

MESSAGE No. 18.

The Officer administering the Government forwards to the House of Representatives copies of the instructions to the Governor of New Zealand, authorizing him to make Regulations for the disposal of the Waste Lands in the Colony, as requested by a Resolution of the House, dated the 4th instant, No. 32.

R. H. WYNYARD.

Government House,

Auckland, 8th September, 1854.

No. 34.

Downing Street,
21st July, 1852.

Sir,

I have to acknowledge your despatch, No. 133, dated September 25th, 1851, transmitting a copy of the New Zealand Company's Land Claimants' Ordinance, and your despatch, No. 6, of the 6th January, 1852, in which you inform me that you had ceased to carry out the provisions of that Ordinance on finding that they conflicted with those of the Imperial Act 14th and 15th Victoria, c. 86, for "regulating the affairs of certain settlements established by the New Zealand Company."

2. I fully appreciate both the usefulness of the objects which the Legislature proposed to effect by this Ordinance, and also the difficulties under which it was considered and passed. It is to be regretted that you did not receive any instructions of the views of Her Majesty's late Government as to these questions for so long a period as that stated in your despatch of the 6th January. But subsequent correspondence will have shown you, that this delay was in no respect occasioned by neglect; it originated in the great complication and difficulty of the questions raised by the sudden surrender of the Charter of the New Zealand Company, and the necessity of repeated references to the law advisers of the Crown, in order to ascertain the rights of the various parties affected by it, as well as of a long correspondence with the Company itself. It was felt that imperfect instructions would only mislead you.

3. And I think it is farther to be regretted that you did not wait until such instructions arrived, or that if you felt compelled to undertake Legislative measures, you did not do so with more recourse to legal advice than appears to have been the case. For the embarrassment occasioned by the Ordinance, and which has caused Her Majesty's Government to be thus late in acknowledging and deciding on it, has been mainly owing to the circumstance that it conflicts with the provisions of the Act 10 and 11 Vict., cap. 112, under which contracts of the New Zealand Company and certain liabilities of that Company, are recognized as devolving on the Crown; which contracts and liabilities could not, therefore, be affected by any provincial legislation. However much they might feel disposed to give effect to your Ordinance, it was impossible to give Her Majesty's confirmation where, being in conflict with an Act of Parliament, it must be a nullity.

4. But the power which Her Majesty's Government now possesses, under the late Constitutional Act, together with those given by 14th and 15th Vict., cap. 86, seems, as will be presently explained, sufficient if not to enable Her Majesty formally to confirm the Ordinance, at least to allow it to be put practically in operation; and although the compensation which it awards is certainly somewhat large, and appears moreover, to be given without reference to the merits of particular cases, on which you have at different times addressed my predecessor and myself, yet I am too sensible of the great importance of setting these questions, as far as possible, at rest, to wish to throw any obstacle in the way of the settlement thus proposed by yourself, and enacted after very full consideration by the Legislature of New Zealand.

5. The leading provisions of the Ordinance forwarded in your despatch No. 133, appear to be these:—It authorizes the Governor to appoint a Commissioner for deciding all claims upon Government arising under contracts with the New Zealand Company. It empowers the authorities to satisfy these claims in conformity with the Commissioner's award, by the issue of Crown Grants and of Land Scrip. It declares that by such issue the Government shall be exonerated from all farther liability in respect to the contract which the land granted, or scrip issued, may have been intended to satisfy, and it extends the ordinary regulations for the disposal of Crown Land (including, of course, those which prescribe the minimum upset price of £1) to all the settlements of the New Zealand Company.

6. In a legal point of view this Ordinance appears open to two objections:—First, as I have already indicated, it materially interferes with, and in some cases assumes to extinguish, obligations which are imposed upon the Crown by the Imperial Act 10 and 11 Vict. cap. 112, sec. 19; those, namely, of performing all subsisting contracts of the New Zealand Company in regard to any of their lands. It is true that all persons who voluntarily submit themselves to the Colonial Ordinance, will have waived their right to a strict performance of this statutory obligation, but the Ordinance not only deals with the claims of such persons, but, in cases where a claim may have been wrongly admitted by the Crown Commissioner, and satisfied accordingly by the Government, it assumes to exonerate the Crown from its liability to satisfy the rightful claimant, who may never have referred his claim

under the local Ordinance, and who consequently remains in possession of his strict legal rights.

