A.—No 1.

PAPERS

RELATING TO

ACTS OF THE ASSEMBLY.

SECTION I.—DESPATCHES FROM GOVERNOR SIR GEORGE GREY, K.C.B.

SECTION II.—DESPATCHES FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF HIS EXCELLENCY.

AUCKLAND.

1863.

PAPERS

RELATING TO

ACTS OF THE ASSEMBLY.

DESPATCHES FROM GOVERNOR SIR GEORGE GREY, K.C.B.

No. 1.

No. 111

COPY OF DESPATCH FROM HIS EXCELLENCY SIR GEORGE GREY, K.C.B., TO HIS GRACE THE DUKE OF NEWCASTLE, K.G.

Government House, Auckland,
31st October, 1862.

My Lord Duke,—

I have the honor to enclose, for your Grace's information, authenticated copies of the several Acts passed during the late Session of the General Assembly of New Zealand; together with a memorandum upon each Act, drawn up by my Responsible Advisers, in which they explain in detail all such points as appear to require your Grace's special attention.

I have &c.,

G. Grey.

His Grace the Duke of Newcastle, K.G.

Enclosure in Despatch No. 1.

MINUTE BY THE NATIVE MINISTER ON CERTAIN ACTS OF THE GENERAL ASSEMBLY.

ACTS RELATING TO THE ADMINISTRATION OF JUSTICE.

12.—*The Supreme Court Amendment.*—(See Mr. Sewell's Minute, page 5.)

24.—*Court of Appeal.*—(See Mr. Sewell's Minute, page 5.)

33.—*Jury Law Amendment.*—(See Mr. Sewell's Minute, page 5.)

35.—*Sale for Non-payment of Rates.*—(See Mr. Sewell's Minute, page 6.)

36.—*Resident Magistrate's Jurisdiction.*—(See Mr. Sewell's Minute, page 5.)

37.—*Debtors and Creditors.*—(See Mr. Sewell's Minute, page 5.)

39.—*Native Districts Regulation Amendment.*—(See Mr. Sewell's Minute, page 6.)

40.—*Native Circuit Courts Amendment.*—(See Mr. Sewell's Minute, page 6.)

ACTS RELATING TO TRADE, COMMERCE, AND NAVIGATION.

No. 2.—*Joint Stock Companies Amendment Act.*

This Act merely enables Insurance Companies to be formed and registered under the provisions of the Joint Stock Companies Act, 1860; prohibiting, however, the registration of any Insurance Company formed with limited liability.

No. 3.—*Military Supplies Customs Act.*

This Act enables the Governor, by Order in Council, to declare what articles may be issued free of duty, for the supply of Her Majesty's Land and Sea Forces, which have not been specially imported by the Commissariat.

No. 5.—*Bills of Sale Registration Amendment Act.*

This Act provides that Bills of Sale shall be filed with the Registrar of the Supreme Court in the Province, within which the personal chattels are situate, over which the Bill of Sale is given, instead of being filed with the Registrar in the Province, within which the Bill itself is given; fixes the time within which Bills of Sale are to be filed; and provides a simple mode in which satisfaction of a Bill of Sale shall be entered.

No. 6.—*Summary Procedure on Bills Act.*

This Act regulates the special procedure in action upon Bills of Exchange, Promissory Notes, Bank Cheques, or any written Contract; the general Rules of Procedure in the Supreme Court being made available, so far as applicable, to proceedings under this Act. It is framed on the principles of the Imperial Act, 18 & 19 Vict., cap. 67, 1855.

No. 7.—*Trustee Relief Act.*

By this Act Trustees may pay monies to, and transfer or deposit securities with the Colonial Treasurer, and therenpon be discharged of liability; and the Supreme Court may then make such Order as shall seem fit in relation to such monies, their investment, and so forth. Trustees may apply to the Supreme Court to make an order for such payment, transfer, or deposit, of monies or securities with the Colonial Treasurer, who shall publish Accounts. Executors or Administrators may, upon an order of the Supreme Court, give notice to Creditors to come in, and after such notice may distribute the Estate. Trustees, Executors, or Administrators may, without the institution of a suit, apply to the Supreme Court for directions how to act, and may invest money (unless expressly forbidden) in Real Securities, or in General or Provincial Government Securities.

No. 16.—*Panama Route Postal Act.*

This Act enables steps to be taken for the establishment of Postal Communication by Steam *via* Panama, either separately or in combination with any of the Australian Colonies; and appropriates £30,000 a year for five years, from 1st January, 1864, for the purpose.

No. 20.—*Marine Boards Act.*

This measure directs the constitution of a Chief Marine Board for the Colony, to superintend the construction and maintenance of Lighthouses upon the Coast, and to appoint, regulate, and control Pilots and Pilot establishments. It permits for these purposes the levying of light dues and pilotage rates upon shipping. It further empowers the Superintendent and Provincial Council of each Province to constitute by Ordinance a Local Marine Board, for the management and superintendence of the harbour, wharves, buoys, and beacons, and for the control of shipping within any part of such Province. The provisions of this measure are intended to meet the special requirements of the various parts of the Colony.

To meet the difficulties which have occurred in the registration of Colonial built ships, and of seamen, the Governor is invested with the powers of the British Board of Trade.

No. 21.—*Steam Navigation Act.*

This measure is almost identical with those in operation for the same purpose in the Colonies of New South Wales and Victoria. Steam vessels plying within, or trading to the Colony, are required to undergo a periodical inspection of their hull and machinery by officers appointed for that purpose, upon whose report Certificates may be issued by any Board constituted under the Marine Boards Act of this Session. The provisioning, stowage, and passenger accommodation of steamers are also made subjects for constant supervision. This measure has been rendered necessary by the extension of steam navigation on the coasts of the colony.

ACTS RELATING TO REPRESENTATION AND THE FRANCHISE.

No. 4.—*Election Petitions Act Amendment Act.*

This Act is intended to provide a more simple and effective mode of procedure in the case of Election Petitions, than existed under the Act of 1858.

No. 10.—*Miners Representation Act.*

This Act repeals the Miners Franchise Act of 1860. The latter statute gave the Electoral Franchise to all holders of Miners rights, issued under the Gold Fields Act of 1858; but it was passed at a time when only the Nelson Gold Field was known, and the subsequent great influx of Miners upon the discovery of gold at Otago, induced the Legislature to re-consider the subject, with the view of giving a special representation in the General Assembly and Provincial Councils to the mining interest, and relieving the settled population of any Province or Electoral District where great numbers of Miners might be attracted, from the risk of being overborne in the election of a Superintendent of the Province, or in the election of a Member for the district.

No. 11.—*Representation Act.*

This Act gives four additional Members in the House of Representatives to the Province of Otago, of whom two are to be chosen as "Gold Fields Members," under the Miners Representation Act last mentioned.

ACTS RELATING TO ARMS, MILITIA, &c.

No. 7.—*Arms Act Continuation Act.*

This is the Sessional law for continuing the Arms Act of 1860.

Nos. 32 and 38.—*Militia Amendment Act and Colonial Defence Force Act.*

The first of these Acts removes a serious difficulty in the working of the Militia law of 1858-60. The second enables the Governor to raise and arm a special force, and it is the intention of Ministers shortly to address the Governor generally on the questions raised by the Duke of Newcastle's despatch of 26th August, 1862, just received, it will not be necessary at the present moment to refer specially to those two Acts.

ACTS RELATING TO FINANCE.

No. 26.—*Civil List Act.*

This Act varies the Civil List granted to Her Majesty in 1858. It raises the salary of the Governor of New Zealand from £3500 to £4500 a-year, and makes an increase in the salaries of the Judges. The salary of the Chief Justice is increased from £1400 to £1700 a-year, and of the Puisne Judges from £1000 to £1500, and provision is made for a third Puisne Judge, rendered necessary by the great increase of population at Otago. The Act also increases the amount granted for the establishment of the General Government, so as to provide for a re-arrangement of the Ministerial Offices, the increase of the salary of Ministers from £800 to £1000 a-year, and so forth.

As the Governor in His Excellency's prorogation speech referred to the increase in the salary of the Judges, no further mention is required here. But Ministers desire to take this opportunity of representing to the Imperial Government, that in the increase which Her Majesty is humbly recommended to sanction in the salary of the Governor, it has by no means been the intention of the General Assembly to measure the personal and pecuniary sacrifices he made in obeying Her Majesty's commands to assume the Government of New Zealand, but simply to fix such an official income for the Queen's Representative as the circumstances of the Colony justify. It may be added here that whereas the practice has hitherto been of voting separately the expenditure requisite for the Governor's personal establishment, Ministers thought it would be more satisfactory to place the sum of £1200 at His Excellency's own disposal for that purpose, in the Sessional Appropriation Act (No. 30.)

No. 27.—*Native Purposes Appropriation Act.*

It will be observed that the Civil List Act makes no alteration in the permanent grant of £7000 a-year originally made to Her Majesty for Native purposes. The Native Appropriation Act makes a large additional grant for a period of three years.

Ministers request the Governor to observe that in this Act it has been the desire of the General Assembly to give effect, as nearly as possible, to the instructions of the Duke of Newcastle, dated 26th May, 1862, on the subject of His Excellency's plan of Native Government. The Duke of Newcastle required that the Colony should, as heretofore, appropriate not less than £26,000 a-year for Native objects, and agreed that in that case the Governor might in addition spend for Native purposes the contribution of £5 a head given by the Colony for Troops. His Grace further stipulated that the arrangement should remain in force for three years, from 1st January, 1862.

The Assembly, considering that nine months of the first year had already expired, thought it fairer to the Governor to grant the money for three years from 1st July, 1862, when the Colonial Financial year commences; and although the £26,000 stipulated for by the Duke of Newcastle (being the yearly expenditure up to that time, by the Colony on Native objects), included the £7000 specially appropriated for Native Schools, the Assembly—considering that this £7000 was already devoted to a special object under a permanent Act—thought it more fair to grant the £26,000, irrespective of and in addition to that amount for Native Schools.

In fixing the mode of computation for the contribution of £5 per head, Ministers proposed to the Assembly the plan suggested by the Secretary of State's despatch of 12th September, 1860, No. 65.

Ministers may be permitted to express a hope that Her Majesty's Government will recognise in these appropriations the sincerity of the desire felt by the General Assembly to assist, so far as lays in its power, the policy which the Imperial Authorities and their Representative in the Colony consider best for the pacification of the country and the Government of Her Majesty's subjects of the Native race.

Nos. 28 and 29.—*Land Revenue Appropriation Acts, Nos.* 1 *and* 2.

These Acts repeal the provision made by law in 1858, by which a sixth of the Land Revenue of the North Island Provinces was set apart as a fund for the extinguishment of Native title, and provide for the repayment to the Provincial Treasuries of the amounts already received and invested on that account.

The wisdom or otherwise of the course taken in 1858 has been the subject of much angry discussion in the Assembly ever since; and it appeared to His Excellency's present advisers proper to repeal it, especially when they were asking the Legislature to pass a law removing the disabilities hitherto existing on the subject of the Native title to land.

No. 30.—*Appropriation Act.*

This Sessional Act requires no remark.

No. 31.—*New Zealand Loan Act.*

Upon this Act the Treasurer has written the accompanying separate minute (see B, No. 2), to which Ministers beg leave to refer His Excellency. The Sessional Financial Statement is appended as giving details as to certain questions connected with the Loan Act, and the views of Mr. Domett's then Ministry before Mr. Wood (the present Treasurer), accepted office in it.

ACTS RELATING TO GOLD FIELDS, CROWN AND NATIVE LANDS, AND THE ISSUE OF GRANTS.

No. 13.—*Land Registry Act Amendment.*—(Vide Mr. Sewell's Minute, page 6.)

No. 14.—*Native Reserves Amendment.*—(Vide Mr. Sewell's Minute, page 6.)

No. 15.—*Public Reserves Amendment.*—(Vide Mr. Sewell's Minute, page 6.)

No. 17.—*Crown Grants Act, No.* 1.—(Vide Mr. Sewell's Minute, page 6.)

No. 18.—*Crown Grants Act,* No. 2.

This Act enables the Governor to issue Grants in fulfilment of any contract, promise, or engagement made on behalf of the Crown. It was introduced by the Government with special reference to the issue of grants to Natives in fulfilment of promises long since made. As this subject has occupied the attention of the Imperial Government as well as the Governor, and been treated of in many recent despatches, it is unnecessary to say more than that the General Assembly has readily granted the power that was required for the fulfilment of all promises of grants made to the Natives, upon reasonable evidence of such promises, and whether they were made in writing or not.

