

As to those already passed, and to which your predecessor had assented, they must be left subject to the doubts which have arisen, and which can only be removed either by the decision of the legal tribunals, or by the action of the General Assembly. As to those which may be hereafter passed, it will be your duty scrutinize them, with the assistance of your legal advisers, and to refuse your assent to such as are shown to contravene the Constitution either by trenching on the prohibited subjects, or by explicit or plainly implied contradiction of laws passed by the General Assembly. For although it is perfectly true (as pointed out in your despatches) that Provincial enactments thus offending are void, it is not the less incumbent on the Government to preclude beforehand inconvenient collisions by disallowing them.

9. I am not surprised that you should anticipate some convenience from an alteration of the Constitution which should give you the power (*vide Note D.*) of returning to the Superintendents, Provincial Acts with suggested amendments. And I am inclined to believe (although I must not be taken as giving a legal opinion) that the General Assembly possesses the authority to give you such power under Section 69 of the Constitution Act, which enables it to "alter the powers of the Provincial Councils." But I think, on reflection, you will see that this power, though attended with certain obvious advantages, would probably in the end produce greater evils. The relation in which the Governor stands, under the Constitution, towards the Provincial Legislatures is substantially the same in which the Crown stands towards Colonial Legislatures, and that of New Zealand in particular. The Crown can disallow the Acts of the General Assembly, but it cannot return them with amendments. On the other hand, the Superintendents have the special power of thus returning Provincial Bills vested in them. Should therefore your present views prevail, there would be two several functionaries, each invested with the power of returning local Bills to the Provincial Legislature with suggested amendments; a complication of rights and duties which must apparently lead to much embarrassment.

10. I pass to a subject of perhaps still greater importance, and on which you have applied for distinct instructions. After the best consideration which they can give to the subject, Her Majesty's Government approve of the principles by which you propose to conduct yourself in relation to the affairs of the Natives, and which they find laid down with sufficient clearness in your Minute of 15th April last, and the Memorandum annexed. They consider that, notwithstanding all the respect due to the principle of Responsible Government, the management of Native affairs should remain, for the present, mainly in the hands of a Governor responsible for it to the Crown. They are of opinion that the circumstances which justify this decision are, the terms of the Constitution itself, which withhold this subject in great measure (as regards the land dealings) from the control of the Local Legislature, to which the Local Executive is responsible; the still subsisting or apprehended danger in certain parts of New Zealand; the necessity arising from this danger for maintaining in the Colony a large Force at the expense of the Mother Country, a Force of which the discipline, control, and application, must remain in the hands of the Governor, as a servant of the Crown, the large amount of the Native Contributions to the local revenue, (as shown by yourself) while from unavoidable circumstances, they remain almost unrepresented in the Legislature, and the fact that the wars of the Native population is found in one or two Provinces only, while the greater part of the European community with preponderating influence in the Legislature, has in reality no direct concern with Native affairs.

11. You are therefore fully authorised to act, until further instructions, on the principles there laid down, and assented to in April last by your responsible advisers. If you should at any time find it in your power to carry into effect the provision of the Constitution for setting apart Native districts, it is plain that a considerable step would be made towards the solution of this difficulty. But this is not a subject on which Her Majesty's Government feel themselves justified in prescribing any course to you, as your conduct must needs depend on local circumstances.

12. The subject of Military defences is closely connected with that of the Management of the Natives. On this head I must take the present occasion for repeating to you the caution conveyed in my despatch of 21st of October last (*vide Note E.*). Her Majesty's Government are willing to abide by the arrangement there specified, but only if it is fully adhered to by the Colony.

13. I fully appreciate the great value to the Colony of the presence of a Ship of War, the services of which would be available in the event of any hostile measures on the part of the Natives on the sea coast, and I shall not fail to use my best endeavours to procure you this accommodation, as far as it can be done consistently with the exigencies of the service.

14. Such are for the present, the whole of the instructions which Her Majesty's Government think it necessary to communicate to you. There is however a contingency to which it may be advisable to advert, although it has not as yet occurred. I mean that of the removal of the seat of Government from Auckland to some other place. Should this be effected, I am disposed to agree with yourself that the absolute necessity of having a Chief of the Executive established in the North, where the mass of the Native population is congregated, will render the appointment of a Lieutenant Governor advisable, and

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*Note D.*—Reference is here made to despatch No. 46 of 8th May 1846, in which is the following:—"I enclose also the remarks of the Attorney-General on an Act passed by the Provincial Council of Wellington, which has been left to its operation. These remarks will serve as one of many instances of the inconvenience attending the working of Section 29 of the Constitution Act, which would have been obviated if the same power had been granted to the Governor in reference to Provincial Acts, as he possesses by Section 56 in reference to the General Assembly." T. G. B.

*Note E.*—The despatch here referred to states "That the Contribution from the Colonial funds in aid of the Military protection afforded to New Zealand, should for the present be limited to all charges on account of the maintenance and repair of barracks, and for constructing such further barracks as may be required." T. G. B.