

MESSAGE No. 8,

His Excellency the Officer administering the Government transmits to the Governor Sir G. Grey House of Representatives copies of two Despatches between H. M. Principal Secretary of State for the Colonies and Governor Sir George Grey on the subject of the Marriage Ordinances of this Colony, in accordance with a Resolution of the House, No. 6, dated the 21st instant, requesting to be furnished with a copy of the correspondence between the Colonial Government and the Secretary of State relative to the disallowance of the Marriage Amendment Ordinance.

R. H. WYNKARD,

Government House,
Auckland, 24th June, 1854.

(Copy.)

No. 110.
Legislative.

Government House,
Wellington, August 25, 1851.

My Lord,—

I have the honour to transmit, in order that Her Majesty's pleasure may be taken thereon, an Ordinance which I have enacted with the advice and consent of the General Legislature of these Islands, intituled "An Ordinance to amend an Ordinance for regulating Marriages in the Islands of New Zealand." No. 7, Sess. xi.

2. The necessity for making, in the existing law, the amendments contained in the enclosed Ordinance originated in the following circumstances.

Enclosure No. 1 Marriage Amendment Ordinance, No. 7, Session 11.

3. In the year 1847, I found that the Marriage Law, as then existing in New Zealand, was in a most unsatisfactory state; in fact it was in so confused a state that applications were on several occasions made to the Government by persons who did not know whether marriages they had contracted were legal and valid or not. I therefore, in the month of August, 1847, introduced into the Legislative Council a Bill for the purpose of regulating Marriages in these Islands, the provisions of which I believed to be well adapted to the circumstances of this country, and likely to be acceptable to all classes and denominations of Her Majesty's subjects. The Legislative Council, however, divided themselves into three parties on this subject, and, apparently from not thoroughly understanding it, so altered the Bill I had submitted for their consideration that I felt quite convinced it would never work satisfactorily. However, it was absolutely necessary that something should be done; and having secured the introduction of a clause into the measure which had the effect of rendering it tolerably effective, although by no means a satisfactory one, I reluctantly gave my assent to the measure.

4. But I felt so satisfied that the community generally, when the law had been brought into operation, would find it unsuited to the circumstances of the country, and so inconvenient in practice that the Legislature would be compelled to retrace their steps by making the necessary amendments in the law that I delayed in 1847 transmitting for Her Majesty's approval an Ordinance which I could not recommend for confirmation, intending, when experience had shown the necessity which existed for alterations in it, to transmit at the same time the original and the amended law for the purpose of being laid before the Queen.

5. In the mean time, owing to the very extended nature of the territory throughout which the Marriage Law was to be brought into operation, and the infrequency of communication between the several parts of that territory, a longer time than I had anticipated elapsed before public feeling had been so far expressed regarding the unsatisfactory state of the Marriage Law as to give me any confidence that I could succeed in carrying through the Legislative Council such a measure as I thought suited to the circumstances of the country. At length, however, public dissatisfaction on the subject became so strong, and remonstrances were addressed to me from so many quarters, that it evidently became the duty of the Government to take some steps to have the necessary amendments in the law made.

6. I therefore, in the month of August, 1849, directed the publication of a draft of the enclosed Ordinance, which I proposed to lay before the General Legislature at its next assembling; but no opportunity offered of bringing it before a large Legislative Council, which might be regarded as fairly representing the interests of all parts of the colony, until the recent meeting of the General Legislative Council at Wellington.

7. In the interval of time which elapsed, the provisions of the draft Ordinance were, however, fully discussed, and they apparently met with the support and approval of all parties, and the measure was ultimately carried through the Council without any opposition.

Enclosure No. 2.
Marriage Ordinance,
Sess. 8, No. 7.

Enclosure No. 3.
Registration Ordinance,
Sess. 8, No. 9.

8. I have therefore now the honour to transmit the former Marriage Ordinance, together with the Amending Ordinance, and the Marriage Registration Ordinance, for Her Majesty's approval. These Ordinances collectively, placing in these Islands the law relating to Marriages upon a footing which I believe to be well adapted to the mixed, peculiar, and scattered population of New Zealand, nearly the whole of whom are now Christians and generally conform to our laws of Marriage; whilst I have also reason to believe that the Ordinances so recom-

mended for the Queen's approval, are acceptable and satisfactory to all classes of Her Majesty's subjects in these Islands.

I have, &c.,

(Signed)

G. GREY.

The Right Hon. EARL GREY,
&c. &c.

(Copy.)

No. 22.

Downing Street,
17th February, 1852.

