

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

RELATIVE TO THE

A P P O I N T M E N T O F J U D G E S

OF THE

S U P R E M E C O U R T.

*Presented to the Honourable the House by command of His Excellency 4th May, 1858,
and ordered to be printed.*

A U C K L A N D :

1858.

Government House, Auckland, New Zealand,
26th July, 1856.

SIR,—

I have the honor to forward for your consideration a Resolution passed by the House of Representatives, on the subject of the Tenure of Office, Number, Manner of Appointment, and Amount of Salaries, of the Judges of the Supreme Court of New Zealand.

I have &c.,

(Signed) T. GORE BROWNE.

The Right Honourable

H. Labouchere, M. P.,

&c., &c., &c.

Government House, Auckland, New Zealand,
2nd October, 1856.

SIR,—

I have the honor to forward and recommend to your favourable consideration the accompanying memorandum, prepared by my responsible advisers, covering and having reference to certain Resolutions adopted by both Houses of the Assembly, which will require for their effectual operation an Act of the Imperial Parliament.

I have &c.,

(Signed) T. GORE BROWNE.

The Right Honourable

H. Labouchere, M. P.

&c., &c., &c.

[MEMORANDUM.]

23rd September, 1856.

Your Excellency's Advisers have the honor to transmit the accompanying Resolutions specified in the margin adopted during the last Session by both Houses of the Legislature, and which require for their effectual operation an Act of the Imperial Parliament.

On the subject of the Financial Resolutions they have addressed your Excellency in another Memorandum, dated the 5th inst., and the other questions do not appear to require particular comment.

As the intervention of Parliament is necessary to give effect to the objects proposed in those Resolutions, they would respectfully suggest that the whole may be embodied in one Act for the Amendment of the Constitution Act, and they would earnestly pray Her Majesty's Government to introduce at the earliest opportunity such a measure to Parliament.

As regards the detail and explanations that may be desired as to the objects and intentions of the Colonial Government and of the Legislature, they have to state that Mr. Sewell, a member of the Government, will be in England, prepared to afford the requisite information, and they would express a hope that Her Majesty's Government will communicate with Mr. Sewell on the subject of any Bill to be proposed in Parliament in reference to the above matter.

(Signed) FREDERICK WHITAKER.

[MEMORANDUM.]

October, 17th, 1857.

His Excellency's Ministers have only to observe with respect to the subject of Mr. Stephen's letters, that, as will be perceived on referring to those Resolutions, the appointment of a Chief Justice from England, whenever a vacancy should occur, was contemplated by the General Assembly when it passed the Resolutions relative to Judges of the Supreme Court.

These Resolutions were at the close of last Session transmitted to the Secretary of State for the Colonies, with other Resolutions adopted by the General Assembly, with a Minute requesting that effect might be given to the wishes of the Legislature. Ministers have no advice to offer in opposition to that.

(Signed) E. W. STAFFORD.

[MEMORANDUM.]

23rd January, 1858.

The Responsible Advisers of the Crown in New Zealand have to express their gratification at the manner in which the Imperial Government has given effect to the wishes of the Legislature and Government of the Colony, as to the Judges of the Supreme Court; which has resulted in the appointment of Mr. Arney as Chief Justice of New Zealand.

The recent decease of Mr. Justice Stephen now renders it necessary that a Puisne Judge of that Court be appointed at as early a date as is possible.

It is therefore advised that Her Majesty's Secretary of State for the Colonies be requested to take the same steps for the appointment of Puisne Judge as have been adopted with reference to the recent appointment of a Chief Justice, and to ensure the early arrival of such Judge in the Colony, where his presence is much required.

His Excellency's Ministers have further to state, that it is proposed that the resolutions adopted by both Houses of the General Assembly in its last session, as to the Tenure of Office, and Salaries of the Judges of the Supreme Court, be carried into effect by a measure to be introduced in the ensuing session of the General Assembly; by which One Thousand Pounds per annum will be assigned as the salary of the Puisne Judge now requested to be appointed.

(Signed) E. W. STAFFORD.

Downing Street, 19th December, 1856.

SIR,—

I have to acknowledge your despatch, No. 76, of the 26th July last, enclosing a Resolution of the House of Representatives on the subject of the Tenure of Office, Number, Manner of Appointment, and Amount of Salaries of the Judges of New Zealand.

