

FURTHER CORRESPONDENCE

BETWEEN

THE GOVERNMENT OF NEW ZEALAND

AND

THE HON. W. FITZHERBERT.

(In continuation of Papers presented 10th July, 1868.)

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON.

—
1869.

FURTHER CORRESPONDENCE BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE HON. W. FITZHERBERT.

No. 1.

The Hon. W. FITZHERBERT to the Hon. E. W. STAFFORD.

21, Cockspur Street, S.W.,
London, 30th June, 1868.

SIR,—

I have the honor to transmit to you a copy of a letter which I addressed to His Grace the Duke of Buckingham, and of his reply thereto, dated respectively the 8th and 20th instant.

Although the subject therein referred to was not one of those specially remitted to me, yet I considered its bearings on the future Government of the Colony sufficiently important to warrant me in bringing it under the consideration of His Grace.

It will be perceived that the view which I have taken is entirely outside any question of the merits of the individual case.

It appeared to me to be opposed to the principles of Responsible Government that the Governor (say of New Zealand) should be required to act in accordance with the advice of his Responsible Advisers, and that possibly for so doing he should be liable, whenever he happened to show himself in this part of the empire, to be tried as a common felon at the Old Bailey, at the suit of a private individual—and the case seems scarcely less objectionable so far as regards Colonial Ministers.

I submit that the Acts, which appear to me to require amendment, were not framed with a view to the state of things now existing in Colonies, to which self-government has been granted, and as such, may be regarded as obsolete.

I hope that the Government will not disapprove of the course which I have taken.

I have, &c.,

The Hon. the Colonial Secretary, Wellington.

WILLIAM FITZHERBERT.

Enclosure 1 in No. 1.

The Hon. W. FITZHERBERT to His Grace the Duke of BUCKINGHAM.

MY LORD DUKE,—

21, Cockspur Street, S.W., 8th June, 1868.

I have the honor to draw Your Grace's attention to the recent proceedings against Governor Eyre, and to the principles laid down in that case as affecting the Colonies generally, and more particularly the Colony of New Zealand.

In that Colony, as your Grace is aware, there has been for a long time, and still is, a state of disturbance. Martial law has been from time to time proclaimed, and under it many acts have been done, and no doubt are doing at the present time, in excess of the ordinary authority of law.

The Colonists have consented, with the sanction of the Imperial authorities, to assume the risk and responsibility of their own internal defence. Responsible Government has been established, and the Governor, in accordance with the directions of the Imperial Government, acts in all matters under the advice of his Responsible Ministers. Bills of Indemnity have been from time to time passed by the Colonial Legislature.

The proceedings, however, to which I have referred, disclose a state of risk affecting all persons in authority in Colonies circumstanced like New Zealand, from the Governor downwards, against which I respectfully submit that Her Majesty's Government is imperatively bound to protect them.

It is true that in Governor Eyre's case the proceedings have led to no result, Grand Juries having ignored the indictments preferred against him; but although it has been held that the circumstances did not, in the opinion of the Grand Jury, justify the prosecution, the party accused has been arraigned before a Criminal Court, at the suit of private individuals, and subjected to great anxiety, and no doubt to severe pecuniary loss.

I venture, very respectfully, to submit to your Grace that the Acts under which prosecutions of this nature may be instituted—viz., the Act of the 11th and 12th Wm. III., c. 12, and the 42nd Geo. III., c. 85—should be altered to the following effect:—

1. That in the case of all Colonies in which Responsible Government is established, a Colonial Governor shall not be held to incur personal responsibility in respect of any act done by him under the advice of his Responsible Ministers, who shall be alone held responsible.

2. That in all cases in which an Act of Indemnity shall have been passed by the Representative Legislature of a Colony and not disallowed by Her Majesty, such Act of Indemnity shall be a bar to all proceedings in the ordinary Courts of Law—saving to the House of Commons and the Imperial Parliament the right of impeachment.

The importance of the question must be my excuse for bringing it under the notice of your Grace; for I cannot but think that, unless some protection of the kind suggested is afforded to Colonial Governors and persons in authority in distant dependencies of the Crown, it will be impossible for any one safely to undertake the risk and responsibility of Government in those places.

I have, &c.,

The Right Hon. the Duke of Buckingham and Chandos,
Secretary of State for the Colonies.

WILLIAM FITZHERBERT.

Enclosure 2 in No. 1.

Sir F. ROGERS to the Hon. W. FITZHERBERT.

SIR,—

Downing Street, 20th June, 1868.

I am directed by the Duke of Buckingham and Chandos to acknowledge the receipt of your letter of the 8th instant, suggesting certain alterations in the Acts 11 and 12 Wm. III., c. 12, and 42 Geo. III., c. 85. I am desired to state that the subject shall receive consideration.

William Fitzherbert, Esq.

I have, &c.,

FREDERICK ROGERS.

No. 2.

The Hon. E. W. STAFFORD to the Hon. W. FITZHERBERT.

(No. 114.)
SIR,—

Colonial Secretary's Office,

Wellington, 8th September, 1868.

I have the honor to acknowledge the receipt of your letter of the 30th June last, transmitting copies of a correspondence which had taken place between yourself and the Secretary of State for the Colonies, on the subject of the position of the Governor and Ministers in Colonies governed constitutionally, with regard to disturbances, under the existing law.

The Government, who entirely agree with you in opinion, and in the course you have adopted, will transmit a Memorandum, to be forwarded by next mail, in support of the suggestions made by you on the subject to the Secretary of State.

The Hon. W. Fitzherbert,
21, Cockspur Street, London.

I have, &c.,

E. W. STAFFORD.

No. 3.

The Hon. W. FITZHERBERT to the Hon. E. W. STAFFORD.

SIR,—

21, Cockspur Street, S.W.,

London, 1st December, 1868.

Vide B. No. 4,
1869. Enclosures
Nos. 1, 3, 4, and
8 to Mr. Fitz-
herbert's Report.

I transmit for your information copies of Memoranda on the following subjects, viz. :— Sinking Fund, Gold Export, Defence; prepared for the information of the Secretary of State for the Colonies. Also, copy of a letter which I addressed to His Grace the Duke of Buckingham in reference to the external defence of the Colony. All these questions had been the subject of conversation at former interviews, and the Memoranda enclosed were prepared so as to reduce them into a practical shape for final decision. I may state that last week I had a lengthened interview with the Secretary of State for the Colonies, and that he then appeared, so far as I could judge, to be favourably disposed on the several points submitted for his consideration.

The decision, however, of some of the questions will rest with the Treasury Department; and I am not yet able to inform you whether there is a probability of compliance on its part.

The Hon. the Colonial Secretary.

I have, &c.,

WILLIAM FITZHERBERT.