No. 21.—*Gold Fields Act.*

The extension of Gold Mining operations within the Colony, involving the administration of the existing gold fields Law under unforeseen circumstances, rendered desirable some important amendments in the Acts relating to that subject. A power to deal with Waste Lands, not of an auriferous character, within a gold field, and a fuller recognition of vested interests in Districts taken for gold mining purposes are the distinguishing features of this measure, which repeals all previous laws and re-enacts their most important provisions. This Act dealing in some measure with the Waste Lands of the Crown is reserved for Her Majesty's assent.

No. 23.—*Crown Lands Act.*

This Act defines the duties and functions of Commissioners of Crown Lands, and renders their mode of appointment uniform throughout the Colony. The powers hereby conferred upon these officers are intended chiefly for the protection of the rights of the Crown over the Waste Lands, and for the speedy settlement of questions of trespass and encroachment between Crown tenants. The quasi-Judicial functions formerly belonging to the Commissioners are removed, and the duties of the office upon which the different land regulations of the several Provinces had thrown some doubts are precisely defined.

No. 34.—*Auckland Waste Lands Act.*

This Act makes certain amendments in the Land Regulations previously in force in the Province of Auckland, and provides for the encouragement of Immigration upon the system of granting Land Orders to Immigrants.

No. 42.—*Native Lands Act.*

This will be referred to in a separate Minute by the Native Minister. (Vide p. 7.)

MISCELLANEOUS ACTS.

No. 8.—*Law Practitioners Act Amendment Act.*

This Act provides for the admission of persons (after examination) to be Attornies or Solicitors, who were disqualified under the old law.

No. 9.—*Birds Protection Act.*

This Act provides for a matter of increasing interest in all the Australian Colonies, but requires no special remark.

No. 19.—*Delegation of Powers Continuance.*

(Vide Mr. Sewell's Minute, page 6.)

No. 25.—*Naturalization Act.*

This is the usual Sessional Act, and requires no remark.

No. 41.—*Commencement of Acts Act.*

Fixes a time for the coming into operation of Acts of the Assembly passed after the passing of this Act.

F. D. Bell,
In the absence of the Colonial Secretary.

Sub-Enclosure 10 in Despatch (111) No. 1.

MINUTE OF THE ATTORNEY-GENERAL (MR. SEWELL) ON CERTAIN ACTS OF THE GENERAL ASSEMBLY.

The Acts of the late Session for which alone I hold myself responsible are as follows:—

The Court of Appeal Act.

Supreme Court Amendment Act.

Resident Magistrates Jurisdiction Extension Act.

Debtors and Creditors.

Native Circuit Courts Amendment.

Native Districts Regulation Amendment.

Sale for Non-payment of Rates.

Public Reserves Amendment.

Native Reserves Amendment.

Delegation of Powers Continuance.

Land Registry Amendment Act.

Crown Grants Act.

Juries Act.

I shortly note the leading objects of those measures.

Court of Appeal.

The object of this Act is sufficiently clear; it is intended to supply a defect in the present organisation of our Courts of Judicature. In New Zealand there is a single Judge at each of the Principal Provinces; but they have no means of sitting together, and there is no Court in which they all meet or which can reverse the opinion of single Judges. The Act is framed strictly in accordance with the recommendation of the Judges themselves. A Copy of their Report accompanies this minute.
(Vide Appendix, 1861, D, No. 2).

Supreme Court Amendment.

One of the leading features of this measure is to establish a kind of minor jurisdiction of the Supreme Court, to deal with cases of smaller amount in a more summary way than by the ordinary practice of the Court. It is hoped that this will enable us to dispense with such Courts (as the "District Courts") intermediate between the Resident Magistrate and the Supreme Court.

The Resident Magistrates Extension.

Requires no explanation.

Juries Act.

There is a special feature in this Act—namely, the establishment of Maori and mixed Juries to deal with cases affecting Natives. This is founded upon an obviously just principle.

Debtors and Creditors.

It will be observed that the general character of the measure is to vest large discretionary power in the Supreme Court. The great difficulty which I felt in dealing with the law of Bankruptcy and Insolvency, was, that the jurisdiction of the General Assembly was merely Intra-colonial. No legislation of ours could reach Creditors or assets outside the Colony, and therefore no perfect and complete system of administering the Debtors Estate could be established by Colonial Law. I therefore was of opinion, and the Legislature has, I may say unanimously, assented to the principle, that the mode of dealing with each particular Debtor's case must be left to the discretion of the Supreme Court as the case arises. It

SECTION I.

has also been thought expedient to attempt the experiment of a sort of Mercantile Tribunal, to aid the Supreme Court, and with this view mercantile assessors are to be appointed, who will for the most part be the individuals constituting Chambers of Commerce throughout the Colony, who may thus exercise an influence upon the course of trading. Other provisions of the Act are adopted from the late English Bankruptcy Act.

I may add that some such measure is one of indispensable necessity.

I desire to state my individual opinion that a General Bankruptcy and Insolvency Law for the whole Empire, including all its Colonies and Dependencies, ought to be framed by the Imperial Legislature. At present, each Colony is compelled to deal with this subject as *quasi* Foreign Country, without reference to the relations between it and other Colonies or to the Mother Country.

Native Circuit Courts Amendment.

This is a measure of great importance, as affecting the Government of the Natives. At present the jurisdiction of the Native Circuit Court's Judge merely extends to cases cognizable summarily before a Resident Magistrate. It is necessary in order to establish some authority to which the Natives will submit, and to which they will look up as a governing power, to arm the Magistrate with very extensive Jurisdiction. He must be able to administer justice on the spot and at the instant, in order to wean the Native from his own barbarous habits of enforcing rights or redressing wrongs. To make it necessary to try offences, committed in remote and almost inaccessible Districts, in the Central Supreme Court, is simply to make the Law inoperative. Also in administering the criminal law amongst Natives it will be idle to preserve the subtle refinements of distinction between crimes of different grades which are recognized by our criminal jurisprudence. Many of these distinctions depend on purely conventional circumstances. For instance the distinction between forgery and common fraud is necessary to be observed in a community whose existence may be said to depend upon maintaining the laws of credit, but the Natives would be incapable of understanding the difference in moral turpitude between the two.

Native Districts Regulation Act.

Requires no observation.

Sale for non-payment of Rates

The object of this measure is, on the one side, to protect private property; and on the other, to give a remedy for charges enforced by Provincial Ordinances. There is at present a most dangerous practice growing up of creating by Provincial Ordinances a power to sell land for non-payment of rates or other liabilities. If permitted to continue without check it will shake the foundation of property. The property of absentees in particular will be rendered wholly insecure.

At the same time property must be made to bear its fair charges for works of public improvement, and in case of non-payment, recourse must be had to the property itself. It is believed that the provisions of the present measure will be found fairly to meet the requirements of the case. It imposes certain conditions before a man's land can be sold, which will operate as a reasonable protection.

1. It requires the judgment of some competent Tribunal in affirmation of the liability.
2. The filing of a memorial of charge in the Registrar's Office.
3. The lapse of a year before sale.
4. Three months' notice of sale.
5. A general controlling and directing power in the Supreme Court, by whose authority alone land can be so sold.

I earnestly trust that no question will be raised as to the allowance of the measure. My anxiety on this point is mainly for the sake of proprietors, absentees in particular. I desire to abridge instead of enlarging the powers of Provincial Governments in this particular.

Public Reserves Amendment Act.

Requires no remark.

Native Reserves.

Requires no remark.

Delegation of Powers.

Requires no remark.

Land Registry Amendment.

This Act will be seen to be in accordance with the requirements of the Law Officers of the Crown. See correspondence on the subject.

Crown Grants Act.

This Act is required to remedy a very serious inconvenience felt throughout the Colony from want of local machinery for the issue of Crown Grants in the Provinces. The effect of delay consequent on the necessity of issuing them from one central Office at the seat of Government, is to involve titles in difficulty arising from transactions intermediate between the date of purchase, and the issue of the Grant. The guards and checks provided by the Act are, it will be seen, sufficient to ensure a proper exercise of the delegated power. It is intended to bring it into operation simultaneously with the Land Registry Act.

Native Lands Act.

I have to express my desire that the Government will transmit to the Home Authorities a copy of my minute on this Bill, before it was brought before the Legislative Council. (Vide p. 11).

HENRY SEWELL.

September 22nd, 1862.

No. 2.

COPY OF A DESPATCH FROM HIS EXCELLENCY SIR GEORGE GREY, K.C.B., TO HIS GRACE THE DUKE OF NEWCASTLE, K.G.

No. 113.

Government House, Auckland,
5th November, 1862.

MY LORD DUKE,—

In continuation of my Despatch No. 111 of October 31st, transmitting to Your Grace the several Acts of the late Session of the General Assembly of New Zealand, I have now the honor to enclose a Minute upon the "Native Lands Bill," prepared by the Minister for Native Affairs, which my Responsible Advisers are anxious should be laid before Your Grace with as little delay as possible.

I have, &c.,
G. GREY.

His Grace the Duke of Newcastle, K.G.

Enclosure in Despatch (113) No. 2.

MEMORANDUM ADDRESSED TO HIS EXCELLENCY BY HON. NATIVE MINISTER IN REFERENCE TO THE NATIVE LANDS ACT, 1862.

I beg leave to submit to His Excellency the following observations on the "Native Lands Act, 1862," passed in the recent Session of the General Assembly, and reserved for the signification of Her Majesty's pleasure.

It does not appear to me that any good object would now be gained by referring to the general subject of the policy so long maintained by both the Imperial and Colonial Governments, in relation to the Native Lands. The Despatch from His Grace the Duke of Newcastle, dated 5th June, 1861, settled the question whether Her Majesty's Government would consent to any alteration of that policy; while the 8th Section of the Imperial Statute, 25 & 26 Vict., c. 48, has removed whatever legal disability stood in the way of such an alteration being made by the New Zealand Legislature. The present Minute is therefore only intended to explain the principle of the Act, and the machinery by which it is proposed to give it effect; but in case Her Majesty's Government should desire to learn the opinions advanced for and against the measure in the Assembly, I append a tolerably full report of the debates in both Houses, which appeared in the newspapers.

Vide essional Papers, 1862, E. No. 1, Sec. 3.

It would not, however, be right to omit stating, that the Bill differs materially from the proposal made by the Governor himself last year, on the subject of Native Lands, as it also does from the Bill prepared by His Excellency's late Advisers. It will not be necessary for the present Ministers to discuss the latter. The Governor's plan was to introduce very gradually the practice of direct dealing in land between the Natives and Europeans, and to make such dealing dependent upon personal occupation of the land by the Europeans, under penalties to be enforced by the Executive Government. His Excellency's views are so clearly stated in the Minute he addressed to his late Advisers in October, 1861, (transmitted in his Despatch of 2nd November, 1861, No. 15), that it would be impertinent to give further explanation of them here. But it was certain from the first that His Excellency's plan, as a whole, could not have been brought before the Assembly, either by the late Ministry, or by the present, with any chance of its becoming law: and his present advisers, knowing this, and themselves sharing in the objections entertained to the plan, introduced instead a measure having for its object the unqualified recognition of the Native Title over all land not ceded to the Crown, and of the Natives' right to deal with their land as they pleased, after the owners, according to Native custom, had been ascertained by Courts to be established for the purpose. The Governor agreed with the principle proposed, but retained, nevertheless, his original views as to the best course to be pursued in its application; and Ministers feeling that (according to the relations which the House of Representatives had proposed should subsist between the Governor and his advisers in questions of Native Policy,) it would not be fair to go on with the Bill except with the Governor's previous assent, submitted the following Minute to His Excellency:—

Vide Sessional Papers, 1862, E. No. 2, p. 12.

"MINISTERIAL MINUTE, NO. 4.

"Ministers desire respectfully to represent to the Governor their position as regards the House in relation to the Native Lands Bill.

"Understanding that His Excellency approved of the principle of the Bill, and of the measure itself with the modifications introduced at his request, Ministers gave notice for the second reading on Friday last, and postponed it at the request of certain members opposed to it till Monday (to-morrow.)"

If His Excellency on further consideration is unable to give his approval to the Bill in its present shape, Ministers respectfully request that His Excellency will be pleased to authorise the Native Minister to make a statement to that effect in the House, in which case it will be necessary to withdraw the Bill. But if the Governor, while approving of the principle of the measure, should desire further modifications to be made or safeguards to be provided in it, Ministers would (with His Excellency's concurrence) proceed with the second reading, postponing going into Committee, until such clauses should be prepared as would meet His Excellency's views.

ALFRED DOMETT.

