

FURTHER PAPERS

RELATIVE TO

NATIVE AFFAIRS,

BEING A DESPATCH FROM THE SECRETARY OF STATE, TO HIS EXCELLENCY THE
GOVERNOR ENCLOSING A BILL FOR THE BETTER GOVERNMENT OF THE NATIVE
INHABITANTS OF NEW ZEALAND, AND FOR FACILITATING THE PURCHASE OF
NATIVE LANDS.

ALSO,

A PAMPHLET BY MR. J. E. FITZGERALD, ON THE SAME.

Presented to both Houses of the General Assembly by Command of His Excellency.

NATIVE AFFAIRS.

COPY OF A DESPATCH FROM SIR G. C. LEWIS BART., TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
26th July, 1860.

SIR,—

I enclose a copy of a Bill which has been introduced into Parliament to authorize the appointment of a Council for the conduct of Native Affairs.

(No. 47.)

You will not fail to observe that in framing this Bill, great care has been taken to adhere to the spirit of sections 71, 72, and 73 of the Constitutional Act. The quasi Legislative functions of the Council are confined to those Districts within which Her Majesty is empowered to provide for the maintenance of Native law, and provision is made that neither directly or indirectly shall the Council have the power without the consent of the local Legislature to affect the extinguishment of a Native title or to anticipate the revenue arising from the resale of Native lands.

The power of leasing given by the Bill is confined to five years, in order that it may not be used to effect a virtual transfer of land from a Native to an European owner.

It is plain, therefore, that without the co-operation of the colonists the Council will be able to effect little, with that co-operation it may, I hope, prove a valuable instrument for recalling the Natives to those feelings of loyalty which the course of events appears calculated to efface, and for inducing them to part on reasonable terms with the lands, which are indispensable to the European settlement of the country.

Any scheme for the latter purpose, in which your Native Council and your Responsible Advisers may concur, will be considered by Her Majesty's Government with the strongest desire to give it full effect.

I shall probably address you more fully on this subject by the next mail, when it appears, whether, and with what modifications the Bill will receive the sanction of Parliament. But I have thought it best to apprise you at once of its introduction.

I enclose a pamphlet on the subject, written by Mr. Fitzgerald, the agent for Canterbury.

From what I have said, and, still more, from a comparison of the Bill with the Constitutional Act, you will see that its authors have carefully endeavoured to avoid that curtailment of Colonial privileges which he sees in this proposal of Her Majesty's Government.

I have, &c.,

G. C. LEWIS.

Governor Gore Browne, C.B.
&c., &c., &c.

Enclosure No. 1.

NEW ZEALAND BILL.

ARRANGEMENT OF CLAUSES.

- Interpretation of Terms ; Sec. 1.
- Appointment of Native Council ; 2.
- Presidency of Council ; 3.
- Rules to be made by Royal Instructions ; 4.
- Powers of Council ; 5.
- Questions to be decided by Majority of Votes ; 6.

A BILL,

INTITLED

AN ACT for the better Government of the Native Inhabitants of New Zealand, and for facilitating the Purchase of Native Lands.

WHEREAS by an Act of the Session holden in the Fifteenth and Sixteenth years of Her Majesty, Chapter Seventy-two, after reciting that it might be expedient that the Laws, Customs, and Usages of the Aboriginal or Native Inhabitants of New Zealand, so far as they were not repugnant to the general Principles of Humanity, should for the present be maintained for the Government of themselves in all their Relations to and Dealings with each other, and that particular Districts should be set apart within which such Laws, Customs, or Usages should be so observed, it was enacted, that it should be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from Time to Time to make Provision for the Purposes aforesaid, any Repugnancy of any such Native Laws, Customs, or Usages to the Law of England, or to any Law, Statute, or Usage in force in New Zealand, or in any Part thereof, in anywise notwithstanding ; and it was further enacted, that, subject to the Provisions in the said Act contained, it should be lawful for the General Assembly of the Colony of New Zealand to make laws for regulating the Sale, Letting, Disposal, and

