

Fitzherbert, and the anomaly of the present position of the Governor and Ministers of a Colony possessing Parliamentary Government, under the circumstances referred to.

G. F. B.

P.S.—July 6.—I annex a further opinion, given on the 30th June ultimo, on the subject of this Despatch, by Mr. Prendergast, the Attorney-General of New Zealand.

G. F. B.

Enclosure 1 in No. 4.

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. 4.

OPINION by the ATTORNEY-GENERAL of NEW ZEALAND.

I HAVE considered the subject referred to in the letter of the Hon. William Fitzherbert to His Grace the Duke of Buckingham and Chandos, dated 8th June, 1868.

I am of opinion that if the Colonial Legislature, by Act, authorizes the Governor or any officer or other person to adopt any measures for suppression of rebellion or other disturbances, no Court of Law in Great Britain could adjudge any act done under such authority to be a crime. The Legislature of New Zealand may also, after unauthorized and illegal acts have been done in suppression of rebellion, by Act, indemnify or pardon the person so acting on account of and for such acts, and I am of opinion that such an Act, if not disallowed by the Queen, would be pleadable in all Courts in England, and be a discharge there as well as here. Some doubt has, I am aware, been expressed whether a Colonial Indemnity Act has that effect: but though the Crown can pardon without Act, it may also do the same thing by concurring with the Legislature in an Act of Indemnity. I cannot, therefore, appreciate the objection made to such legislation.