Wellington, 24th August, 1862.

To which the Governor was pleased to return the following answer :—

"The Governor understands from Ministers that what is meant by the principle of this measure is :—That Natives of New Zealand should be allowed to have as good a title to their lands as Europeans, and that they should, in the event of their disposing of or renting these lands, be allowed to obtain the value of such lands. The Governor assents to this principle ; but in its details, it should be carefully and prudently carried out.

"G. GREY.

"August 25th, 1862."

At a later stage, when the Bill had been greatly altered and enlarged in its progress through the House of Representatives, Ministers thought it their duty to the Governor again to ascertain whether he would accept it in its then form ; and the following Correspondence took place :—

"House of Representatives, 8th September, 1862.

"DEAR SIR GEORGE GREY,—

"I beg leave to inform your Excellency that the Native Lands Bill is down for second reading in the Legislative Council to-day.

"I have reason to think that if Mr. Tancred were permitted to say, on moving the second reading, that the Bill was accepted by you in its present form for transmission to the Imperial Government, and that you would wish it to pass the Assembly, as a measure to assist you in carrying out your Native policy, the Council would pass it without substantial alteration.

"May I ask, therefore, if your Excellency would have any objection to allowing Mr. Tancred to make a statement to the above effect.

"I am, &c.,

"ALFRED DOMETT.

"His Excellency Sir George Grey, K.C.B."

"Wellington, September 8th, 1862.

"MY DEAR DOMETT,—

I have always thought, and still think, that the plan I proposed for the recognition of the title of the Natives to their lands, and for the gradual occupation of the country by European proprietors agreeable to the Natives of the district, was the plan best adapted to the circumstances of this country, and most likely to produce permanently beneficial results—at the same time, as there appears no hope of my succeeding in convincing a majority of the Assembly that my views are the soundest and best, I think the recognition of the title of the Natives to their lands a matter of such importance, that I will, as I have before stated, accept the Bill in the form in which it passed the House of Representatives, for transmission to the Imperial Government ; and I think, upon the whole, it can be so worked as to produce beneficial results at this crisis.

"Very faithfully yours,

"G. GREY."

The Legislative Council made an amendment in the Bill, to which, as it imposed a tax, there was no chance of obtaining the assent of the Lower House ; but it was adopted *pro forma*, in order to enable the Governor to return the Bill to the Assembly with a proposition of his own for establishing an *ad valorem* transfer duty on conveyances of Native lands.

Thus the Bill, while it does not in its present form exactly express the Governor's views, nor those entertained by Ministers when it was first introduced, is the best that could be got in a Legislature where, though the Ministry had a majority of at least three to one in favor of their original measure, the Legislative Council was equally divided in opinion ; where great impatience existed to get through the Session ; and where the extreme opinions of no one could have been carried, and a certain amount of compromise had to be made on every side.

As usual, any advantage gained by such compromise has been balanced by the imperfections necessarily attending a design worked out by many people, and these in a hurry. I readily admit

that such defects exist, and will have to be remedied: indeed, the late Attorney-General (Mr. Sewell), seemed to consider his reputation as a lawyer so compromised by the supposition that he was responsible for the Bill, that he requested the Government to send home a Minute of his objections; which is accordingly annexed with marginal notes. But His Excellency's Advisers may be permitted to say, nevertheless,—1st, that a perfect measure on the subject could hardly be expected in one Session, especially under the various difficulties consequent upon a change of Government;—2nd, that the Bill as now submitted to the Imperial Government does give effect to the chief design they had in introducing it, namely, that the title according to Native custom of the owners of Native lands shall be ascertained by regular tribunals instead of being determined by the Executive Government, and that when that title has been so ascertained and registered, the Native owners may deal with their land as they shall think fit; and 3rd, that whatever technical or other defects exist, are such as there will be no difficulty whatever in getting cured next Session. The question of principle may, so far as the General Assembly is concerned, be considered as absolutely determined, subject to the assent of the Imperial Government: and we can take time to settle the best means for giving it effect.

Vide p. 11.

As to the means now provided, it will perhaps be sufficient for me briefly to go through the sections of the Bill, and shew what would be the practical course taken under its provisions.

The preamble recites the provisions of the Treaty of Waitangi; and that Her Majesty may be pleased to waive Her right of pre-emption under it.

Section 1.—Is the short title.

Section 2.—Provides that Native Lands may, after their owners by Native Custom are ascertained, be dealt with under the Act.

Section 3.—The language of this Section is somewhat obscure; Native Custom is not to be cognizable by our Courts before certain things are done, but it is not enacted that it shall be when they are; though it is difficult to see what real objection there is to the recognition of Native Custom in the Superior Courts when it has been properly declared and defined in the Courts below.

Sections 4, 5, and 6, 7, and 8.—Provide for the establishment of Courts to ascertain and define Native Title subject to the Governor's confirmation of the proceedings. The Governor is authorized to grant all requisite powers to these Courts, as it would have been vain for the Assembly to attempt making specific provision in the first instance. The precedent was followed of the Royal Instructions of 1846, which ordained the establishment of similar Land Courts without precisely defining their powers, and it will be time enough, when some experience has been gained, to introduce a law declaring in a specific form what powers shall be exercised by these Courts. One power, however, which it is proposed at once to confer upon them, will be identical with that which would have been conferred on the Native Council, if the Bill introduced into Parliament by the Duke of Newcastle (in 1860) had passed, namely, a power to declare, record, and amend the Native law or custom relating to land: so that in process of time some Canons of Native Tenure may be laid down, and the varying customs of different Tribes acquire some settled form; and so that the same tribunal which ascertains title by Native Custom, may purge it from barbarous practices by refusing to admit these as Custom at all.

Sections 9, 10, 11.—Empower the Governor to make Reserves or Settlements for the benefit of the Natives out of their own lands, so as to prevent their pauperising themselves.

Section 12.—Provides for the issue of a Certificate of Title by the Court, after the Governor's confirmation of the proceedings by which the title was ascertained and recorded.

Section 13.—Prevents the issue of any Certificate unless the land shall first have been actually surveyed. This will in practice be found the great safeguard against any political complications. As a general rule it may safely be said that where the Natives allow a Survey to be made, there will be no difficulty in finding out the true owners.

Section 14.—Makes the Certificate conclusive as to the land and its owners.

Section 15.—Enables a Certificate which has been issued to not more than 20 Natives to be endorsed by the Governor and Sealed with the Public Seal of the Colony, when it will have all the qualities and effects of a Crown Grant: and Section 18 enables the holders of Certificates or of Conveyances under Certificates to exchange the same for Crown Grants. The effect of these Sections will best be seen by reading them with Section 17, which authorises the individual persons named in a Certificate to sell, lease, or exchange their land as they please. Certain Native Owners prove their title and obtain a Certificate: if they wish to keep to the Maori Title, they do not get the Certificate endorsed; if they prefer an English Title, they get the Governor's signature and the Colonial Seal to their Certificates: if they sell under the Maori Title (the unsigned Certificate) the purchaser may either continue to hold under it, or may exchange it for a Crown Grant.

Section 16.—Enables the Governor to make Regulations for the Registration (either in the Court or in any Land Registry Office) of all Certificates and Transfers thereof. This

Section will have to be amended so as to include all conveyances or dealings of whatever nature under the Certificates.

Section 19.—Imposes a Transfer Duty. This, as before stated, was the Governor's proposal.

Section 20.—Enables a Tribe to go to the Court to effect a partition of their tribal land and to individualize the title, and allows this process to be indefinitely repeated.

Sections 21, 22, 23, 24, 25, and 26.—Enable tribes to dispose of their land under a settled system; in fact to organise the colonisation of the land themselves. These Sections are almost identical with similar provisions in the Bill of the late Ministry which is referred to in the Duke of Newcastle's Despatch of 19th August last, enclosing the Imperial Statute before quoted.

Sections 27 and 28.—Enable the Governor to reserve lines of road in Native lands, and to advance money for Native Surveys.

Sections 29 and 30.—Save persons dealing with the Natives after the issue of a Certificate, from the penalties of the existing Ordinance; but transactions entered into before such issue are declared void.

Sections 31 and 32.—Are intended to save the rights of the Provinces over certain tracts of land, where agreements for the cession of territory have been already made, and are not yet completed;—and provide for the exercise in one place, of certain rights of selection granted by the Land Orders and Scrip Act, 1858.

Sections 33, 34, and 35.—Require no special remark. The Government may still acquire land in the old way if it likes, wherever the Natives are willing to sell in blocks to the Crown.

Section 36.—Provides that the Act shall only come into operation when and where proclaimed by the Governor. This was a power which obvious considerations relating to the present posture of affairs made it necessary to vest in His Excellency. Ministers did not hesitate for instance to say, that in their opinion it would be preposterous to extend the advantages of this Act to the Ngatiruanui and Taranaki Tribes, while they continue to hold our own land, the Tataraimaka Block, avowedly by right of conquest.

The last Section of the Act (Section 37) reserves it for the signification of Her Majesty's pleasure.

I will now shortly state the course of proceeding under the Bill.

If a Tribe is desirous of having its title defined to the tribal lands belong to the entire tribe in a certain District, application will be made by or on behalf of the Tribe to the Court appointed for that District; which Court, though presided over by a European Magistrate, will be mainly composed of Native Chiefs. The Court will investigate the title of the tribe according to Native custom, and declare the custom under which it is held, and before coming to any decision will cause the land to be carefully surveyed and marked off on the ground, and a proper plan of it made.

If the title of the tribe to the land claimed by them is (after such survey) established to the satisfaction of the Court, the Court will declare and register it, and then send up the record of their proceedings to the Governor for confirmation. If it should appear necessary to make Tribal or other Reserves for the special benefit of the tribe generally, or of particular Chiefs or families, or their descendants, so as to prevent the whole of their land being improvidently disposed of by them, the Governor will do so. Then, assuming the proceedings of the Court to have been regular and just, the same will be confirmed by the Governor; whereupon the President and Members of the Court are to sign and issue a Certificate of Title, with a proper plan of the land annexed, declaring that the tribe are the proprietors of that land; and the tribe will thenceforth be recognised as such in our Courts.

If the tribe should afterwards desire to make a partition of their tribal territory, to individualize their title, and to subdivide their land, they will go back to the Court for that purpose; and after investigation and survey of the proposed subdivision, the original certificate will be exchanged for a new Certificate according to the partition agreed upon. This process may be indefinitely repeated, and the oftener it occurs the better. Or, if the tribe wish to keep part of their land as tribal land, and to individualise the title to the remainder, they may in like manner go back to the Court and obtain new certificates, to the tribe for their tribal land, and to particular persons or families for the subdivided land.

But it will sometimes happen that within the tribe there are sections, hapus, communities, or individuals, actually entitled to land of their own not covered by any general tribal right. In such a case these people will be able, by application to the Court, to have their right ascertained in like manner as the right of the entire tribe may be, and obtain certificates in their own names as joint or separate owners.

The title being made clear, and a certificate issued either to the entire tribe or to communities or individuals, the Act next provides means whereby they may dispose of their land by direct sale, or otherwise according to their own wishes and interests.

In the first place, where a certificate is issued to not more than twenty individual natives, the persons named therein as the owners of any estate or interest may absolutely sell, lease, or otherwise

dispose of it at their pleasure, in like manner as English settlers named in a Crown grant may dispose of their land held under title from the Crown.

In the second place, if an entire tribe is described in the certificate as being owners of the land, they cannot sell under that certificate, because the "tribe" cannot make a conveyance; they must go to the Court, and either make a partition, or apply to have a new certificate issued in the names of trustees, with a proper declaration of trust to act on their behalf. Thus if a tribe holds a tract of land, and wishes to sell or lease a portion of it, they will get a new certificate for the land to be retained by the tribe, and a separate certificate in the names of certain members of the tribe for the land to be disposed of.

In the third place, where an entire tribe is named in the certificate as the owners, they may propose a regular plan for the partition, disposal, leasing, or otherwise dealing with their land. Thus if any tribe wish to lay out a township for sale and settlement in their own district they may obtain the whole value and profit of the allotments; or if gold is discovered in the interior, as it has been at Coromandel, they may propose regulations for mining it. They are also empowered to raise money on the security of their land, for making roads, building, and endowing churches and schools, paying for their surveys, building mills, sowing land with grass, and so forth; in fact, for any objects they may themselves consider conducive to their own welfare and advancement.

With regard to the transfer duty imposed on transfers, it may be remarked that there is no tax so long as the Natives choose to hold their land, or if they lease it. As the tendency of this will be to encourage improvidently long leases, it is probable that some alteration will have to be made next Session.