7. Next, the Ordinance restores the upset price of £1 an acre throughout the Islands in direct contravention of the rights of the Canterbury Association as secured by Act of Parliament, of the contracts of the New Zealand Company (which have now devolved upon the Crown) with the Otago Association, and of the provisions of 14th and 15th Victoria, cap. 86, sec. 1, which enacted, that so long as the Cook's Straits settlements (in which for the present purpose, I include New Plymouth) exist, land should not be sold in them below its then price.

8. On these grounds, as I have already said, Her Majesty cannot be advised to confirm this law. But it will be allowed to remain in force, and I wish to point out to you the effect which the recent legislation in this country will have in enabling you to give practical effect to its most important provisions, comprising some of those which, when originally enacted, were contrary to the Imperial Law, and could not be rendered effective by any exercise of the prerogative.

9. Under the Act 14th and 15th Victoria, cap. 86, sec. 10, taken in connection with the previous Act 9 and 10 Victoria, cap. 382, sec. 51, the award of an officer to be nominated by you, will have the exonerating effect which the Colonial Ordinance assumes to give to the decision of a Government Commissioner, subject only to this limitation, that as the English Acts of Parliament only contemplate the issue of grants of land, the exonerating effect will not extend to cases in which the alleged liabilities of the Crown have been satisfied in scrip. If, therefore, an award wrongly made in favour of a person who shall prove not entitled, has been so satisfied, the Crown will remain liable to discharge its obligations a second time when the rightful owner appears, some mode may occur to you of obviating this possibility, but even should this not be the case, I do not think the mere chance of such an inconvenience need interfere with your operations in settling the claims of the Company's settlers. I need scarcely observe, however, that it furnishes an additional reason for caution in examining them.

10. I have next to point out, that under the first section of the same Act, and the instructions conveyed in Lord Grey's despatch of August 8th, 1851, you are not only empowered (subject to the above condition as to price) to make regulations for the disposal of Crown Lands within the Cook's Straits settlements, but, without any such restrictions, to make regulations "for the closing and determination of the affairs of the said settlements" If you think it advisable (in concurrence with the general feeling of the settlers) to exercise this power, I apprehend that the regulations respecting the price of land contained in the New Zealand Company's terms of purchase, would fall of themselves, and the instructions as to the sale of land, which are in force in the rest of the Colony, would at once take effect within the settlements. Farther, the 72nd section of the new Constitutional Act invests the General Assembly with a power wholly unrestricted (except as regards Canterbury and Otago) of "regulating the sale, letting, disposal and occupation of the Waste Lands of the Crown in New Zealand;" and the proviso contained in the same section, taken conjointly with the 79th section, declares that, until otherwise enacted by the General Assembly, the same powers shall be exercised by the Crown, or the Governor if duly authorized by the Crown. It follows that under the authority conveyed to you in my despatch of the 16th instant, enclosing the Constitutional Act, you will be at liberty to make such regulations generally throughout New Zealand for the disposal of land during the short interval which may elapse, until the assembling of the new Legislature, as you may think advisable, nor can I foresee any legal difficulty in regard to the mode of dealing with Crown lands, which these very large powers will not enable you to overcome.

11. The quasi judicial machinery established by the Colonial Ordinance will, I hope, suffice to deal satisfactorily with most of the Compensation Claims which may call for revision. With regard to these, I think that although cases of gross fraud, or exorbitancy, should be severely scrutinized; yet the mass of the claims should be dealt with in such a liberal spirit as may secure a general submission to the provisions of the Ordinance. And I take this opportunity of observing that I do not consider that the merits of any particular case, involving as they all do, mixed considerations of justice and policy, can be properly dealt with in this country. I cannot, of course, prevent, or prohibit, direct appeals from any decisions at which the authorities appointed by you may arrive, to the Secretary of State, if the parties choose to make them; but it is my earnest wish, if possible, to leave the adjustment of each separate case entirely to those authorities.

12. With regard, therefore, to compensations in Wellington and in New Plymouth (if there are such) I apprehend that you will have no difficulty. With regard to Nelson, the case is different. Lord Grey transmitted to you by his despatch of January 10th last, copy of a Report from the Land and Emigration Commissioners, dated December 10th, 1851, from which you will have perceived that the Law Advisers of the Crown had reported that the resolutions adopted at Nelson, on July 1st, 1847, were binding on the Company, and, consequently, on the Crown. Her Majesty's Government have, therefore, no alternative but to regard them as still in force, and to consider the proprietors of land at Nelson who may be within the terms of those Resolutions as entitled to demand compensation in the particular manner which they authorize. No Provincial Ordinance can absolve the Local, or Her Majesty's Government, from the necessity of fulfilling Act of Parliament obligations.

