actuated by designs inconsistent with good faith

and honest dealing. Nor am I willing that the extent of the delay which took place, and for which I may be held responsible, should be exaggerated. A Petition received at this Office on Saturday, the 7th January last, which practically might have been the 9th of the month, the Signatures to which required proper authentication, could scarcely have been returned, first to Your Lordship, and then by Your Lordship to the party in the interior from whom it emanated for such authentication, and been received from him again, first by Your Lordship, then by me, in time for its statements to be examined, and an explanation of, or reply to, them to be prepared for simultaneous transmission to the Secretary of State by the 13th January, when the Mail closed; so that, had all the alertness and the despatch which could have been reasonably expected—and that not only on the part of this Office, but likewise on that of the individuals interested in the furtherance of the Petition—been observed, it could have resulted only in the transmission of the document by the February Mail, which cannot yet have arrived in England, instead of by that of March; a difference which, there is much reason to believe, will prove of no practical consequence whatever.

Your Lordship will, I trust, acquit me of any intentional disrespect if I pass without comment the views which you have propounded in respect to official usage, and constitutional principles, and to my own particular line of duty, in your several communications. I cannot accept Your Lordship as an authority on these points; and I advert to your dicta only to disclaim a general admission of their correctness, and lest silence thereon should be misconstrued.

I am glad to receive Your Lordship's repudiation of any responsibility for those perversions of truth which have appeared in one of the public papers in reference to the subject matter of this correspondence. Such a denial was, indeed, but necessary for Your Lordship's exculpation; but, spontaneously offered, it is welcome as marking your opinion of the gross misinterpretations which have been published to the world on a circumstance not very heinous in its origin, nor, it is anticipated, very serious in its consequences.

I have, &c.,

WILLIAM HENTY.

The Right Rev. the Lord Bishop of Tasmania.

Launceston, 10th April, 1860.

SIR,

VERY little, I apprehend, is required on my part in order to close the correspondence that has taken place between us respecting the Petition to the Queen forwarded by the Rev. B. Ball.

It would be ungenerous, as well as untruthful, in me to attribute to you any improper motive in delaying the document in question. Nor do I apprehend that my remarks upon the subject can be so interpreted as to convey the impression that I conceived you to be "actuated by designs inconsistent with good faith and honest dealing."

Whenever or wherever the matter has been alluded to in conversation, I have expressed myself to the effect that the suppression of this Petition is attributable to no "design" whatever, but solely to that habit of delay on your part, of which (pardon me in saying) I have so often had reason to complain.

Do not imagine that I am endeavouring to make too much of this business, if I venture still to adhere to my opinion, that, whilst in other cases such delays are productive only of inconvenience, more or less serious, according to circumstances, any even the smallest delay in forwarding a Petition to the Sovereign is a matter of very grave importance.

There are few privileges of which Englishmen are so proverbially jealous as the "right of Petition." The slightest interference with the free exercise of that right is calculated to lead to very painful results.

I do not desire to dispute the question with you, whether the views propounded by me "in respect to official usage, and constitutional principles, and to your own particular line of duty," are or are not correct.

Believing them, however, to be substantially unimpeachable, it will be my duty to the

(No. 10.)

8

Clergy, as being the guardian of their privileges, to take good heed that copies of all future documents sent through me to the Government should, at the same time, be transmitted to the Governor himself.

I remain,
Sir,
Your obedient Servant,
F. R. TASMANIA.

The Hon. the Colonial Secretary.

To the QUEEN's Most Excellent Majesty.

The humble Petition of the undersigned.

MOST HUMBLY SHOWETH :

THAT your Majesty's Petitioners are Chaplains of the Church of England (appointed by Your Majesty) within the Colony of Tasmania.

That a certain Petition on behalf of the Chaplains of the Church of England, dated the 1st day of November, 1859, was, on the 12th day of the same month, forwarded for presentation to Your Majesty; and that your Petitioners, by reason of the shortness of the time allowed for its preparation, and the imperfect postal communication of the Colony in country districts, were unable to see the said Petition or any copy thereof; but they have since been furnished with a copy of the same, and now desire to express their concurrence in that Petition, and in the prayer thereof.

Your Majesty's Petitioners therefore pray, that Your Majesty will be graciously pleased to interpose your Royal Prerogative between your Petitioners and those who would deprive them of their Appointments (graciously conferred on them by Your Majesty), without any just compensation suited to the circumstances of the case; and that Your Majesty will use the "legitimate influence of the Crown" for the protection of your Petitioners, as promised in the Despatch of Lord John Russell of December, 1839, by withholding the Royal Assent to the Bill mentioned in that Petition, and entitled "*A Bill to provide for the Abolition, upon certain Terms, of State Aid to Religion in the Colony of Tasmania.*"

And Your Majesty's Petitioners, as in duty bound, will ever pray, &c.

(Signed) WILLIAM RICHARDSON, B.A., appointed in London in 1840, Chaplain of Avoca.

CHARLES DOBSON, Clerk, appointed in London in 1848, Chaplain of Prosser's Plains.

W. W. F. MURRAY, M.A., appointed in 1850, Chaplain of New Norfolk.

Dated *January 1st*, 1860.