2. Her Majesty's Government fully concur in the views expressed in the four first Resolutions of the House.

The Tenure of Office proposed is the same with that already established by the Constitutional Act passed in New South Wales and confirmed by the 18 and 19 Vict. C. 54. The Number and Salary of the Judges are matters for the decision of the local Legislature, and the liberality evinced by the present Resolutions is likely to secure for the Colony the services of able men. But it appears to me that all these objects would be better obtained by local enactment than by any other method.

You are authorised beforehand to assent to any Bill for carrying into effect these Resolutions: and if it is thought that any such measure requires to be reserved for the assent of Her Majesty, on account of its interference with the present Civil List (under sec. 65 of the Constitution Act,) I shall be ready to advise Her Majesty to give such assent.

3. The fifth Resolution appears to me open to some objection. It is the practice of this Department as regards Colonies under Responsible Government, to be guided, as far as possible, by the wishes of the Provincial Responsible advisers of the Crown in the selection of Judges as well as other officers: and if those advisers think fit to take the opinion of any Judge in this Country as to whom they shall recommend, they will, as I believe, adopt a course highly advantageous for the Province, and in which Her Majesty's Government will be happy to co-operate. But to establish by law the principle, that Her Majesty must act in this matter on the recommendation of some one Judge selected by the Colonial Government (if this is the meaning of the Resolution) seems to me hardly a Constitutional proceeding. Her Majesty's right of appointment to offices is exercised according to the principle of the British system of Government, under the recommendation of advisers responsible either to Parliament as in England, or to the local Legislatures in Colonies under the form of Government established in New Zealand. But a designated Judge, established to direct the Crown in making appointments, would be an officer responsible neither to Parliament at home nor to the Legislature in the Colony: and I fear that this might not merely prove an objection of principle, but might also lead to practical inconvenience.

I have, &c.,

(Signed) H. LABOUCHERE.

Governor Colonel T. Gore Browne,
&c., &c., &c.
New Zealand.

Downing Street, 18th August, 1857.

SIR,—

I enclose for your information Copy of a letter which I have received from Chief Justice Martin tendering his resignation of his Office, which although with much regret, Her Majesty's Government felt themselves bound to accept, and have signified that acceptance in a letter of which copy is also annexed.

In considering the question of appointing a successor, I had regard to the Resolution of the Houses of Assembly of the 24th of July, 1856, expressing their opinion in what manner the Judges of the Supreme Court should be selected. I had felt it necessary to point out to you, by my Despatch of the 19th of December last, No. 96, that it was impossible for Her Majesty's Government to accede unreservedly to the terms of a Resolution which if literally taken would have had the effect of placing the disposal of very important Offices in the hands of an irresponsible adviser of the Crown. But at the same time I fully recognised the substantial justice of the wish of the Assembly, that the judgment of the Secretary of State on such a subject should be assisted by that of a personage so qualified to advise, and whose selection was so certain to be attended with respect, as one of the Judges of the Superior Courts at Westminster.

I collected likewise from your correspondence that the delay which would be occasioned by a reference back to the Colony on the occasion of Mr. Martin's resignation, might be prejudicial to the interests of justice.

I accordingly consulted Mr. Justice Coleridge as to the selection of a gentleman calculated to supply the place of Mr. Martin. Mr. Justice Coleridge recommended Mr. George Alfred Arney, of

the English Common Law Bar, and Western Circuit: and on correspondence with that Gentleman, I learned that he was willing to accept the Office, and also to embark for the Colony as early as October next in order to fulfil its duties.

Mr. Arney has been accordingly appointed by Her Majesty to the office of Chief Justice of the Supreme Court of New Zealand.

I have not thought it advisable on the present occasion to alter the established course of usage in respect to judicial offices in the Colonies by advising Her Majesty to appoint Mr. Arney otherwise than during Her pleasure (which would have placed him on a different footing from his brethren on the Bench). But I have already informed you in my Despatch already referred to, that Her Majesty's Government would entertain no objection to a general change of the tenure of the Judges, in the manner recommended by resolution of the Assembly, provided this were done by law, as it has already been done in the Colony of New South Wales.

I cannot conclude this Despatch without expressing to yourself, as I have already done to Mr. Martin, the sense entertained by Her Majesty's Government of the very valuable services which he has rendered to the Colony during his tenure of Office, both in his judicial capacity and as an enlightened and public spirited member of the community.

I have &c.,
(Signed) H. LABOUCHERE.

Governor Thomas Gore Browne, C.B.

&c., &c., &c.
New Zealand.