

DESPATCH

FROM THE

SECRETARY OF STATE FOR THE COLONIES

RELATIVE TO THE

POLITICAL AFFAIRS OF THE COLONY.

*Presented to the House by command of His Excellency, 10th April, 1858,
and ordered to be printed.*

AUCKLAND:

1858,

(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.

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

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.

possibly some further measures may be requisite in order to leave the new local Government thus constituted, sufficient independence of action. In this case it may become further necessary that Parliament should be consulted, a contingency which need not at present be anticipated, but for which I should wish you to be prepared, and on which I shall expect to receive from you timely information and advice.

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

Governor Gore Browne,
&c., &c.