13. But, on the other hand, if any Nelson proprietors, who may be within the terms of those Resolutions, have already accepted the compensation provided by your Ordinance, you may safely regard them as having waived that to which they were entitled under the Resolutions, and accepted the other in lieu of it; and their cases are concluded.

14. If, on the other hand, there are still outstanding Nelson claimants, it will be necessary to propose to them, as an alternative, either the compensation given by the Ordinance, or that given by the Resolutions.

15. I transmit, for your farther information, a copy of the opinion of the late Law Advisers, now in question, as it does not appear to have accompanied my predecessor's despatch of January 10th.

16. With these observations I leave this matter for the present in the hands of yourself and the authorities of New Zealand. I cannot, however, do so without expressing my sense of the care and industry with which these subjects have been investigated in New Zealand, which I hope will enable you, with the powers with which you are now invested, to make a rapid progress towards the settlement of these embarrassing questions. If you should be enabled to complete it before the Constitution comes into force, you will probably spare the future Legislature much embarrassment, and it will take the land questions into its own hands comparatively free from the many difficulties which have unavoidably beset them during your administration.

I have, &c.,

(Signed) JOHN S. PAKINGTON.

Governor Sir George Grey, &c., &c., &c.

Temple,

November 13th, 1851.

My Lord,

We are favored with your Lordship's commands contained in Mr. Elliott's letter of the 23rd of September last, in which he stated that he was directed by your Lordship to transmit to us the accompanying case which had been drawn up by the Colonial Land and Emigration Commissioners on points arising out of certain resolutions passed by the purchasers of land in the settlement of Nelson in New Zealand; and he was to request that we would favor your Lordship with our advice on the several questions raised therein.

In obedience to your Lordship's command, we have considered the several documents transmitted to us, and have the honor to report—

1st. That as Colonel Wakefield had received plenary authority from the New Zealand Company to adopt the plan sent out by them for the adjustment of the differences between their purchasers and the Company, or to substitute any other, which, after consultation with the settlers he should deem more advisable, his assent to the scheme embodied in the resolutions of the Nelson purchasers, if in fact given, was binding on the Company, and that the operation of such assent was not affected by the circumstance of the previous reference by the purchasers, of the matter to the Directors at home, made by them when unaware of the authority of Colonel Wakefield to settle with them.

It appears to us that the assent of Colonel Wakefield must be assumed for the present purpose to have been given, inasmuch as there is no evidence to contradict the statement

of the Nelson purchasers, and the resolutions have for the most part been acted upon and treated as binding by all parties concerned.

2nd. We are of opinion that Colonel Wakefield having had authority to bind the Company, and having done so by his assent to the resolutions, it was not competent to the Directors subsequently to add the qualification in regard to the meaning of the word "arbitration" in the 2nd clause.

3rd. We are of opinion that the resolutions in question did form one of those contracts in regard to Lands or existing engagements with reference to the settlement at Nelson, which by the surrender of the Company's Charters, have devolved on Her Majesty's Government. It appears that the word existing must be taken as referring to engagements existing at the time of the surrender of the Charter, not of the passing of the Act 10 & 11 Victoria, cap. 112.

We have, &c.,

(Signed)

{ A. G. COCKBURN.
{ W. P. WOOD.

Right Hon. Earl Grey, &c., &c., &c.

No. 55.

Downing Street,
1st September, 1852.

Sir,

I have to acknowledge your despatches of the numbers and dates specified in the margin, conveying memorials from Wanganui, Nelson, and Wellington, and a letter from Messrs. Fell and Seymour, of Nelson, on the subject of the Land Claimants' Ordinance, and of the New Zealand Company's terms of purchase at Nelson and Wellington.

Altho' the several parties who thus address you, are not wholly agreed as to the measures to be taken with respect to these complicated land questions, yet the memorials afford abundant evidence that the settlers in general are satisfied of the impolicy of maintaining the price of land fixed by the Company's terms of purchase at Nelson, Wellington, and New Plymouth.

You have acted fully in accordance with Lord Grey's directions in obtaining this strong expression of opinion; but I had already become so satisfied, from other evidence, of the general inclination of the colonists, that I had felt myself justified in already giving you directions to place the land affairs of these settlements on such a footing as you might find advisable, and have only to refer you to my despatch of the 21st July last, No. 34, in which those directions and observations on the legal position of the case are contained.

I defer any more particular notice of Messrs. Fell and Seymour's memorial, until the fuller report, which you propose to send, respecting the subject of it, reaches me.

I have, &c.,

(Signed)

JOHN S. PAKINGTON.

Governor Sir George Grey, &c., &c., &c.