I have thus endeavoured to explain the intention of this measure. It only remains for me to remark, that Ministers do not pretend to hope for any immediate results from it. They believe that in the present temper of the Natives it will take a long time to convince the great majority of those who are banded together in the King Movement that they can get any good out of an Act of the General Assembly. But as the secret and poisoned spring of the King Movement has most certainly been the conviction among the Natives that we meant to dispossess them of their lands and extinguish their existence as a people, so the great change to be now made of the policy of the Government towards them (if Her Majesty shall be graciously pleased to assent to the Act) will, Ministers believe, be the best antidote, let the time be long or short when its effects shall be seen. It is not by stimulating the political activity of Village Runangas that the Natives are to be civilized and governed. But if we give them a common bond of interest with ourselves, and assure to them and to their children a legal right to, and the full money value of their great territorial possessions, we may some day make them believe, in spite of themselves, that the progress of colonisation by our race means wealth and power for them as well as for us. A member of the House of Representatives, weary of the long debate on the Bill, made a sketch, while it was going on, of "the Palace of King Matutaera at Ngaruawahia," as one result of the Native Lands Bill. He was not so very wrong. There are twenty-three millions of acres of Native Lands.

Undoubtedly the Natives must become peaceable subjects before this Bill, or any other proposal for their welfare and advancement, can be productive of much good. But if Matutaera and his fellow Chiefs had, as they may easily some day have, their separate estates, with good incomes arising from their own property, we should hear very little of Native Wars or King Movements; we should hear, instead, of English Villages, and Churches and Schools in what are now purely Native Districts, and English Law gradually growing up to supplant Native Customs.

F. Dillon Bell.

Auckland, 6th November, 1862.

Sub-Enclosure in foregoing Minute.

MEMORANDUM BY THE ATTORNEY-GENERAL (MR. SEWELL) ON THE NATIVE LANDS BILL, AND NOTES BY MINISTERS THEREON.

This Bill not having been prepared by me, or in accordance with my opinion, I am anxious that my views as to some of its clauses, to which I entertain strong objections, should be submitted to the Government before it goes before the Legislative Council.

If the Government decide on adhering to the Bill as framed, I shall offer no obstruction to its passing in the Legislative Council. Indeed, I am of opinion that the mischief likely to arise from its rejection would be greater than any likely to result from its becoming law. At the same time, I desire to relieve the measure from what appear to me grave objections. With that view, I make the following suggestions:—

Section 3.—I am strongly of opinion that very ill consequences will flow from bringing Native rights under the cognizance of our ordinary Courts of Law. The only basis of

Ministers cannot admit this. There appears to be no sufficient reason why Native rights should not be recognized

SECTION I.

title which our Courts can recognize is that founded on grant from Her Majesty, under the Public Seal of the Colony, or some instrument having the like operation and effect.

I, therefore, propose to omit the words at the end of the clause, "until the same shall have been defined, and a Certifi- "cate issued according to the provisions of this Act." If these words stand, the instant a Certificate is issued our Courts of Law are obliged to take cognizance of title derived under it.

Section 4.—In my opinion it is alone competent to Her Majesty to establish Courts for ascertaining and defining Native rights to land. That exclusive right of Her Majesty appears to me to flow from the establishment of Sovereignty assumed by Her Majesty over the Native race by the Treaty of Waitangi; but it does not seem to me to be within the powers vested in the General Assembly by the Constitution Act. Upon the policy of formally establishing such Courts by enactment of the General Assembly, I offer no opinion here; but assuming it to be deemed expedient that such Courts should be so formally established by Act of the Assembly, words should in my opinion be introduced to prevent conflict with what I perceive to be Her Majesty's exclusive prerogative.

I propose to add, therefore, after the words "It shall be "lawful for the Governor," the following words, "*in the name* "*and on behalf of Her Majesty, in such manner, and with such* "*powers, and subject to such directions and instructions as Her* "*Majesty may by any Instrument under Her Sign Manual, or* "*through one of Her Principal Secretaries of State, from time* "*to time, direct or declare.*"

The nature, constitution, and powers of such Courts appear to me not sufficiently defined, I suggest the addition of the following words to the clause:—

"And such Courts shall either be Courts of Record or "otherwise, and shall have and exercise such powers of hear- "ing and determining cases, and otherwise of adjudicating "upon claims of Natives to land, and of summoning and "examining witnesses upon oath or otherwise, and such other "powers as Her Majesty shall by any such Instrument, or in "manner aforesaid, from time to time direct and appoint."

Section 5.—If the addition proposed by me to clause 4 be adopted, clause 5 may be excepted to, as inconsistent therewith; the constitution of the Court being matter exclusively for Her Majesty. Her Majesty would doubtless constitute the Court in the manner indicated by this clause.

Section 6.—Is open to the same remarks.

Section 11.—I entertain the strongest possible objection to introducing special limitations by way of entail in Crown Grants to Natives, involving possibly the most intricate and difficult questions of descent and devolution of estate. The whole policy of entails is at variance with modern principles. To establish them in the case of Natives, as to whom our system of entails and rules of descent are wholly unsuitable, appears to me full of objection. I may ask, is it intended that entails so created may be barred, and how? The power reserved to the Governor of revoking and re-settling is in my opinion sufficient for all purposes; but I doubt whether such a power should be as extensive as the clause provides. The power of re-granting or re-settling should, I think, be confined to some member, or members of the family of the original grantee either lineal or collateral.

by our Courts, or why the Native customary tenure, if properly defined and recorded, should be excluded. If the Native law had been "declared and recorded" by the Native Council, as proposed in the Bill introduced into Parliament by the Duke of Newcastle in 1860, it would have become cognisable by our Courts. Why not, then, when declared and recorded by another kind of tribunal? The question of *what* tribunal is quite immaterial.

Ministers could not agree with the Attorney-General on this point. The Duke of Newcastle, in his Despatch of 5th June, 1861, when expressly inviting legislation by the Assembly, respecting Native Lands, suggested the establishment of a tribunal. Ministers conceived that if such tribunals could only be set up by the Royal Prerogative, this would have been pointed out by Her Majesty's Government itself.

Ministers considered it much more simple, on the assumption that the Assembly could enable the Governor to constitute Courts; also to provide that they should exercise such powers as the Governor might appoint. If the Assembly had the power to grant specific powers to the Courts, it also could grant a general power to the Governor to appoint the specific powers of the Court himself.

The words objected to by Mr. Sewell in this Section were, on his motion, omitted in the Legislative Council, and their omission agreed to by the House of Representatives. But Ministers think it proper to observe, that the objection was not shared in by many other lawyers. The clause was imported from the Native Territorial Rights Bill of 1858, which was most carefully drawn by Mr. Whitaker, then Attorney-General, and Mr. (now Justice) Richmond, and which went through the ordeal of the criticism of Mr. Swainson, formerly Attorney-General, and of the present Chief Justice, Sir George Arney; besides several lawyers in the Lower House.

Section 15.—I think it extremely objectionable to admit twenty persons to undivided shares in land included in a certificate. I foresee inextricable confusion of title as likely to result from such a provision.

In my opinion 6 is the extreme number who ought to be made capable of taking as *individuals* under this Act. Any number beyond this should be deemed to be a *community*, and only capable of dealing with their rights in the manner provided by the Act as applicable to *communities*.

Ministers could not consent to reduce the number from 20 to 6. However desirable to limit the number, its limitation to six would have completely defeated one of the principal objects of the Bill—namely, the encouragement to holders of certificates to come in and get them signed and sealed by the Governor; whereupon the certificates become clothed with the effects and qualities of a Crown Grant, which of course could not be the case with any certificate issued to a *community*.

Section 17.—Is in my opinion open to the strongest possible objections. It enables title to be founded on a Native certificate, and is certain to bring into our Courts innumerable questions with which it will not be possible for our Courts to deal, and which may become the foundation of serious political difficulties.

The certificate ought, in my opinion, to be strictly treated as an instrument *exchangeable for a Crown Grant*, and as of no other operation or effect. Title derived under a Crown Grant is governed by the ordinary and well understood rules and canons of English Law.

In case of error the Crown Grant may be repealed by *Scire facias*, but title under a Native certificate will be utterly anomalous and beyond all such means of correction. By what rules of transmission or canons of descent is title under it to be governed, Native or English? and yet upon this title, *Sales*, *Leases*, and *Exchanges*, to which our Courts will be called on to give effect, are to be founded.

I object to recognizing any basis of title according to English Law, but title derived from the Crown. I am unable to follow out all the consequences which would result from so fundamental a change in the Law of Tenure as that now proproposed.

As to the transfers of certificates. If it be thought expedient to allow certificates under any circumstances to be transferred before exchange for a Crown Grant (the policy of which I greatly doubt), at any rate strict precautions should be taken for protecting the Crown from difficulties, which will otherwise seriously embarrass it.

Every transfer of a certificate should *be entire;* on no account should any severance of interest be permitted. I point to the notorious inconveniences experienced from a departure from this rule in the case of the New Zealand Company's Land Orders, and other like instruments; but the mischief will be infinitely greater in the case of Native certificates entangled possibly with Native disputes and political complications. If several persons interested in one certificate desire to make a severance, let them go to the Court; and let the Court issue separate certificates to the respective parties.

The Court will be the proper tribunal to deal with such a case, not the Crown. The very object of establishing the Court is to relieve the Crown from such questions. Again, in any case of transfer, let the transfer be proved and registered in the Court. Transfers so authenticated may be recognized by the Crown, for the purpose of issuing to the transferee the Crown Grant; but I object to imposing on the Crown the responsibility of enquiring into a possibly long and complicated transmission of title from an original holder of a certificate through successive transferees to a derivative holder. The Crown will be utterly without means of testing the title of the transferees in such cases.

This is Mr. Sewell's cardinal objection. But the adoption of his view would, of course, have been fatal to a chief purpose of the Bill, which was precisely what he most objects to, the recognition of the Maori title. If the Imperial Government had thought certificates of Maori title so dangerous, they would not have proposed the issue of them by the Native Council. Perhaps Mr. Sewell did not see that by restricting the operation of the certificate as he desired, the grant of any certificate whatever to a tribe or a community would be prevented; for no Crown Grant could issue to these, and any such Grant, if made in exchange for the certificate, would on the face of it be void. Now as the great difficulty is to get the Natives to individualize their title, the refusal of certificates to tribes would be tantamount to refusing the issue of any at all, and it would have been better to prohibit their issue altogether.

As to the other legal difficulties stated, Ministers would readily have made provision for them, if there had been time. But they were in a position of the greatest difficulty and disadvantage. Mr. Sewell, instead of supplying such legal provision as would ensure the success of the policy which had been determined on, took the course in this Minute of combating the policy itself, and objecting to the legal defects of the Bill. The most careful consideration will, however, be given during the recess to the remedying of whatever defects really exist, and some of those here stated are admitted to be serious.

I observe that no provision is made for appeals from the Courts established by the Act. In my opinion such a provision should be introduced, and the Governor should have an absolute power of decision in cases of appeal.

I desire to know whether Government will adopt the foregoing suggestions. I have already stated that in my opinion it will be better that the Bill should pass in its present form than that it should be thrown out; and as a member of the Legislative Council, I shall vote for it in any form. If the Government decline to adopt these suggestions, I shall not press them upon the Legislative Council.

HENRY SEWELL.

September 6th, 1862.

Ministers considered that sufficient security was taken by subjecting the proceedings of the Courts in the first instance, to the confirmation of the Governor.

No. 3.

COPY OF DESPATCH FROM GOVERNOR SIR GEORGE GREY, K.C.B., TO HIS GRACE THE DUKE OF NEWCASTLE, K.G.

No. 134.

Government House, Auckland,
31st December, 1862.

MY LORD DUKE,—

A question of Privilege having arisen between the Legislative Council and the House of Representatives of New Zealand, the Legislative Council has requested me to transmit a case, embodying the facts of the question at issue to your Grace, with a request that you would be pleased to obtain for their future guidance the opinion on this case of the Law Officers of the Crown in England.

1. Case.
2. Minute thereon by Mr. Domett.
3. Minute by Mr. Bell.
4. Resolutions printed in Journals of Legislative Council, 1862, p. 97.

2. In compliance with the address of the Legislative Council, I have now the honor to enclose the documents, necessary to enable you to obtain for the Council, the opinion of the Law Officers of the Crown, if you would be pleased to do so.

I have, &c.,

G. GREY.

His Grace the Duke of Newcastle, K.G.

Enclosure 1 in Despatch (134) No. 3.

CASE FOR THE OPINION OF THE LAW OFFICERS OF THE CROWN.

