

Enclosure to Despatch No. 63.

THE LAW OFFICERS TO THE DUKE OF NEWCASTLE.

Temple, April 9th, 1863.

MY LORD DUKE,—

We are honored with your Grace's commands signified in Sir Frederic Rogers' letter of the 31st ultimo, stating that he was directed by your Grace to request that we would favor your Grace with our early opinion on certain questions which have arisen respecting the present position of the Auckland Islands, and which are raised in a Memorandum submitted to the Governor of New Zealand by his Responsible Advisers, and by him transmitted to your Grace.

Sir Frederic Rogers was also pleased to state that he enclosed a copy of this Memorandum and copies also of

1. The Letters Patent of 4th April, 1842, defining the limits of the Colony of New Zealand.
2. The New Zealand Government Act (15 and 16 Vict. cap. 72).
3. The Commission of Sir George Grey.
- 4 and 5. Two Parliamentary Papers (No. 182 of 1853, and No. 369 of 1855) respecting the lease of the Auckland Islands to the Messrs. Enderby.

And that from these documents we should perceive that these Islands were leased to Messrs. Enderby in the year 1847, subject to an obligation of paying £1,000 a-year rent after the first two years, and to a right of re-entry in case of non-payment. (P.P. 122 of 1853, p.p. 22-23.)

And that we should also see that the Islands were occupied and abandoned by Messrs. Enderby and a Company to whom Messrs. Enderby were alleged to have assigned their interest, and that in 1853 this Company were prepared to surrender their interest to the Crown, but conceived that they were not legally in a position to do so. (PP. 369 of 1853, p.p. 30-31.)

And that it need hardly be said that if any rent was ever paid to Her Majesty's Government it has long ceased to be paid.

And that we should also perceive that the Auckland Islands are within the limits of New Zealand as defined by the Letters Patent of 1842, but not within these limits as defined by the New Zealand Government Act "for the purposes of that Act," that the Commission of Sir George Grey constitutes him Governor of New Zealand, without defining the limits of the Colony, and that the Government of New Zealand are desirous to ascertain whether these Islands are within the scope of Sir George Grey's Commission and their own authority, and what steps should be taken to secure the surrender of Messrs. Enderby's interest.

Sir Frederic Rogers was also pleased to state that your Grace is of opinion that the Auckland Islands should be incorporated into the Colony of New Zealand, and that your Grace would be prepared to propose to Parliament a Bill (of which a draft was annexed) repealing the Statutory definition of New Zealand (14 and 15 Vict. cap. 72, sec. 80), and substituting a new definition in accordance with the Letters Patent of 1842, and therefore embracing the Auckland Islands. And that your Grace would therefore be glad to learn whether this draft Bill would be proper and sufficient for its purpose, and what other steps if any, would be necessary to place these Islands unequivocally under the authority of the Government and Legislature of New Zealand, and to extinguish the dormant interest of the Messrs. Enderby and their alleged Assignees.

In obedience to your Grace's commands, we have taken these papers into consideration, and have the honor to Report—

1. That in our opinion the authority of the Colonial Government of New Zealand does not now extend to the Auckland Islands. Upon this point, we think there can be no room for doubt, having regard to the 80th section of the New Zealand Government Act.

2. That we also think the existing Commission to His Excellency Sir George Grey does not include the Auckland Islands. That commission recites the commission of the preceding Governor, Colonel Gore Browne, as having constituted him Governor, &c., "in and over our Islands of New Zealand," and then (without any other description or mention of the Colony,) it proceeds to constitute and appoint Sir George Grey, Governor, &c." in and over "our said Colony of New Zealand and its Dependencies;" commanding him "to do and execute all things in due manner, that shall belong to your said command, and the trust we have reposed in you, according to and in pursuance of an Act, &c." (referring to the New Zealand Government Act) "and according to such reasonable laws as are now in force in our said Colony, or hereafter shall be made by the General Assembly of our said Colony." It appears to us that, according to the true construction and import of these words (with which the whole sequel of the commission agrees) the "Colony of New Zealand and its Dependencies," of which Sir George Grey is constituted Governor, is that defined in the 80th section of the New Zealand Government Act, which does not include the Auckland Islands. And we are further disposed to think that the first section of the New Zealand Government Act had itself the effect of repealing the former definition of the Colony, contained in the Letters Patent of the 4th April, 1842, so far as that definition was at variance with the 80th section of that Act.

3. Nothing more is necessary to put an end to all claim of title on the part of the Messrs. Enderby, or their Assigns, under the Lease of the 1st March, 1847, than that Her Majesty should exercise Her power of re-entry for non-payment of rent; and this may be done by directing Sir George Grey, on behalf of Her Majesty, to cause possession of the Islands to be retaken; and to notify such re-entry thereon, and the determination of Messrs. Enderby's lease, in the "New Zealand Government Gazette," after the intended Act to re-incorporate the Auckland Islands with New Zealand shall have been passed.