Occupation of the Waste Lands of the Crown in the said Colony, and for appropriating the Revenue arising from such Disposal, and that the Surplus not so appropriated should be distributed among the several Provinces of New Zealand in the Proportion therein described, and that the said Waste Lands should be taken to include all Lands wherein the Title of Natives should be extinguished as thereafter was mentioned; and it was further enacted, that it should not be lawful for any Person other than Her Majesty, Her Heirs or Successors, to purchase or in anywise acquire or accept from the Aboriginal Natives Land of or belonging to or used or occupied by them in common as Tribes or Communities, or to accept any Release or Extinguishment of the Rights of such Aboriginal Natives in any such Land as aforesaid; and that no Conveyance or Transfer, or Agreement for the Conveyance or Transfer, of any such Land, either in perpetuity or for any Term or Period, either absolutely or conditionally and either in Property or by way of Lease or Occupancy, and no such Release or Extinguishment as aforesaid, should be of any Validity or Effect unless the same were made or entered into with, and accepted by Her Majesty, Her Heirs or Successors: Provided always, that it should be lawful for Her Majesty, Her Heirs and Successors, in manner therein mentioned, to delegate Her Powers of accepting such Conveyances or Agreements, Releases or Relinquishments, and to prescribe or regulate the Terms on which the same should be accepted: And whereas in the said Act no Provision is made in respect of Land belonging to any of the said Aboriginal Natives otherwise than as Tribes or Communities: And whereas it is expedient to make more effectual Provision for ascertaining, recording, and amending such Native Laws, Customs, or Usages as aforesaid, and for declaring the Districts within which the same shall be maintained, and for ascertaining and recording the Rights of the said Aboriginal Natives in Lands held by or in trust for them (otherwise than in virtue of any Crown Grant), whether in common or in severalty, and for regulating the Management of such Lands, and for facilitating the Extinguishment of such Rights: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

Interpretation of Terms.

I. In the Construction of this Act the Term "Native Law shall be deemed to mean the Laws, Customs, and Usages of the Aboriginal Inhabitants of any Part of New Zealand, so far as the same are not repugnant to the general Principles of Humanity.

The Term "Native Lands" shall include all Lands, not being comprised in any Crown Grant which shall at any Time belong to, or be held in trust for, the said Aboriginal Inhabitants, or any of them, or which shall have been used or customarily occupied in common by such Inhabitants as Tribes or Communities:

The Term "Native Title" shall mean the Rights of the said Inhabitants to any "Native Lands":

The Term "Native Owners" shall mean the Possessors of such Title.

Appointment of Native Council.

II. It shall be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, to constitute a Council, to be called the "Native Council of New Zealand," to consist of not more than Persons, and by such Letters Patent from Time to Time to appoint and remove the Members of such Council.

Presidency of Council.

III. The Officer administering the Government of the Colony, or in his Absence any Councillor designated by him in Writing under his Hand and Seal, shall be President of the said Council, and shall have a Veto on all its Proceedings.

Rules to be made by Royal Instructions.

IV. It shall be lawful for Her said Majesty, Her Heirs and Successors, by Instructions under the Signet and Royal Sign Manual, or signified through One of Her Majesty's Principal Secretaries of State, to make Rules respecting the Suspension or provisional Appointment of such Councillors as aforesaid, and respecting the Execution of their Functions and the Exercise by them of the Powers hereinafter conferred upon them.

Powers of Council:

V. It shall be lawful for the said Council, subject to such Instructions as aforesaid, or for the Governor, in case and so far as he shall be authorised by such Instructions,—

To declare Native Districts;

1. To declare and set apart Districts within which Native Law shall be maintained; provided always, that Native Law shall not be maintained in any District or Part thereof after the Native Title to the same shall have been extinguished:

To declare Native Law.