A question of Privilege has arisen between the Legislative Council and House of Representatives of New Zealand upon which the Legislative Council are anxious to obtain for their guidance the Opinion of the Law Officers of the Crown in England.

They venture to ask for that Opinion partly because the question arises upon the construction of an Act of the Imperial Legislature, and partly because the question depends upon analogy to the practice of other Constitutional Governments, and in particular of the Imperial Parliament.

The circumstances out of which the question arises occurred in the passing of the Native Lands Bill through the Colonial Legislature, and are as follows :—

A large extent of land in New Zealand, comprising many millions of acres, is still held by the Aboriginal inhabitants, who have never surrendered their title to the Crown, and whose rights were guaranteed to them by the Treaty of Waitangi.

Hitherto the only mode in which such land has been acquired for purposes of colonization has been through the exercise of the Queen's right of preemption or exclusive purchase. Land so acquired is subject to the disposal of the General Assembly of New Zealand under the 72nd Section of the Constitution Act.

It has been determined to effect a change in this system; to abandon the Crown's right of preemption or exclusive purchase; to institute Courts for defining the rights of Natives to their lands according to their own customs; and to permit the Native proprietors to dispose of their land as of common right.

With this view a Bill was introduced into the General Assembly through the House of Representatives in the last Session, a copy of which as finally passed is herewith.

The Bill as passed by the House of Representatives contained, instead of what is now Clause 19, a Clause to the following effect :—

"Upon the signing and sealing of every certificate by the Governor, or the issue of every "Crown Grant in exchange for a certificate under the provisions of this Act, there shall be paid to "Her Majesty the sum of two shillings and sixpence for every acre of land described in such certi- "ficate or grant, and such sum shall be deemed to be part of the land revenue of the Province in

" which such lands are situate, and shall be paid over to the Treasury of such Province, subject to " the appropriation of the Provincial Council of such Province."

The Legislative Council amended the Bill by adding to Clause 17 the following proviso :—

" But no certificate shall entitle any tribe, community, or person named therein to sell, ex- " change, or lease for a longer period than seven years, or dispose of any land or interest thereby " affected unless such certificate shall have been endorsed by the Governor, and sealed with the " Public Seal of the Colony as aforesaid, and the amount payable on such endorsement and sealing " be duly paid."

The Bill was returned to the House of Representatives so amended. The amendment was accepted by the House of Representatives, and a Message to that effect was transmitted to the Legislative Council without notifying any exception thereto. A Resolution, however, was passed at the same time in the House of Representatives to the following effect :—

" That the amendment of the 17th Clause of the Native Lands Act, 1862, by the Legislative " Council is an infringement of the privileges of this House, inasmuch as it assumes to 'regulate' " the imposition of a fee and the limits within which it is proposed to be levied, contrary to the " provisions of the 128th Standing Order and the practice of the Imperial Parliament in such " matters."

The Bill thus amended was transmitted to the Governor for the signification of Her Majesty's pleasure thereon.

The Governor, under the provisions of the 56th Section of the Constitution Act, returned the Bill to the House of Representatives with a Message proposing two amendments, a copy of which Message is herewith.

The Governor's amendments were adopted by both Houses, and in that shape the Bill finally passed and now stands.

The question submitted for consideration is, whether the Legislative Council was warranted in amending the Bill as they did, or whether their amendment was, as the House of Representatives insists, a breach of the privileges of that House.

The general rule practically acted on by the two Chambers as regards Money Bills and Money Clauses is understood to be analagous to that which governs the two Chambers of the Imperial Legislature—*mutatis mutandis.*

The following Standing Orders have been specially agreed to by both Houses :—

" That with respect to any Bill brought to this House from the Legislative Council, or returned " by the Legislative Council to this House with amendments whereby any pecuniary penalty, for- " feiture, or fee shall be authorised, imposed, appropriated, regulated, varied, or extinguished, this " House will not insist on its undoubted privilege in the following cases :—

" 1st. When the subject of such pecuniary penalty or forfeiture is to secure the execution " of the Act, or the punishment or prevention of offences.

" 2nd. Where such fees are imposed in respect of benefit taken or service rendered under " this Act, and in order to the execution of the Act, and are not made payable into " the Treasury or Exchequer, or in aid of the Public Revenue, and do not form the " ground of public accounting by the parties receiving the same, either in respect of " deficit or surplus.

" 3rd. When such Bill shall be a Private Bill for a local or personal Act.

" Also, that provisions for giving full effect to the object of such Bills, but which might " infringe upon the privileges of the House, ought, if printed in italics, to be treated " by the House as forming no part of the Bill, and ought not, if adopted in Com- " mittee of supply to necessitate the return of such Bill to the Legislative Council as " though amendments had been made."

The Legislative Council appointed a Select Committee to consider the question of Privilege. The Report of the Committee is as follows :—

" Report of the Select Committee appointed to consider and report as to the question whether " the amendments introduced into the Native Lands Bill by the Legislative Council be a breach of " the Privileges of the House of Representatives, and if the Committee shall think fit to do so, then " to prepare a Case to be submitted for the opinion of the Law Officers of the Crown in England, " as a guide to the Council in its future dealings with like questions.

" Your Committee have considered the question referred to them. At this late period of the " Session they can do little more than state their opinion that the question involved is one of the " greatest importance as affecting the Legislative functions of this Council, particularly as the House " of Representatives has passed a Resolution on the subject which, if acted on, will bring the two " branches of the Legislature into collision.

" In the opinion of your Committee the Council has not exceeded its privileges in this matter.

" As a guide to the Council in future upon a question of so great importance, your Committee " recommend that a Case be prepared to be submitted to the Law Officers of the Crown in England, " by and under the direction of the Chairman, the Case to embody the following material points :

" A copy of the Native Land Bill in its original and amended state, the Governor's amend- " ments, and the reports of such of the debates as may elucidate the points at issue, should accom- " pany the Case.

" The question to be stated is this : Whether the House of Representatives having in a Bill " imposed on a Crown Grant, or an instrument in the nature of a Crown Grant, a certain tax or " duty, it is competent to the Legislative Council to introduce an enactment to the effect that no " transaction shall take place under another class of instruments affecting native lands until such

"instruments have been practically transmuted into or changed for Crown Grants, so, in effect, "rendering the latter class of instruments liable to such tax or duty.

"HENRY SEWELL.

"Committee Room, 13th September, 1863."

In the course of debate two arguments were urged which appeared to have great weight with the Council, one, that if the present claim of the House of Representatives be admitted, the Legislative Council will be practically excluded from legislating on one of the most important questions, viz., the price of waste land, or, what is virtually the same thing, the taxation on alienation; the other, that if the House of Representatives could, by imposing a tax or duty on a particular kind of legal instrument, exclude the Legislative Council from all consideration of questions connected with the subject matter of such instruments, the field of legislation over which the power of the Legislative Council would extend would be greatly and most injuriously narrowed. It would in effect be the same as if a stamp duty being imposed on deeds in England, the House of Peers were thereby precluded from considering whether certain transactions should or should not be effected by deed.

The question of taxation, as the Council insists, is in this case merely incidental to a general question of policy, upon which the Legislative Council is unquestionably entitled to legislate and make amendments in Bills. It cannot, it is conceived, be debarred from doing so by the mere circumstance of a question of taxation being incidentally involved.

The report of the debate in the Legislative Council accompanies the case.

HENRY SEWELL,
Chairman of Committee.

Enclosure 2 in Despatch (134) No. 3.

MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

Auckland, 29th December, 1862.

Vide Journals of Legislative Council, 1862, p. 97.

In transmitting the accompanying Resolutions of the Legislative Council to His Excellency the Governor, Ministers desire to append thereto the following remarks by the Colonial Secretary and Native Minister.

ALFRED DOMETT.

The difference of opinion as to the breach of Privilege complained of by the House of Representatives, evidently arises from the ambiguous mode of legislation adopted in the clause of the Native Land Bill, inserted by the Legislative Council. A price fixed virtually for the sale of land was imposed in the shape of a fee upon the instrument conveying the land. Considered in the latter light (as a *fee*, to be imposed not in respect of benefit taken, to be paid into the Public Treasury, and to be publicly accounted for), the imposition of the half-crown per acre on the certificate, was evidently a breach of privilege by the Legislative Council.

Considered as a fixed uniform price of land, settled in a kind of commercial transaction between the Government or the Crown, and the public as voluntary purchasers—the Legislative Council had an undoubted right to impose it.

The principle on which the exclusive right of the House of Representatives to deal with money is founded, is of course, that of the right (by some called *sacred*) of property. No man is to take that which belongs to another. Money taken in the shape of taxes, fees, &c., for Government purposes, is to be taken only by the Representatives of the people, that is, by themselves, from themselves, or in other words, it is considered not as taken but voluntarily given.

But where the subject matter is the fixing a sum to be taken for a full equivalent given, a mere exchange of money for a material object of barter, and where it is quite at the option of the payer to pay or leave it alone, and not enter into the transaction at all, this principle of the right of property does not enter. There seems no reason in this case why the consent of the payers (through Representatives) should be required, or why the Legislative Council should not legislate as well as the House of Representatives.

It is true another argument might be used; it might be urged that these two cases are similar in one respect, viz., that in both an equivalent for money is given, only in one case the return is in government and its advantages, or in the mental labour of the governing body, and in the other case, in a material object, *i.e.*, in land. That where any price is to be fixed by the legislature, both the buyers and the sellers should concur in that price, and as the lands to be sold belong to the whole public, and the whole public may be buyers, the House of Representatives alone should fix this price. But I think this would prove too much, and limit to an extent never demanded or advocated (as far as I know) the powers of this or any non-representative branch of a legislature.

The above is the view taken of the clause by the Chairman of the Committee of the Legislative Council. On the other hand, the Native Minister urges the following (which expresses the opinion of the House of Representatives) as the more correct statement of the character and effect of the clause under consideration.

The Bill as originally passed conferred on the Natives the power of selling their lands, after obtaining certificates of ownership.

The amendment of the Legislative Council deprived them of this power, because, by it, the original certificate was made only to confer a right of leasing. Unless the certificate obtained the signature and

seal of the Governor, it was not, under the amendment, to confer the power of sale, and for this signature and seal, a fee of half-a-crown was to be paid.

There are three documents conferring power of sale under the Bill, as originally passed and finally amended.

1st. Certificate issued by the Court (after confirmation of its proceedings by the Governor) not signed or sealed.

2nd. Certificate signed by Governor and sealed with Colonial Seal (for not more than twenty persons), having all the effect of a Crown Grant.

3rd. Crown Grants to be given in exchange for either of the foregoing classes of certificates.

A fee of 2s. 6d. was chargeable on the last two documents.

The amendment of the Council took away the power of sale from the 1st class of certificates, limiting it to the 2nd class, that is, the Natives, to acquire a general power of sale, would have to pay the 2s. 6d. fee and get the 2nd class of certificate.

Looked at in this light, the Council's amendment evidently amounted to the imposition of a fee or tax, as it could not be to the Native the price of his own land. It is not a sufficient answer to say the European purchaser would really pay the half-crown because he would deduct it from the price to be paid to the Native.

And as the Bill conferred on the Native the right of absolutely selling his land, only requiring the payment of 2s. 6d. per acre for the additional privilege of getting a Crown Grant or equivalent document for it, the true opinion seems to be that the half-crown was always a tax or fee, not a price for land. In such case the amendment of the Legislative Council was a breach of privilege.

ALFRED DOMETT.

FURTHER MEMORANDUM ON THE SAME SUBJECT BY THE NATIVE MINISTER.

I should like to add a few words to Mr. Domett's minute that the nature of my objection may not be misunderstood.

The Bill granted an absolute right of sale of their lands to the Natives, free from any tax or fee. If European buyers were content to hold and sell under the Maori certificate and a proper conveyance of it, they could do so; but if they preferred to come in and exchange their certificate for a Crown Grant, or to get the certificate sealed, which gave it the qualities of a Crown Grant, for that special advantage they were to pay 2s. 6d. an acre. Now the Legislative Council's amendment said that no Native should sell at all, unless he had paid a tax of 2s. 6d. an acre on his land to the European Treasury.

In one case, the European paid for a privilege which converted his tenure under a Maori certificate into fee simple according to English Real Property Law; he paid a price for his English Title, and the payment of it was optional with himself. In the other, the Natives' property was taxed absolutely, since he could not sell it without paying a tax for which he literally got nothing in return.

The promoters of the amendment knew perfectly well that such a tax was ruin to the whole working of the Bill, and not being able to defeat it directly, they resorted to this apparently indirect mode of securing to the Provinces a revenue out of land which did not belong to the Provinces.

