

CORRESPONDENCE.

SIR,—

Government House, Wellington, 25th October, 1900.

I have the honour to transmit a Bill passed by the two Houses of Parliament entitled "The New Zealand Ensign Act, 1900."

The Bill is reserved for the pleasure of Her Majesty.

By section 735 of "The Merchant Shipping Act, 1894," any Bill purporting to deal with the flags to be used in the colonies must be so reserved.

2. The Bill contains the following clause: "4. This Act shall be reserved for the signification of Her Majesty's pleasure thereon, and shall come into operation on a day to be fixed by the Governor by Proclamation in the *Gazette*: Provided that such Proclamation shall not be made unless it contains a statement that Her Majesty has been pleased to approve of this Act."

3. This is not in accordance with the clause requested by the Right Hon. the Secretary of State for the Colonies, in his despatch circular dated the 20th June, 1884, to be used in such cases. It was as follows: "This (law, Act, Ordinance) shall not come into operation unless and until the Officer administering the Government notifies by Proclamation that it is Her Majesty's pleasure not to disallow the same, and thereafter it shall come into operation upon such a day as the Officer administering the Government shall notify by the same or any other Proclamation."

4. The Government of New Zealand agreed to the request in this despatch, but suggested that in consequence of the provisions of the Interpretation Act the word "Governor" should be substituted for the words "Officer administering the Government."

5. This is the first occasion that such a clause as now appears in this Bill has been used in New Zealand.

6. I enclose memoranda that have passed between the Premier and myself in regard to it.

7. I should like to make, in explanation of the reason why I deemed the prerogative of the Governor interfered with, the following observations:—

(a.) By our Constitution Act the Governor is a constituent part of the General Assembly. Our statutes are enacted by "the General Assembly of New Zealand," and the Assembly consists of the Governor, the Legislative Council, and the House of Representatives. Our Constitution Act differs in this respect from the Constitution Acts of the Australasian Colonies. The clause in its present form dictates to the Governor what he shall do. No clause is really necessary at all, but if one was inserted it should, I submit, have been in the form approved of by Her Majesty's Government in England, and mentioned in the circular despatch before referred to. It would be considered improper in a statute to dictate to the House of Representatives how it shall perform its duties, and it is equally wrong to tell the Governor how he shall perform his functions.

(b.) This clause also makes a breach in the uniformity of procedure in regard to Bills reserved, which the circular despatch meant to provide for, and to which procedure all the other colonies agreed.

(c.) You will observe in my memorandum to the Premier [17th October, 1900] that I warned him that I should not be surprised if the assent of Her Majesty were refused to the Bill. He has chosen to run that risk. There would, I believe, have been no difficulty in getting the House to agree to the clause in the proper form if a message had been sent to the House recommending it.

I have, &c.,

The Right Hon. the Secretary of State for the Colonies.

Deputy Governor.

ENCLOSURES.

"The New Zealand Ensign Act, 1900."

Memorandum for the Right Hon. the Premier.

SECTION 4 of this Bill seems to invade the prerogative of the Governor. I doubt if the two Houses ought to put in a Bill that it should be reserved. It is for the Governor to express his opinion on the subject in accordance with the law.

Government House, Wellington, 15th October, 1900.

Memorandum for His Excellency the Governor.

THE Premier presents his compliments to His Excellency, and, in respect to the question raised that section 4 of the New Zealand Ensign Bill seems to invade the prerogative of the Governor, begs to state that he does not think the Governor's prerogative is involved. On the contrary, it would be a serious limitation of the constitutional powers of Parliament if it could not insert in a Bill a clause requiring it to be reserved, especially seeing that the powers of the Governor as to reserving Bills are limited to what is contained in the Royal Instructions. The Premier admits that clauses such as No. 4 are not uncommon, and though the word "reserved" may not be used, the effect is the same, and it is submitted that the form is not material.

It was with a view of securing uniformity throughout all the self-governing colonies that Lord Derby, in 1884, sent out a model clause, and the Governor in acknowledging it refers to it as "a clause recommended to be used in reserving Acts for the signification of Her Majesty's pleasure."

Premier's Office, Wellington, 16th October, 1900.

Memorandum for the Right Hon. the Premier.

THE Deputy Governor begs to inform the Premier, with reference to his memorandum dated the 16th instant,—

1. He has no desire to enter into a controversy as to whether a precedent will not be established that may be deemed hereafter an invasion of the Governor's rights and privileges, but he may add that the opinion he previously expressed is not shaken by the Premier's memorandum.