

(No. 90.)

[POLITICAL.]

Downing-street,
10th December, 1856.

SIR,—

I have to acknowledge your Despatches, of the numbers and dates specified in the margin, containing the history of the political affairs of the Government of New Zealand from March to June last, and raising a variety of highly important questions for the consideration of Her Majesty's Government.

2. It is very gratifying to me to be able to convey to you, at the outset, the approval of Her Majesty's Government, and the sense which they entertain of the discretion and ability by which your conduct has been distinguished, under circumstances of considerable difficulty, since you undertook the administration of the affairs of the Colony.

I observe with pleasure the frankness of dealing which has characterized your relations with the Local Legislature and Authorities, and which is so highly calculated to obtain the respect and confidence of a free and intelligent community.

3. I do not propose to enter into unnecessary discussion, either on the subject of the Constitution which has been conferred on the Colony, or of the measures taken by the Provincial Authorities before you assumed the administration of its affairs, which may have had the effect of increasing the inherent difficulty of carrying on harmoniously the joint action of Local and Central Institutions.

I continue to feel strongly that if embarrassments of this kind are now seriously felt, or shall hereafter become apparent, the proper remedy for them will be found in the exercise of those legislative powers which have been freely given to the Colonists through the General Assembly, rather than in the interference of the Imperial Parliament, which could be justified only under circumstances of plain necessity. (*Vide Note A.*)

4. One reason which leads me to this conclusion, in addition to others formerly communicated to you, is this, that whatever temporary antagonism may exist between the powers of the Central and Provincial Legislatures under the Constitution, there can be no ultimate and irreconcilable opposition. The Provincial Legislatures are made by the Constitution absolutely subordinate to the General Assembly. The Provincial Legislatures are, in the first place, restrained from legislating at all on certain subjects; but, in the next place, whatever extent of residuary enacting powers may be left to them, they cannot in any case contravene any law of the General Assembly. The General Assembly, on the other hand, may control or supersede any law of theirs; and further, the General Assembly may modify the powers of the Provincial Councils themselves. The supremacy of the Assembly seems therefore complete, as far as the words of the law can make it so.

5. Nor do I find this doctrine controverted in any of the numerous legal statements and discussions conveyed in your despatches. I see great doubts expressed as to the legality of particular measures of particular Provincial Councils; but I see no doubt anywhere expressed, that if the General Assembly thought proper, that Body could at once put an end to these questions, and correct any excess of power assumed by those Bodies.

6. The inference which I draw from this leading fact is two-fold: first, that I could be of little service to you by taking any measures to test the legality of the various Provincial Acts (*vide Note B.*) (and thereby perhaps adding to the doubts which already embarrass you), because the real remedy is in the power of the Central Legislature; and, secondly, that if this conflict of laws still subsists, and these alleged usurpations of authority are still persisted in by the Provincial Governments, I must assume for the present that the Central Legislature, which has the power to redress such evils, has not thought proper to exercise that power; and that any appeal to Parliament, having thus no necessity to authorise it, would be without justification.

7. In coming to this conclusion, Her Majesty's Government cannot forget that the existing Constitution has been in operation only a very short time (*vide Note C.*), that owing to circumstances, the Provincial Legislatures were called into existence before the Central; that the latter has been as yet hindered in its other functions by the necessity and difficulty of constituting a General Executive Government; and that there is therefore no reason whatever, from what has yet occurred, to doubt that the public spirit and good sense of the community, acting by its representatives, will succeed in applying an adequate remedy to prevent defects.

8. I approve therefore of the course which you have hitherto taken with respect to the alleged illegal Provincial enactments, and hope that you will be able to persevere in it.

Note A.—This is supposed to have reference to some document forwarded by the Governor from the Law Officer of the Province of Auckland, as in Despatch No. 82 of 21st August 1856, the Governor observes:—"It will be time enough for Her Majesty's Government to consider what alteration should be made in the Constitution Act, when the Assembly has declared its views and wishes in reference to this important subject." T. G. B.

Note B.—This remark is supposed to have reference to doubts submitted through the Governor by Mr Brown, late Superintendent of the Province of Auckland. T. G. B.

Note C.—In despatch No. 47 of 9th May 1856, the Governor observes:—"Although I do not recommend the adoption of any alteration in the Constitution Act until it has undergone a longer trial, I feel that I should be neglecting my duty if I did not bring to your notice such information as I possess, and keep you acquainted with the actual state of affairs." T. G. B.