F. D. BELL.

No. 4.

COPY OF DESPATCH FROM GOVERNOR SIR GEORGE GREY, K.C.B., TO HIS GRACE THE DUKE OF NEWCASTLE, K.G.

Taranaki, New Zealand,
30th March, 1863.

No. 34.

MY LORD DUKE,—

I have the honor to transmit for Your Grace's information a Memorandum I have received from my Responsible Advisers, in which they respectfully request that Your Grace will be pleased to have the opinion of the Law Advisers of the Crown obtained in regard to the power of the General Assembly of New Zealand to pass Acts inferring an alteration of the Constitution Act of this Colony.

I have, &c.,

G. GREY.

His Grace the Duke of Newcastle, K.G.

Enclosure in Despatch (34) No. 4.

MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

Auckland, 25th February, 1863.

MINISTERS transmit to His Excellency the Governor the enclosed copy of a Memorandum, as to the power of the General Assembly to pass any Act inferring an alteration of the Constitution Act, together with a copy of an opinion of the Attorney-General of this Colony, referring to certain points submitted

Vide Sessional Papers, 1862, A, No. 2, B.

to the Law Officers of the Crown in England (in a case bearing on this question), and to their reply, transmitted in the Secretary of State's Despatch, 10th August, 1861.

His Excellency is respectfully recommended to transmit the enclosure now forwarded, in order to obtain the opinion of the Law Advisers of the Crown on the question raised in that Memorandum.

ALFRED DOMETT.

MEMORANDUM AS TO ALTERATION, ETC., OF THE CONSTITUTION ACT.

In the case laid before the Law Officers in England (pages 5 and 6, A. No. 2b., Session Papers of 1862), relative to the legality of the New Provinces Act, the following question is asked (No. 5).

"Can the powers given by the Constitution Amendment Act, of repeal, alteration, and suspension of the provisions of the Constitution Act be exercised inferentially by passing over-riding Acts, or must that power be exercised directly and expressly as an alteration, suspension, or repeal of certain specified provisions of the Constitution Act, and has the New Provinces Act in fact repealed, altered, and suspended the Constitution Act as regards the original Provinces and their boundaries and Electoral Districts."

The reply of the Law Officers was that the fifth question "must be answered in the negative."

Setting aside the New Provinces Act, respecting which another case has been sent to the Law Officers in England, there appear to be several Acts of the General Assembly altering the Constitution Act "inferentially" and "not directly and expressly as an alteration, suspension, or repeal of certain specified provisions" of that Act.

I would instance the following as some which appear to me as included in that category,—

"The Disqualification Act, 1858,"

"The Elections Writs Act, 1858,"

"The Qualification of Electors Amendment Act, 1858,"

"The Land Revenue Appropriation Act, 1858,"

"The Highways and Watercourses Diversion Act, 1858."

Should not the doubts of the validity of these Acts be removed?

W. GISBORNE,
Under Secretary.

NOTE BY THE ATTORNEY-GENERAL (MR. GILLIES).

A most important question, and one which should engage the careful attention of the Attorney-General during the recess; it cannot be attended to properly in the present Session. My impression has always been in accordance with the opinion indicated by the Law Officers of the Crown, and that an Act must be passed validating such Acts of the Assembly as those referred to.

THOMAS B. GILLIES.

9th August, 1862.

OPINION OF THE ATTORNEY-GENERAL (MR. WHITAKER).

The power given to the General Assembly of New Zealand by the Constitution Amendment Act is to "alter, suspend, or repeal" any, except certain specified provisions of the Constitution Act.

There is no doubt that, in reference to two Laws passed by the same Legislature, an alteration or repeal may be either expressed or implied,—that *Leges posteriores priores contrarias abrogant*,—and that the fact of a subsequent Law being contradictory and contrary to a prior Law, operates as a repeal or alteration of the latter.

The power of alteration and repeal is given in general terms, without restriction, by the Constitution Amendment Act; and it would have appeared to me that the effect of this was to confer on the General Assembly the rights which, as far as I am aware, in all other cases are incidental to such a power—viz., that it may be exercised by express enactment, or by "overriding Acts." I do not see the grounds upon which a limited meaning is given to the words "repeal and alter." The Imperial Parliament does not possess, indeed cannot have, as regards its own acts, more than a power to repeal, alter, and suspend, and that power, in express words, it has, as regards one Act, given to the General Assembly of New Zealand. In my opinion, the General Assembly would not be restricted to a particular mode of using it.

The Law Officers of the Crown in England are, however, of a different opinion, and, in deference thereto, it is necessary that the errors which it appears have been committed should be rectified.

The proposition of Mr. Gillies to pass a "validating Act" does not seem to me to meet the case.

If the General Assembly could only by express words alter and repeal, and have attempted to do so by implication, certainly an Act purporting to give validity to that which is invalid, from the manner in which it is attempted to be done, could be of no effect.

The only course which at present suggests itself to me is to repeal by express enactment the precise words which are inconsistent with the Acts of Assembly repealing and altering provisions of the Constitution Act; but, if all the cases and opinions, and other papers, are sent to me, I will, after a more careful consideration, suggest the course which I think should be taken.

FRED. WHITAKER.

14th February, 1863.

FURTHER OPINION.

I have read the cases and opinions, and I still adhere to the above. I am not at all sure, looking at the complicated terms of the 5th question, that the Law Officers of England intended to decide that no provision of the Constitution Act could be repealed or *altered*, except in express terms. The 5th question indeed includes several, some of which might be answered affirmatively—some negatively. The special questions submitted to the Law Officers were in reference to the New Provinces Act—it may be that their negative had application only to those.

I do not, however, for a moment intend to set up my opinion in opposition to the Attorney and Solicitor Generals of England, and I recommend that steps be taken to obtain an explanation from them as to whether they intended to declare their opinion that the powers given by the Constitution Amendment Act to repeal, alter, and suspend certain provisions of the Constitution Act cannot be exercised inferentially, or by passing over-riding Acts, but must be exercised directly and *expressly* as an alteration, suspension, or repeal. If it be so it will be necessary to pass some measure in the next Session of the Assembly, and to cure the past as well as prevent difficulties for the future, the only effectual remedy as it appears to me would be to repeal in express terms every Section of the Constitution Act over which the General Assembly has control, and re-enact those of the provisions which are still required to be in force.

As examples explanatory of the manner in which over-riding Acts have been passed, copies of the "Disqualification Act, 1858," the "Elections Writs Act, 1858," the "Qualifications of Electors Amendment Act, 1858," and the "Land Revenue Appropriation Act, 1858," may be transmitted for the information and consideration of the Law Officers in England.

FREDERICK WHITAKER.

21st February, 1863.

DESPATCHES FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G.

No. 1.

(Separate.)

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

Downing-street,
26th July, 1862.

Enclosure.
Not printed.
Vide Sessional Papers, 1862, A, No. 9.

SIR,—

With reference to my Despatch of the 26th ultimo (separate), I transmit for your information a copy of the Bill respecting the New Provinces Act, as amended in the House of Commons. You will see that, acting on the recommendation contained in your Despatch of the 9th of April, No. 39, a Clause has been inserted, empowering the local Legislature to repeal or alter the 73rd Section of the Constitution Act of 1852, relating to the lands of the Natives. This was, in the opinion of the Attorney and Solicitor General, all that was necessary to enable the General Assembly to legislate effectively in respect to those lands.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

No. 2.

No. 70.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

Downing-street,
19th August, 1862.

Enclosure.
Vide N. Z. Gazette, 1862, p. 322.
Vide Sessional Papers, 1862 A, No. 2, E.

SIR,—

I enclose the copy of an Act of Parliament, passed during the last Session, respecting the establishment of New Provinces, and the management of Native lands in New Zealand.

2. Your Despatch, No. 26, of the 25th of November, 1861, brought to my notice a series of objections, to which, in the opinion of your Law Officers, the Colonial New Provinces Act remained liable, notwithstanding the passing of the Imperial Act of 1861. These are fully stated in a Memorandum drawn up by Mr. Sewell, your Attorney-General.

3. Passing by various questions of detail, the broad legal objection to the Colonial Act appears to be this—that, whereas by various clauses of the Imperial Act of Parliament, 15 and 16 Vic., cap. 72, some alterable and some unalterable, the Superintendent, with the advice of his Council (a body of which he cannot lawfully be made a member), is authorised to make laws for the administration of the Province, the Colonial Act transfers in effect the legislative powers of the Superintendent to the Governor, giving to the former officer the power of sitting in the Council in which he is probably intended to occupy the place of President or Speaker.

4. This fundamental difference appears to be the key to the inconsistencies between the Imperial and Colonial Legislation which are pointed out in Mr. Sewell's Memorandum.

5. Now it appears to me that the Constitution of the Provincial Legislatures may very properly be left to the decision of the General Assembly of New Zealand, subject only to these reservations—first, that these subordinate Legislatures shall be required to adhere to the rule which places the initiation of the money votes in the hands of the Government (15 and 16 Vic., cap. 73, sec. 25); and, secondly, that the Provincial Laws not liable to disallowance by Her Majesty shall be liable to disallowance by Her Majesty's Representative in the Colony (15 and 16 Vic., cap. 72, sections 28 and 29), and shall be confined to subjects on which the final decision may safely be entrusted to that Representative (15 and 16 Vic., cap. 72, sec. 19).

6. It is plain that the provisions of the New Provinces Act in no degree impair, and, by enlarging the power of the Governor, in one respect materially strengthen, the security thus required by the Home Government; and I therefore not only consider that Act unobjectionable in this respect, but would gladly see it extended to the existing Provinces.

7. I had therefore no hesitation in proposing to Parliament a Bill to give validity to the Colonial New Provinces Act, as it stands, and to enable the General Assembly to deal as they please with the

Administrative and Legislative Constitutions of the Provinces, subject only to such limitations as would secure the objects which I have indicated.

8. You will perceive that the first seven Clauses of the Act which I enclose are calculated to effect these objects.

9. The 7th Clause is a repetition of the 4th Clause of the Act of last year; and I think it as well to explain that it is intended to meet a doubt which might be raised upon the application of various Clauses of the Constitutional Act. The third Section of that Act provided for the establishment of a Council for each of the Provinces thereby established, and for every Province thereafter to be established, "*as thereinafter provided*," that is to say, in virtue of the now repealed 69th Section.

10. It might be doubted, therefore, to what extent the third and some of the subsequent Clauses of the Constitution Act would apply to Provinces established, not "as thereinafter provided," but in virtue of a Colonial enactment. This doubt the 7th Clause of the Act now forwarded is intended to set at rest.

11. The 8th Clause of the Act, which enables the General Assembly to repeal the 73rd Clause of the Constitutional Act, will, as I am advised, place it in the power of that body to legislate freely respecting the disposition of Native lands; and to pass, if they shall think fit, the Bill of which a draft was enclosed in your Despatch, No. 38, of the 9th of April last. I have not, however, thought it advisable to add a Clause giving the Governor the power of provisional legislation. If immediate legislation is of vital importance, the General Assembly can be summoned for the purpose. But I do not desire, in the present posture of affairs, to intervene, by Imperial legislation, in order to enable the Executive to anticipate their decision.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

No. 3.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

No. 94.

Downing-street,
20th September, 1862.

SIR,—

With reference to your Predecessor's Despatch No. 128, of the 21st of October, I have the honor to inform you that I referred to the Board of Treasury the private Acts passed by the Legislature of New Zealand, entitled—

"An Act to Incorporate the Proprietors of a certain Banking Company, called 'The Bank of "New Zealand,' and for other purposes." And—

"An Act to Incorporate the Proprietors of a certain Banking Company, called 'The Bank of "New South Wales,' and for other purposes;" and I transmit for your information, and for that of your Responsible Advisers, a Copy of the Answer returned by their Lordships' desire to the reference thus made to them.

I have to acquaint you that I have laid these Acts before the Queen, and that they will be left to their operation.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

Enclosure to No. 3.

RIGHT HONORABLE F. PEEL TO SIR F. ROGERS.

Treasury Chambers,
13th September, 1862.

SIR,—

With reference to your Letter of the 29th January last, transmitting Copies of two private Acts passed by the Legislature of New Zealand, entitled "An Act to Incorporate the Proprietors of a "certain Banking Company, called the 'Bank of New Zealand,' and for other purposes;" and—

"An Act to Incorporate the Proprietors of a certain Banking Company, called 'The Bank of "New South Wales,' and for other purposes," I am directed by the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of the Duke of Newcastle, that my Lords see no objection to these Acts being left to their operation.

