

Enclosure in No. 3.

THE LAW OFFICERS TO THE DUKE OF NEWCASTLE.

Temple, February 26th, 1862.

MY LORD DUKE,—

We were honored with your Grace's commands, signified in Sir Frederick Roger's letter of the 28th January last, in which he stated that with reference to the Law Officer's Report of the 21st of June last, he was directed by your Grace to transmit to us a copy of a Despatch from Colonel Gore Browne, together with a Memorandum drawn up by his Responsible Advisers, respecting the Act of the New Zealand Legislature "To simplify the Law relating to the transfer of landed property in New Zealand," and to request that we would inform your Grace, whether the explanations now supplied in Colonel Gore Browne's Despatch, and its enclosures, were sufficient to remove the objections stated in such Report to some of the provisions of the Bill; and if so, whether the Act in question, together with the subsequent Acts, of which copies were annexed, entitled respectively "An Act for giving effect to Regulations under the 'Land Registry Act of 1860' and for amending the said Act," and "An Act for correcting Surveys of Land," might be left to their operation.

In obedience to your Grace's commands we have taken this matter into consideration, and have the honor to Report :—

That the first point to which attention was directed by the former Report of the Law Officers, was the necessity of providing adequate safeguards and securities, with a view to ensure notice to all persons interested, of any application to Register a Title; as to which, it was observed, that the opinion to be formed of the justness and reasonableness of the proposed measure would depend in a great degree upon the rules of procedure which might be made by the Governor in Council, under the powers of the proposed Act; and which were not then before the Law Officers.

These rules of procedure, confirmed by the "Land Registry Amendment Act, 1861," are now before us. By the 47th rule it is provided that "within one month after receipt of an application to Register a Title to land, the District Registrar shall cause a notice to be inserted in some local newspaper circulated in the District and shall continue such advertisement three times consecutively in such newspaper." The notice, (which is the only safeguard or security taken for non-apparent claims or titles,) is to state the name, &c. of the applicant; is to give "a short description of the land, specifying the estimated contents, the section, parish, district, county, &c., where situate"; and is to appoint a day for all parties interested to lodge their claims and evidence in support thereof, and to attend personally or by Attorney at a specified time and place for the purpose of establishing their rights. The time to be fixed for the appearance of parties is thus left absolutely and without limit to the discretion of the District Registrar; if they do not appear at the time appointed, they will be liable to be absolutely concluded by the entry of the name of the applicant upon the Register; which entry, under the 33rd section of the Land Registry Act, will give the person registered (unless he obtains the Registry by fraud) an indefeasible Title in fee simple, free from all charges and liens whatsoever, which are not entered, or saved by reservation, on the face of the Register.

It is impossible not to perceive the serious danger to which persons absent from the Colony, or living in the Colony, but at a distance from the district where the land is situate, may be exposed under such a mode of procedure. The sole medium of notice is an advertisement in three successive numbers of a local newspaper circulating in the district, and the interval between the notice and the entry of the applicants' name on the Register may be indefinitely short. The difficulty, therefore, which was felt by the Law Officers on this point, in June, 1861, is not at all removed by the Regulations which have hitherto been made.

The remarks upon this subject, of the Registrar-General of New Zealand, in paragraph 20 of his able Report, dated the 3rd May 1861, and of the Colonial Ministers in their Memorandum of the 20th September 1861, must not be overlooked. "As regards absentees and dormant claimants," (says the Registrar-General) "the Act requires notice to be given, calling on parties to come in to substantiate their claims; by shortening or extending the time of such notices, and enlarging or contracting their circulation, we shall afford more or less opportunity to absentees and dormant claimants to come in and present themselves. Upon the whole, the balance of reason is, I think, in favour of adopting a short notice, and of not attempting wide or distant circulation, otherwise, we may practically frustrate by delay, the benefits proposed by the new system. The instance, will be rare in which wrong will happen. The chances of it will not be greater than under the present Registration law, if so great. It will be the business of the Registrar to watch jealously for all such possible cases, and the 81st section provides compensation when wrong may happen by default of the Registrar. But the mere contingency of possible wrong ought not, in my opinion, to be admitted as a cause for frustrating the benefits of the new law."

It will be for your Grace to estimate the degree of weight due to these arguments, but we cannot say that they are, to our minds, at all satisfactory. To create a Parliamentary title to land against all the world, thereby extinguishing all such prior and paramount rights as may not be brought forward within a limited period, is an exercise of legislative power which can only be reconciled with the fundamental principles of justice, if the notice given and the time limited are reasonably sufficient to enable the persons having such rights to come forward and defend them. Justice, in such a matter, and when the first foundation of a new system of titles is being laid, seems to us to be of very much more importance than mere despatch; but the Registrar-General's