

One was passed establishing new Provinces. Another was passed making provision for the distribution of surplus of revenue amongst the Provinces.

Doubts were entertained as to the validity of some of the provisions of the New Provinces Act, and consequently the Imperial Parliament passed the 24th and 25th Vict., c. 30. This Act was repealed in the following Session, by the 25th and 26th Vict., c. 48. By the last-mentioned Act the New Provinces Act was validated.

The third section provided that, subject to the conditions mentioned in the Act, it should be lawful for the General Assembly to provide for establishing New Provinces, and to provide for altering boundaries of any existing Provinces, and to make provision for the administration of such Provinces, and to repeal any of the provisions of the Constitution Act, or the Act of 20th and 21st Vict., c. 53, relating to Provinces or Superintendents and Provincial Councils; the fourth section of the Act, however, provided that it should not be lawful for the General Assembly to make any law inconsistent with the provisions in the said fourth section contained, amongst others that there should, in every Province, be a Superintendent, who unless to the contrary provided, shall be capable of being a member of the Provincial Council of the Province.

In support of the contention that the Act of the General Assembly establishing the County of Westland is inconsistent with and repugnant to the Acts of the Imperial Parliament which relate to the constitution of New Zealand, it has been argued that the powers given to alter the boundaries of Provinces are given only in connection with the power to create new Provinces, and that by the third section of the 25th and 26th Vict., c. 48, it is made a condition of the alteration by Act of Assembly of the boundaries of Provinces, that a new Province should be created with a Superintendent and Provincial Council, and, consequently, that as the district included in the County of Westland was part of a Province it could not be separated from it without being annexed to an existing Province, or created into a separate Province.

It has been further urged that as by the sixty-sixth section of the Constitution Act it was provided that the surplus revenue shall be divided amongst the Provinces in like proportion as gross revenue shall have arisen therein; and, as the whole surplus revenue was to be divided, as it was not expressed that so much of the revenue as arose within Provinces, after deduction for General Government, was to be divided, it is to be inferred that the whole of New Zealand was to be included in some Province; otherwise, if any parts of New Zealand were intended to be omitted, the parts within Provinces would, according to the provisions of the sixty-sixth section, have that share of surplus of revenue which has arisen in parts not within any Province; it is argued that such could not be the intention, and that, consequently, it must be inferred that it was intended that the whole of New Zealand should be included in some one or other of the Provinces named in the Act.

On the other hand, it has been contended that the second section of the Constitution Act (15th and 16th Vict.), does not provide that the Colony shall be "divided" into Provinces; the words used are—"The following Provinces are established in New Zealand," and "the limits of the several Provinces shall be fixed by proclamation," and that there is nothing in such language which indicates any intention that these Provinces should absorb the whole of New Zealand; but, on the contrary, it is argued if such had been the intention a more definite expression would have been used.

Moreover, it is said that as the third and sixty-ninth sections provided for the constitution of new Provinces from time to time, it is clear that there was no intention that the whole Colony should be from the first and thereafter be included in the same Provinces, and that the mere addition of the power to alter boundaries of existing Provinces cannot be taken as limiting the power of establishing Provinces but as enlarging the power; that is, that the power given is not only to constitute into Provinces districts not yet included in any Province, but also, if necessary, to alter boundaries of existing districts.

It is also said that the true construction of the provisions of the 25th and 26th Vict., c. 48, is that if new Provinces are established, with a Provincial Government and constitution, such constitution shall always have the elements specified in the fourth section of that Act, but that where no such constitution is given and no Provincial Government is created, then that the Act does not apply.

As such questions have been raised, it is deemed very necessary that they should be set at rest by an Act of the Imperial Parliament.

Moreover, having regard to the present condition of several of the Provinces, and the increasing belief entertained that they will not be able much longer to maintain the present Provincial system, it is considered expedient that ample power should be given to the General Assembly (if it does not already possess it) to establish such form of Government in any of the existing Provinces, and to make such disposition of the revenue as circumstances may from time to time require, without regard to the Provincial divisions or forms of Government hitherto subsisting.

As action is about to be taken immediately under the County of Westland Act, which will affect a large proportion of the inhabitants and revenues of New Zealand, Ministers beg respectfully to express their trust that the subject will receive the early attention of the Imperial law advisers of the Crown, and that if it should be considered that the County of Westland Act requires to be validated, and that further powers in the direction indicated require to be conferred on the General Assembly, a Bill for that purpose may be introduced in the ensuing Session of the Imperial Parliament.

For His Excellency the Governor.

E. W. STAFFORD.

No. 16.

COPY of a DESPATCH from Governor Sir GEORGE GREY, K.C.B., to His
Grace the Duke of BUCKINGHAM.

(No. 130.)

MY LORD DUKE,—

Government House, Wellington,

23rd November, 1867.

I have been requested by my Responsible Advisers to transmit to your