Their Lordships would, however, suggest that the Provision in the 14th Section of each Act regarding the value of Bullion would more properly form the subject of some general enactment rather than of a Clause in a particular Bill for the Incorporation of a Bank, and they would be inclined to doubt the expediency of fixing by enactment the price of unassayed Gold.

In the case of the Bank of England the rate at which persons may demand Notes in exchange for Gold is fixed by Act of Parliament with reference to Standard Gold, with a Provision that the Bank shall in all cases be entitled to require Gold Bullion to be melted and assayed by persons approved by the Bank at the expense of the parties tendering such Gold Bullion.

The effect of this Provision is that unassayed Gold or Foreign Coin is received by the Bank at its Market value with reference to the price of Standard Gold. This seems to be the true principle, if it be desired to give facility for obtaining a circulating medium in exchange for unassayed Gold, for the Banks will probably be governed in the purchase of unassayed Gold by the price for which they are allowed to account for it in their periodical accounts, and the attempt to fix an undeviating price for that which must be of uncertain value, depending on the richness of the native Gold, may tend either to give an undue profit to the Banks, or to impede the natural expansion of the circulation.

My Lords have further to observe that the price of Standard Gold is incorrectly stated in this Clause at £3 17s. 9d. the ounce. That is the price at which the Bank of England is required to purchase it; but the Mint price—that is, the quantity of Coin which is made out of an ounce of Standard Gold is £3 17s. 10½d., and that is the price at which Standard Bullion is sold by the Bank of England.

I have, &c.,

F. PEEL.

Sir F. Rogers, Bart.

No. 4.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

No. 13.

Downing-street,
18th February, 1863.

SIR,—

Among the Acts of your Government which accompanied your Despatch, No. 111, of the 31st October, is the Act, No. 13, of 26th Victoria, which has been passed in pursuance of the Instructions addressed to you, "to further amend the Land Registry Act, of 1860."

The Law Officers of the Crown, to whom I referred on the subject, have informed me that the Act now passed, sufficiently obviates the objections entertained by them to the Acts of 1860 and 1861.

I have accordingly laid before the Queen this Act (No. 13), as well as the Land Registry Acts, No. 27, of 1860, and No. 34, of 1861, and I have to inform you that they will be left to their operation.

Her Majesty is also pleased to leave to its operation the Act of your Government, No. 35, of 1861, entiled "An Act for correcting Surveys of Land."

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.]

No. 5.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

No. 17.

Downing-street,
26th February, 1863.

SIR,—

I have had under my consideration an Act passed by the Legislature of New Zealand, intituled "An Act to amend the Native Reserves Act."

The effect of this Act is to transfer to the Governor and Council the species of trusteeship exercised hitherto in respect to Native Reserves by a Board of Commissioners; and as the assent of the Natives is a necessary condition for bringing Native Reserves under the operation of the Act, it enables the Governor in Council also to declare that this assent has been obtained.

I cannot but view this Act with great apprehension, though I observe your Ministry consider it of so ordinary a character as to require no comment. Even in England it is thought necessary that the administration of any important Trust affecting the management of large landed property, should be vested in some permanent body unaffected by the politics of the day, and it would be held very unsafe to vest such a Trust in the Ministry for the time being. But all the peculiarities of the present case, whether arising out of the circumstances of New Zealand as a new country, or out of the nature of the particular Trust, which lies especially exposed to the varying impulses of popular feeling, and if unjustly, or even inconsistently, administered, may rouse the most dangerous kind of discontent, enhance the objections of principle to which the Act lies open.

The circumstance that the Governor's concurrence is necessary to the acts of the Ministry, may

possibly furnish a guard against a hasty assumption of the Native assent—that being a matter on which a veto can be effectively used. But in matters of practical administration, where action is indispensable, and a veto therefore ineffective, it is plain that the management of these Native Lands will be exposed immediately to the alternations of popular feeling.

As, however, I have relinquished to the Colonial Government the administration of Native Affairs, I am bound to assume that the Act will be so administered as to neutralize its obvious dangers; and I have to inform you that Her Majesty will not be advised to exercise her power of disallowance in respect to it.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

No. 6.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

(Separate.)

Downing-street,
26th February, 1863.

SIR,—

You will observe from my Despatch of the 26th instant, No. 17, that a slight alteration has been made in the form of words by which you are apprised that certain Acts of the recent Session will be allowed to remain in force. Vide supra.

It has hitherto been customary to state that Her Majesty had been advised to "leave such Acts to their operation." It happens, however, that this is a form of words by which Her Majesty's sanction is sometimes given to Laws, of which the Provisions have been examined and approved in this country, and which, therefore, may be considered as receiving more or less of positive approval on the part of the Imperial Government,

But in New South Wales and the other Australian Colonies possessing Responsible Governments, it is not, as you are aware, the general practice of Her Majesty's Government to ascertain the sufficiency or propriety of Colonial enactments, so long as they affect matters of merely Colonial interest. I have thought it best, therefore, that the form of words in such cases should be so chosen as to express as unambiguously as possible this absence of Imperial responsibility, and this I think is best effected by following the leading of the Constitutional Acts of the Colony, and merely declaring that the power of disallowance expressly reserved to Her Majesty by these Acts will not be exercised. The change is of little importance, but I have thought it best to explain it to you in case it should call forth any remark.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

No. 7.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

No. 23.

Downing-street,
26th February, 1863.

SIR,—

I have had under my consideration the Acts passed by the Legislature of New Zealand intituled—

No. 27. "Native Appropriation Act," and—

No. 32. "Colonial Defence Act."

I observe with pleasure that the first of these Acts (subject, however, to the qualifications introduced by the second) appropriates to Native purposes £7,000 more than the minimum expenditure required by the Imperial Government as a condition of its own contribution to that object.

I am unable, however, to submit either of these Acts for the formal approval of Her Majesty, because their language is in some respects open to objection, and their legal effect at variance with what I conceive to be the meaning of the framers and of Her Majesty's Government.

The 4th Clause provides for the payment to Her Majesty of £5 per annum for every Officer and Soldier of Her Majesty's forces serving in New Zealand, with such explanation as makes it sufficiently clear that the payment is to be made to the Imperial Treasury.

But the 5th Clause enables the Governor to expend on Native purposes "so much as to him shall seem fit" of a fund which under the preceding Clause has been placed beyond the control of the Colonial Legislature.

This is obviously incorrect. The proper course would have been to omit this Clause, leaving Her Majesty's Government to perform in their own way the pledge given in my Despatch No. 53, of the 26th of May, which might have been recited in the preamble.

I think, therefore, that this (the 5th) Clause of the Act ought to be repealed.

The Colonial Defence Act is one the object of which I cordially approve, but I think that the effect of one of its provisions has not been fully observed.

The expense of maintaining the force to be organised under this Act is to be paid from one of several sources, among which is enumerated "any funds available generally for Native purposes not specifically appropriated." It is, of course, quite competent to the Legislature to enable the Colonial Government to appropriate to the support of this defensive force any sum of money voted by them for Native purposes above the £26,000, which is to be expended in the support of Native Institutions, and for other purely Native objects, as a condition of receiving a remission from the Colonial Military Contribution. But the provisions of the Local Act taken in connection with the 5th Clause of the Native Appropriation Act, would render applicable to the building of Barracks and defence of the Colonists £20,000 or more of the payment which was relinquished by the Imperial Treasury, not for purposes of defence, but in order that it might be employed in removing the causes and occasions of war by ameliorating the condition of the Maoris. I am sure this was not the intention of the Legislature. But in order to prevent misconception, I think it necessary to remind you that the sums spent in furnishing Barracks and pay for this new force must not be reckoned as part of the £26,000 applied from the Colonial Treasury to Native purposes, or in satisfaction of the Military contribution payable under the 4th Clause of the Native Appropriation Act.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

No. 8.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

[Received at Taranaki 26th May, 1863.]

No. 34.

Downing-street, 24th March, 1863.

SIR,—

Printed at p. 7 ante.

I have received your Despatch, No. 113, of the 5th November, 1862, transmitting a Minute, signed by Mr. Dillon Bell on behalf of your Responsible Advisers, and other documents relating to the Native Lands Bill, which was reserved for the signification of Her Majesty's pleasure, and transmitted with the other Acts of the Session, in your Despatch No. III., of the 31st of October.

I perceive from Mr. Dillon Bell's Minute, which is extremely full and clear, that the Bill is not one which you would yourself have proposed; and that the main ground upon which your Advisers declined to adopt your views was that there was no chance of their being accepted by the General Assembly. It is plain, therefore, that whatever may be the language held by that body in resolutions and other manifestoes of an inoperative character, they have not any real intention of allowing the Home Government, through you, to dictate their course in respect of this, one of the most important branches of Native policy.

With this observation I proceed to add that I see no reason why Her Majesty should refuse her assent to a Bill which has been passed under such circumstances, and which in your opinion can be so worked as to produce beneficial results at this crisis.

It appears to me, as far as I can judge, honestly and carefully framed, and I see no reason to doubt that the defects alleged by Mr. Sewell, may and will be removed by subsequent legislation, as experience shall shew the best mode of dealing with them.

Enclosure. Not printed.

I have therefore advised that the Bill should receive Her Majesty's assent, and I enclose the Order in Council by which that assent is conveyed.

I have, &c.,

NEWCASTLE.

His Excellency Sir G. Grey, K.C.B.

No. 9.

COPY OF DESPATCH FROM GOVERNOR SIR GEORGE GREY, K.C.B., TO HIS GRACE THE DUKE OF NEWCASTLE, K.G.

No. 42.

Downing-street, 17th April, 1863.

SIR,—

Printed at p. 14 ante.

I have to acknowledge the receipt of your Despatch, No. 134, of the 31st December, forwarding in conformity with a request to that effect, which was made to you by the Legislative Council, a case

embodying the facts relating to a question of Privilege which had arisen between the two Houses, upon which the Legislative Council were desirous that the opinion of the Law Officers of the Crown should be obtained for their future guidance.

The House of Representatives are not parties to this application, but as I have no reason to suppose that they object to it, and as I infer from your Despatch that the reference is in conformity with your wishes, and of those of your Responsible Advisers, I caused the case, with the documents which accompanied it, to be forwarded to the Law Officers of the Crown; and I now enclose for your information a copy of the Report which they furnished upon the subject.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

Enclosure in No. 9.

LAW OFFICERS TO THE DUKE OF NEWCASTLE.

Temple, April 9th, 1863.

MY LORD DUKE,—

We are honoured with your Grace's command, signified in Sir Frederic Rogers' letter of the 28th March ultimo, stating that, in compliance with an application forwarded by the Governor of New Zealand from the Legislative Council of that Colony, Your Grace directed him to request that we would favor you with our opinion on a question of privilege which had recently been raised in New Zealand, and which is stated in the following terms, in the Report of the Committee of the Legislative Council:—

"Whether the House of Representatives, having in a Bill imposed on a Crown Grant, or an Instrument in the nature of a Crown Grant, a certain tax or duty, it is competent to the Legislative Council to introduce an enactment to the effect that no transaction shall take place under another class of Instruments affecting Native lands until such Instruments have been practically transmuted into, or changed for, Crown Grants, so, in effect, rendering the latter class of Instruments liable to such tax or duty."

Sir Frederick Rogers was also pleased to annex the case which was received from the Colony, and the papers which accompanied it.

The Standing Orders quoted in the case were passed under authority of the 52nd Clause of the New Zealand Government Act, 15 and 16 Vic., cap. 72.

Sir Frederic Rogers was further pleased to state that we would not fail to observe that the case was drawn on the part of the Legislative Council, and that the House of Representatives was not a party to the reference. But we would find among the papers a Ministerial Memorandum in an opposite sense, from which it might be inferred that the question was fairly stated.

In obedience to Your Grace's commands, we have taken this matter into consideration, and have the honor to report—

That we are of opinion that, if, in a Bill introduced in the House of Representatives, and passed through that House, a certain tax or duty has been imposed upon a Crown Grant, or an Instrument in the nature of a Crown Grant, it is competent to the Legislative Council, without any breach of the privileges of the House of Representatives, to make the efficacy for any given purpose of another class of instruments intended to affect Native lands under the provisions of the same Bill, dependent upon their assuming the form of Crown Grants, or of those Instruments in the nature of Crown Grants, on which the tax or duty has been so imposed by the House of Representatives.