2. To declare, record, and amend the Native Law; provided that the Declaration and Amendment of any such Law shall be made with the consent of the Native Inhabitants subject to the same, such Consent being ascertained and signified in such Manner as the said Council shall appoint; provided also, that all Regulations made and established by the Governor of New Zealand in Council, for the Guidance of such Native Inhabitants, under Authority of an Act passed by the General Assembly of New Zealand, intituled No. 41, of 1858, "An Act to regulate the "Local Affairs of Native Districts," shall remain in operation until altered or revoked by Authority of the said Native Council:

To make Rules respecting Native Lands.

3. To make Rules respecting the Use, Occupation, and Devolution of Native Lands:

4. To investigate and to make Rules respecting the Investigation of Native Titles, and to issue Certificates of such Titles when duly established; provided always, that no such Certificate shall, without consent of the General Assembly of New Zealand, confer the Power of alienating the Lands to which it refers : To investigate and certify Native Titles.

5. To prescribe Rules under which "Native Lands" may be leased by the Native Owners; provided always, that no such Lease shall, without Consent of the said General Assembly, be for a longer Period than Five Years : To make Rules respecting the leasing of Native Lands;

6. Subject to the Provisions of Section Seventy-three of the above recited Act of Parliament, to make Rules respecting the Terms on which, and the Mode in which, the Extinguishment of Native Titles to Land shall be effected, and respecting the Use, Occupation, and Management of such Parts of the said Land as they the said Council shall think fit to reserve for the Use of the Native Owners, and respecting the Division among the said Owners of so much of the Purchase Money as may be divisible among them as Individuals, and to administer or make Rules for the Administration of so much of the said Purchase Money as shall be payable to the said Owners as Tribes or Communities : And respecting the Extinguishment of Native Titles.

7. Subject to such conditions as may from Time to Time be imposed by Authority of the General Assembly of New Zealand, to issue or make Regulations for issuing Crown Grants conveying to Native Owners an alienable Title to their Lands, and to prescribe the Provisions to be contained in such Grants : Subject to Acts of Colonial Legislature, to make Rules respecting Issue of Crown Grants to Natives.

8. Subject to such Conditions as aforesaid, to borrow Money on Security of the Funds to be derived from the Sale or other Disposal of Native Lands acquired under Authority of this Act, and to charge such Proceeds with annual Payments for the Benefit of the Native Owners : And to borrow Money.

9. To appoint Committees of their own Body, and to associate with such Committees Persons not being Members of the said Council; provided always, that every such Committee shall be *ipso facto* dissolved Twelve Months after the Appointment thereof, and that every Member of a Committee holding office under the New Zealand Government shall, on vacating his Office, cease to be a Member of such Committee : To appoint Committees.

10. To make all such Rules as may be required for the proper and effectual Exercise of the Powers and Functions herein conferred upon them, and for the Guidance of Committees appointed by them and of Persons acting under their Authority. To make Rules of Procedure.

VI. Until otherwise provided by such Instructions or Rules as aforesaid, all Questions coming before the Native Council shall be decided by a Majority of Votes of the Councillors present, the President having a Casting Vote in addition to his Vote as Councillor; and every Act or Resolution of such Majority done or passed at a Meeting of the Council summoned by the President shall be deemed to be the Act or Resolution of the Council. Questions to be decided by Majority of Votes.

Enclosure No. 2.

MEMORANDUM

Relating to the conduct of the Native Affairs in New Zealand, as affected by a Bill now before Parliament.

In the year 1852, a free Constitution was established by Act of Parliament in New Zealand, by which the General Assembly of that Colony, consisting of the Governor and the two Houses, was empowered to "*Make Laws for the Peace, Order, and Good Government of New Zealand.*" Upon the exercise of this plenary power of legislation, there were no restrictions imposed in respect of the affairs of the Native inhabitants, other than those contained in the 71st and 73rd clauses of the Constitution Act. It cannot be pretended that any power is wanting to the General Assembly of the Colony to legislate for Native affairs, provided only that the provisions of the clauses above mentioned are not violated. The Natives and Europeans have precisely the same privileges in respect of voting for, or becoming members of the legislature. The Constitution was, on the face of it, intended to confer a free government upon both races, European and Maori, although some time must inevitably elapse before the Maori could take advantage of rights peculiar to a civilized people.