Sir,—

I have to acknowledge your dispatch No. 110 of the 25th August last, transmitting Ordinance of Sess. XI, No. 7 to amend a former ordinance for regulating marriages in the Islands of New Zealand

Your report also your reasons for delaying to transmit the latter ordinance (Sess. 8, No. 7) and also the Marriage Registration Ordinance (Sess. 8, No. 9) until amendments had been made.

2. I trust that the provisions of the Ordinances of 1847 will remove the difficulties which you mention as affecting the Law of Marriage in the Islands; but I must point out to you an error into which the Legislature have, in my judgment, fallen, which renders it impossible for me to advise Her Majesty to allow the amending Ordinance of 1851 to remain in operation.

3. The power of granting Licenses for the solemnization of marriage has been generally vested in English colonies in the Governor; that is, in the civil authority. This is, in my opinion, the most convenient and reasonable course, and as such it was recommended by my predecessor, Lord Stanley, in several cases in which it was proposed to amend the Law of Marriage in different Possessions of the Crown.

4. The institution of these Licenses, like that of the Banns previous to the solemnization of Marriage in Churches, is merely part of the machinery for ensuring sufficient notice being given beforehand of every intended marriage, so as to prevent clandestine and unauthorised marriages. It is simply a civil object, and has nothing to do with that portion of the Law of Marriage with which religious feelings and opinions are concerned, namely, the solemn sanction given to the union by the religious ceremony. There is, therefore, no reason whatever why Licenses should not be given simply by the civil authorities; nor can any religious sentiment be offended thereby.

5. The precedent afforded by the English Marriage Law of 1837 appears to have been misunderstood. That Act preserved indeed the old usage under which Licenses were issued by the Ecclesiastical Authorities. But it did so, simply for the sake of preserving existing customs and vested interests. Accordingly Licenses in England are granted under the late Act, either by the Authorities of the Church of England, preserving the law as it stood before the Act, or simply by the Civil Authorities,—that is, by the Registrar.

6. The Clause of the Ordinance No. 7 (sec 9), which confers the power of granting Licenses to the Authorities of the Church of England, and of the Roman Catholic Church, I therefore regard as objectionable in itself, as well as worded in a manner likely to lead to difficulties as to the legal interpretation of the words "agreeably to the forms and usages of such Churches." But I observe in the margin, though not in the body of the enactment, the words "Licenses to be issued as heretofore;" it may be therefore that the Legislature was only preserving the existing custom, which ought not of course to be altered without strong reason.

7. But when I turn to the Ordinance of 1851, I find that the departure from what I regard as the sounder and more simple principle in the Legislation of a new community has led to results so inconvenient as to indicate clearly the erroneous nature of the policy pursued. I conjecture, although your despatch is not explicit on the subject, that offence was taken by the members of other religious bodies at the reservation of the right to issue Licenses to the Clergy of the Churches of England and Rome. It was, I presume, in order to appease this

jealousy that the Ordinance of 1851 extends the right to issue Licenses to parties who possess no such right in England or in other British Colonies, to certain authorities who may be regarded as the heads of the Church of England, the Free Church, and the Wesleyan Community, and finally (which seems to render these last provisions quite unnecessary) to all officiating Ministers whatever—that is, to any person who can produce the certificates required by the latter part of the Ordinance.

8. It seems to me that in endeavouring to reconcile religious differences on a subject in which no religious principle is involved, this enactment loses sight of the main object, namely, publicity. If Marriage Licenses can be granted by all the parties on whom it confers these powers, there will be obviously danger that knowledge of an intended marriage should not be duly obtainable beforehand by parties interested respecting it, and too much facility will thus be given to clandestine or irregular marriages.

9. I have therefore felt it my duty to advise Her Majesty to disallow this last Ordinance, and not to confirm No. 7, of 1847, but to leave it for the present tacitly to its operation, together with No. 9, of 1847, which is clearly connected with it. It will be distinctly understood that this resolution is adopted not from any wish to give to the clergy of the Churches of England and Rome legal powers not possessed by other ministers, but simply because it is almost unavoidable to preserve existing practice until some well considered substitute is adopted.

10. The Representative Legislature of New Zealand, when assembled, will no doubt consider the whole question. They will be best able to adapt the law on this important subject to the real wants of the community. But in my own opinion, the safest course which can be adopted as to Licenses will be that already recommended, namely, to confer the power of granting them exclusively on the Civil Authority.

I have, &c.,
(Signed)

GREY.

Governor Sir GEORGE GREY,
&c., &c.