It is, we think, a fallacy to represent this as a case in which the Legislative Council takes upon itself to impose any tax or duty. It merely provides that a particular kind of Instrument shall be necessary to produce a particular effect. It has a right to decide for itself upon the form and character of the instrument which shall be sufficient for that purpose, and it cannot be deprived of that right merely because the form of instrument which it prefers is one on which a duty may have been already imposed by law, or will be imposed, if the Bill should pass—the imposition of the duty on that form of Instrument being the act, not of the Legislative Council, but of the House of Representatives.

We do not agree with the argument that the 2s. 6d. per acre was not in its nature a tax or duty. But the other argument, urged on the part of the Legislative Council, that the House of Representatives cannot, by imposing a tax or duty on a particular kind of legal instrument, exclude the Legislative Council from the power of originating or amending bills relating to such instruments, seems to us to be well founded; and we see no answer to the suggestion that the privilege contended for by the House of Representatives, would, in effect, be the same as if a stamp duty "being imposed upon deeds "in England, the House of Peers were thereby precluded from considering whether certain transactions "should or should not be effected by deed." It has never been supposed in England that the privilege of the House of Commons as to originating taxation, is attended with such consequences as this.

We have, &c.,

W. ATHERTON.
ROUNDELL PALMER.

His Grace the Duke of Newcastle, K.G.

No. 10.

No. 44. COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

Downing-street,
20th April, 1863.

SIR,—

I referred for the consideration of the Lords of the Committee of Privy Council for Trade, a copy of the Act of your Government, No. 20, of 26th Victoria, "to establish Marine Boards for the general control and management of ports, pilots, lighthouses, and other matters relating to navigation, and to regulate port charges and other rates," and also a copy of the Act passed in the same Session, No. 22, of 26th Victoria, "to regulate steam vessels, and the boats and lights to be carried by seagoing vessels."

I enclose for your information a copy of the reply which has been returned to that reference, and I have to instruct you to communicate this letter to your Responsible Advisers, requesting their attention to the observations of the Board of Trade, and the necessity of amending the Act No. 20, in some of the particulars pointed out by them.

Her Majesty will not be advised to exercise the prerogative of disallowance in respect of the Act No. 22. But I should wish you to draw the attention of your Government to their Lordships' observations on this Act.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

Enclosure in No. 10.

MR. FARRER TO SIR F. ROGERS.

Office of Committee of Privy Council for Trade,
Whitehall, 9th April, 1863.

SIR,—

I am directed by the Lords of the Committee of Privy Council for Trade to acknowledge the receipt of your Letter of the 30th ultimo, enclosing Copies of two Acts passed by the Legislature of New Zealand, and at the same time asking if their Lordships see any reason why these Acts should not be left in operation.

With reference to the "Marine Board Act, 1862," No. 20, my Lords are of opinion that it will not be desirable to leave it to its operation without further communication with the Colony, for the reasons following:—

Section 3, as explained by the Memorandum which accompanies the Act, is intended to give to the Colonial Government the power of altering the rules of the Imperial Act relating to the Registration of Colonial-built Ships.

It is not stated what alterations are contemplated, or what the difficulties are which it is intended to remove.

If these points were explained, steps might perhaps be taken under the Imperial Act as it stands to meet the views of the Colonial Government. But however this may be, it is clear that a general power to alter the Rules relating to the Registration of Colonial Ships could not be sanctioned by Her Majesty's Government, even if such alteration were allowed by the Imperial Act.

The Registration and Measurement of Sea-going British Vessels, wherever built, is a matter of Imperial concern, both as regards the mode of transferring and dealing with the Ships and also as regards their right to use the British Flag, and no alteration in the Rules for these purposes contained in the Imperial Act should be made except by the authority of the Imperial Government.

Section 60, which refers to the same subject, appears to their Lordships to require modification for the same reasons.

Sections 11 to 22 create a very stringent system of compulsory Pilotage in every Port in the Colony. My Lords think it right to point out that whilst Her Majesty's Government can scarcely require in the Colonies the abandonment of a system which is still in force in some Ports of the United Kingdom; yet that compulsory Pilotage is objectionable in principle, and that all steps recently taken by the Legislature of this country on the subject have tended towards its abolition.

It is unjust to compel a Ship to pay for a Pilot when she does not require one, and it is inexpedient to take the charge of a Ship out of the hands of those who are most interested in her safe management.

The system of compulsory Pilotage is also further open to the grave objection, that if a collision happens whilst the Ship is in charge of a Pilot, persons injured by reason of such collision can obtain no compensation.

The argument in favour of compulsory Pilotage is that without such a system the supply of Pilots would be inadequate. But the experience both of large and small Ports in this Country, shows that an efficient Staff of Pilots can be kept up without interference with the ordinary laws of supply and demand.

My Lords think that these considerations should be brought to the notice of the Colonial Authorities before they embarrass themselves with a false system, from which the mother country is now with great trouble and inconvenience, trying to disembarrass herself.

As regards the details of these clauses, I am to observe that Section 16 might have the effect of preventing unlicensed persons from offering their services in cases where, though there might be no absolute necessity, those services would be most desirable.

Section 19 provides for certain exemptions in the case of Colonial Traders—a term explained in the interpretation clause; but the exact intention of the Clause is not obvious. It is clear, however, that if a system of compulsory Pilotage is to be adopted, and if certificates of exemption are to be given, they ought to be given to all persons who prove themselves competent to Pilot their own vessels without any limitation arising from special previous employment; such a limitation might be unfair to other persons, and might also possibly infringe the rights conferred by Reciprocity Treaties.

Section 50 is intended to give certain exemptions both from Pilotage and Light dues. But it is not at all clear to what vessels they apply. From the marginal note, and from the language at the end of the clause, they seem to be intended for Whalers only; whilst there are other words which on this hypothesis are unmeaning and unintelligible.

Certain other Clauses in the Act are more stringent than would be tolerated in this country, whilst the meaning of some others is not clear. But as they refer to matters of local interest, their Lordships think it needless to refer to them.

On the whole, my Lords recommend that Act No. 20 should be re-considered by the Colonial Government.

With reference to Act No. 22, entitled "The Steam Navigation Act, 1862," my Lords see no sufficient reason for refusing to leave it to its operation; but they direct me to make the following observations for the consideration of the Colonial Authorities.

Section 21 provides for watertight bulkheads in iron Steamers built after the 1st January, 1863. The corresponding provision in the "Merchant Shipping Act, 1854," has been repealed by the "Merchant Shipping Act Amendment Act, 1862," in consequence of the difficulty experienced in carrying into effect any provision of the kind without interfering with private skill and enterprise, and without diminishing the responsibility of owners. The same objections would seem to apply in the Colony, and it would also be obviously wrong that vessels which have legally cleared from this country under the Imperial Law should, when they arrive in the Colony, be prevented from trading there by a Colonial Law of this description.

My Lords do not apprehend that the Clause as it stands is likely to have this effect, and therefore it is unnecessary to object to the Act on this ground; but they think the attention of the Colonial Government should be called to this point.

Clause 28 gives the Governor power to regulate, inter alia, the "Lights to be carried, and Signals to be displayed by Vessels."

As this power is only to be exercised on a recommendation from the Board of Trade in England, their Lordships do not object to it; but they think that it should be pointed out for the Governor's information, that these are now matters not only of Imperial but of International concern, and cannot be altered except for the gravest reasons.

I have, &c.,

T. H. FARRER.

The Under-Secretary of State for the Colonies.

No. 11.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B. No. 53.

Downing-street,
2nd April, 1862.

SIR,—

I have the honor to inform you that Her Majesty will not be advised to exercise the power of disallowance in respect of the Act of your Government No. 16, of 26th Victoria, entitled, "An Act for establishing Postal Communication with Great Britain by way of Panama."

At the same time I enclose for your information the Copy of a Letter from the Secretary to the Board of Treasury, which will acquaint you with the decision arrived at by their Lordships after considering the proposals which were made to them on this subject by Mr. Crosbie Ward, also by Mr. E. Hamilton on behalf of the Government of New South Wales.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

Enclosure in No. 11.

MR. PEEL TO SIR F. ROGERS.

Treasury Chambers,
7th May, 1863.

SIR,—

The Lords Commissioners of Her Majesty's Treasury have had before them your Letter of the 30th March last, forwarding Copy of an Act passed by the Legislature of New Zealand, intituled, No. 16, "An Act for establishing Postal Communication with Great Britain by way of Panama."

I am directed by their Lordships to acquaint you for the information of the Duke of Newcastle that they have had under consideration proposals made by Mr. E. Hamilton, on behalf of the Government of New South Wales, and by Mr. Crosbie Ward, on behalf of the Government of New Zealand, to the effect that Her Majesty's Government should assist in establishing a monthly Mail to New Zealand *viâ* Panama, by paying the cost of a Packet Service across the Pacific, and by agreeing to make no claim on the Colonies for the conveyance of the Australian and New Zealand Mails by the Packets between Southampton and Colon.

Their Lordships have caused Messrs. Ward and Hamilton to be informed that this Board is unable to assist in the establishment of such a line, owing to the expense it would entail on this Country under the proposals above adverted to.

With regard to the Act No. 16, passed by the Legislature of New Zealand, their Lordships see no objection to its being left to its operation.

I have, &c.,

F. PEEL.

Sir F. Rogers, Bart.

No. 12.

No. 59.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

Downing-street, 14th June, 1863.

SIR,—

Vide p. 23.

With reference to the remarks contained in my Despatch, No. 23, of the 26th of February, respecting the Act of your Government "for raising a force for the internal defence of the Colony," I have the honor to transmit for your information the copy of a letter from the War Office, enclosing copy of one from the Horse Guards, stating the views entertained by His Royal Highness the Field Marshal Commanding in Chief upon the subject of this enactment.

You will observe that His Royal Highness considers that the Act is a good one, but that he thinks that it would be advantageous if it was so far amended as to invest the Governor with power, under certain conditions, to increase the numbers of the force and to prolong its service on an emergency.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

Enclosure in No. 12.

SIR E. LUGARD TO SIR F. ROGERS.

War Office, 12th May, 1863.

SIR,—

With reference to your letter of the 30th March last, enclosing an Act, No. 32, passed by the Legislature of New Zealand "for raising a force for the internal defence of the Colony," I am directed by the Secretary of State for War to transmit to you for the information of the Duke of Newcastle the copy of a letter from the Horse Guards stating the views of His Royal Highness the Field Marshal Commanding in Chief respecting this Act.

I have, &c.,

EDWARD LUGARD.

Sir Fredk. Rogers, Bart., &c., &c.

Sub-Enclosure to foregoing.

MAJOR-GENERAL FORSTER TO THE UNDER SECRETARY OF STATE FOR WAR.

Horse Guards, 8th May, 1863.

SIR,—

Having submitted to the Field Marshal Commanding in Chief your letter of the 22nd ultimo, with its enclosure, herewith returned, I am directed to request that you will inform the Secretary of State for War that His Royal Highness considers the "Act for raising a force for the internal "defence of the Colony of New Zealand" a good one, and sufficient for the purpose required; but he also thinks it would be desirable to invest the Governor (with the consent and under the advice of his Executive Council) with power to increase the number of the force and to prolong its service on an emergency.

I have, &c.,

W. F. FORSTER.

The Under Secretary of State for War.

No. 13.

COPY OF DESPATCH FROM HIS GRACE THE DUKE OF NEWCASTLE, K.G., TO GOVERNOR SIR GEORGE GREY, K.C.B.

No. 67.

Downing-street,
26th June, 1863.

SIR,—

I have received your despatch No. 34, of the 30th March, forwarding a Memorandum from your Responsible Advisers, in which they request that the opinion of the Law Advisers of the Crown may be obtained as to the power of the General Assembly to pass any Act inferring an alteration of the Constitution Act, and I transmit for your information and for that of your Responsible Advisers, an extract of a report furnished by the Law Officers of the Crown in the month of April, 1862, in which their opinion on this subject is fully set forth.

Vide pp. 17, 18.

I have, &c.,

NEWCASTLE.

Governor Sir George Grey, K.C.B.

Enclosure in No. 13.

EXTRACT FROM LAW OFFICERS' REPORT, DATED 30TH APRIL, 1862.

"With reference to the fifth question, we think it would be convenient in all cases, and would certainly tend to remove doubts, if, when the powers of repeal and alteration given to the Provincial Legislature by the 20th and 21st Vic., Cap. 53, are meant to be exercised, that intention were carried into effect, not inferentially, but by direct specific enactment. But it would be unsafe, except with reference to some particular case which had occurred, to undertake to say whether such repeal or alteration might or might not be effected without such direct and express reference, as for instance, by plainly inconsistent subsequent legislation. We understand the former opinion of the Law Officers to have been expressed with particular reference to the case before them, but we prefer to express ourselves generally, and at large."