

## No. 12.

Copy of a DESPATCH from His Excellency Sir GEORGE GREY, K.C.B., to the Right Honorable EDWARD CARDWELL, M.P.

Sir,—

Government House, Auckland, 7th September, 1864.

My Responsible Advisers have requested me to transmit the enclosed copy of a \*Memorandum, in which they enter a protest against your Despatch, No. 76, of the 27th June, 1864, on the subject of prisoners taken by Her Majesty's Forces during the disturbances prevailing in this Colony.

2. I am anxious that the real question at issue in this case should be understood, and I wish therefore to point out that my Responsible Advisers have, in my belief, in the enclosed memorandum, lost sight of what I regard as the point which is to be determined. I understand them to say that the practical point is that you have decided that the disposal of the prisoners taken by Her Majesty's Forces is not a subject on which the Governor is bound to take the advice of his Ministers, but that these prisoners are to be held under the absolute control of the Governor, and to be disposed of at his pleasure, even against the advice of his Responsible Ministers.

3. What I gather from your Despatch is, that such prisoners are to be dealt with according to law, and not to be disposed of at any person's pleasure; and that they are to have the same safeguards thrown around them to protect them from wrong, or being injured by the heat of momentary passions, as the laws and customs of the Empire throw around all Her Majesty's subjects; but that in the event of the Ministry in this country requiring the Governor here to act virtually as their servant in carrying out illegal acts in reference to such prisoners in a manner that he regards as being unduly harsh, you will support him in refusing any longer to carry out such illegal proceedings in a manner he deems harsh and ungenerous; and that also within the limits of the law he may, if he sees a strong necessity for so doing, deal generously with such prisoners, whether with or without the consent of his Ministers. Whether your instructions, as I have stated them, are just and proper is, in my belief, the question which has arisen for decision.

4. My Responsible Advisers had an Act passed by the Local Legislature, which enabled them to deal summarily with the case of such prisoners, by bringing them to trial before Courts Martial, provided they did so at the earliest possible period; but of this law they did not avail themselves, nor offer to do so, until the prisoners had been for several months in custody. The usual Courts of the country were at all times open to them, but they had the prisoners in custody, the witnesses were present, and no just excuse for not bringing the prisoners to a fair trial existed. But they would not do this. They required me to have them confined for many months, without any legal authority existing for their detention. They were thus, as I believed, illegally detained in confinement on board a hulk, crowded into a most insufficient space, with nothing to lie on but the deck of the vessel, great want of light and air prevailed, and the ventilation was most defective. I believed the atmosphere to have been in a most impure state. I believed also that at the early period of their confinement their diet was not of the kind their habits rendered necessary. I was informed on the best authority that the hulk the prisoners were confined in was a most unfitting prison for them, and that they were there contracting the seeds of disease which would shorten their lives when released. On the whole, I was satisfied that the treatment these prisoners were receiving was such as would, when men's minds cooled down, be regarded as derogatory to the good name of Great Britain, and was rendering the Native population in some instances desperate. I have since seen the hulk and the prisoners. I believe that the health of many I saw and closely observed has been permanently injured by the length and nature of the imprisonment they were subjected to; and that their imprisonment in such numbers, in so limited, badly lighted, and ill-ventilated a space, reflects discredit on us, and will hereafter be most deservedly censured.

5. Amongst the men thus treated were some whose previous conduct gave them strong claims on our generosity; others who, I believe, were most probably innocent men; no enquiry had been made into the guilt of any of them. Whilst I was required to sanction and co-operate in this treatment of prisoners made by Her Majesty's Forces, important information regarding their state was not imparted to me, and the visit to the hulk of the Sanitary Officers, who were, I think, my proper advisers with regard to the condition and state of these prisoners, was treated as an unauthorized and improper intrusion; whilst besides imprisonment the prisoners were to be subjected to other severe penalties.

6. The Ministers who required me to carry out this illegal line of proceeding, of which I so highly disapproved, and who refused solicitations which I earnestly pressed on them regarding it, were, as I have shewn in another Despatch, but remotely responsible to the General Assembly,—not at all to the British Government. In truth, the whole responsibility in the eyes of Great Britain and of future times would have rested on me; yet my recommendations, my wishes, my feelings were all disregarded. You will therefore, I think, make every allowance for me when I say that I cannot consent to be put in such a position in this matter as my Ministers wish me to occupy, and that I cannot, whilst I am the person who is responsible for what is done, act as their servant to carry out that which I know to be illegal, and believe, rightly or wrongly, to be such as will reflect discredit upon our name.

7. I do not think, with my Responsible Advisers, that when all the facts are known public feeling in New Zealand will be in favour of the course they have in this instance pursued. It may take some time before all the facts are placed in their real light, and efforts will possibly be made by some to raise a popular clamour on the subject, but I have no doubt that the cause of justice and right will at last prevail.

8. In the meantime I shall continue to act before your instructions in the sense in which I have already explained I understand them; and I am quite satisfied they direct me to do that which is legal, constitutional, and right.

I have, &c.

G. GREY.

The Right Hon. Edward Cardwell, M.P.

P.S.—Dr Mackinnon, the Sanitary Officer to the Troops in New Zealand, drew up on the 4th of June last, a Memorandum for the principal medical officer in this command, detailing his observations when he visited the hulk on board which the native prisoners were confined on the 24th May last (the