The cases in which the Natives are dealt with exceptionally are,

1. By the 71st clause, the Queen (or the Governor by delegated powers, see clause 79) may set aside districts in which the Native laws and customs may be preserved, notwithstanding their repugnancy to the laws of England or of the rest of the Colony.

2. By the 73rd clause, the Queen alone (or by delegation the Governor of the Colony, or the Superintendent of a Province) may "*purchase or otherwise acquire or accept from the Aboriginal Natives, land of or belonging to, or used or occupied by, them in common as Tribes or Communities.*" All sales, gifts, or leases of such land, are made null and void, unless entered into with, and accepted by, the Queen.

These are the sole restrictions on the powers of the General Assembly; and it would appear that there is nothing which forbids it to legislate respecting land owned by Natives, as *individuals*, supposing that such individual proprietorship were established.

If, however, it should be thought desirable that the absolute restriction upon the sale of land by the Natives to the Europeans, should be remitted, an Act of Parliament could be passed containing a single clause to that effect.

Beyond this, it is perfectly obvious that Parliament can confer no power on the General Assembly which it does not already possess.

Before touching on the effect of this Bill, now before Parliament, it is desirable to call attention to the conduct of Native affairs by the Government of New Zealand up to the present time.

Up to the year 1854, when the Constitution Act was allowed to come into operation by the calling together of the General Assembly, the Native policy of the Colony was conducted solely by the Governor in person.

It does not appear, from a reference to the New Zealand statute book, that much had up to that time been achieved or even attempted towards founding institutions or introducing the laws and customs of civilization amongst the Native race. The dealings with the Natives by successive Governments have been of the most irregular, frequently illegal, description. And when the late Governor left the Colony, it was a matter of surprise to his successors in power to find the want of system and settled policy which still reigned in the conduct of Native affairs.

It is a matter greatly to be regretted that the habit of successive Governments has been to represent the settlers as hostile to the Natives, and the Government as essential to the maintenance of peace: whilst, as a matter of history, it is a fact that all the disputes with the Natives have commenced, I believe, almost without exception, with the Government and its agents, whilst there has been no instance of the settlers embroiling the Government with the Natives.

In 1854 the first Ministry proposed to establish a proper department for the conduct of Native affairs, under the management of a responsible Minister; and that plan was frustrated only by the resignation of the Ministry. In 1855, when the present Governor arrived, a new Ministry was constituted; but the Governor retained in his own hands, in virtue of his instructions from the Home Government, the conduct of Native affairs. The withholding of this department from the ordinary government of the Colony is defended upon the grounds: 1. That the Native policy involves the use of the Queen's troops, and occasions expenses which may fall upon the English tax-payer; and ought therefore to be in the hands of the Governor, who is the representative of the mother-country. 2. That the Natives are the subjects of the Queen not of the settlers, and have recognised the Sovereignty of the Queen, but not of her English subjects. But the answer to both these points is obvious. 1. That however much the Home country may be interested in the Native proceedings, the colonists are very much more interested, and have therefore, *à fortiori*, a right to a larger share in the direction of the Native policy of Government. 2. That free institutions were granted to the Colony, not to gratify dilettanti politicians, but because it was believed that better government would result. And that, unless the whole doctrine of free government be a mistake, the Native Department will be better conducted, and by better men, under a sense of public responsibility than by a clique of secret advisers of the Governor.

Governor Browne appears to have recognized the justice of these views to a certain extent, by placing the nominal conduct of Native affairs in the hands of one of the responsible Ministers, although retaining his ultimate decision in all action adopted. By this arrangement the Ministers, without having an absolute control over the Native Department, have a full acquaintance with its proceedings, and can resign, should a policy in their opinion mischievous, be adopted.

A glance at the Statute Book of the Colony will shew that, no sooner had the Ministry obtained even this *quasi* control over Native affairs, than a new and most wise and enlightened Native policy was inaugurated. The laws which were passed in the Sessions of 1856 and 1858 are a complete and triumphant reply to those who imagine that a desire to improve the Native race is the peculiarity of *Governors*, and meets with no sympathy in the popular Assembly of Colonists.

The most prejudiced person cannot fail to observe how more important is the legislation on Native affairs by the General Assembly than by all former Governments. Reference may be made in evidence of this assertion to the "Native Districts Regulation Act," the "Native Circuit Courts Act," the "Native Schools Act," the "Bay of Islands Settlement Act," &c., and to other Bills which it is to be regretted have been disallowed or dropped.

It is also to be remarked, that the Constitution Act reserves from the control of the Assembly, and places upon the Civil list at the disposal of the Governor, the sum of £7000 a year, to be expended in Native affairs. The feeling which dictated this reserve was one of mistrust and jealousy of the public Assembly, and fear that it would refuse the supplies necessary for the Native Department. How has the House of Representatives responded to this mistrust? By munificent annual votes for Native purposes, in addition to the sum so reserved on the Civil list. In 1858, a sum of £7000 a year was voted for seven years, for the maintenance of Native schools, in addition to the Civil list and a variety of votes for other Native purposes.

I claim, then, for the present Ministers and for the present Assembly, the credit of inaugurating a far more liberal, generous, and far-seeing policy, in respect of Native affairs, than was ever contemplated by any Government which has preceded it in New Zealand.

In the land question, too, that most complicated of all Colonial questions, I claim for the General Assembly a political sagacity, which has only been frustrated by the disallowance of their Acts.

I beg special attention to a few words on the land question, which is the subject of the present war in New Zealand. By the treaty of Waitangi the Native Chiefs granted to the Crown the right of pre-emption of their lands. And it has ever been held to be the law of England, that her subjects could not acquire rights of property in land from savage tribes except through the Crown.

But the Native has awakened to the fact, that his lands are bought by the Governor at a few pence an acre, and immediately after are sold by the Governor to the settlers for twice as many shillings. There are various feelings amongst the Natives on this point. Many, no doubt, would be glad to sell land at a market price to the settlers. There are others who would not sell it at any price to the Government, and are in a league to prevent its further alienation. It is probable that the latter feeling is occasioned in a great measure by the obvious unfairness of the present system. It is thought by many of those best informed, that it is impossible now to continue buying lands from the Natives at rates so much under the market prices; and that the time has arrived, when, if we are to live on good terms with the Maories, the Government must give up this monopoly, and allow of sales to settlers at the market price. Restrictions are necessary to provide against the Maori selling without a clear title to his land; and also against the unscrupulous land sharking of those who would take advantage of such an opening of the trade. The best judges are of opinion that this may be done; and with a powerful legislature on the spot to check abuses, there would probably be little danger. But even to effect this no change in the law is absolutely necessary, because the Constitution Act only forbids sales by Natives without the Queen's consent and acceptance of the title, and that, the Governor can always supply.

The General Assembly commenced a line of policy tending to this result by passing an Act last Session which would have had the effect of individualising by degrees the present tribal title of the Natives. This admirable law was unfortunately disallowed.

Parliament can do nothing in this matter which the Local Parliament cannot do better.

The Bill now before Parliament proposes to do three things.

1. It empowers the Crown to set aside certain districts in New Zealand within which the Native law is to be maintained instead of English law.
2. It empowers the Crown to appoint a Council for Native Affairs.
3. It bestows on this Native Council very large legislative and executive powers within the Native districts.

Of these it will appear that *the first is superfluous*, because it is simply the repetition of a power already given to the Crown by the Constitution Act.

The second is dangerous, because it supplants the ordinary Government, and makes two antagonistic bodies in the Colony.

The third is unnecessary, because it does only that which the Local Parliament can do if requisite.

It is now some years since I first proposed to the Government a plan very similar to that now aimed at, but in that proposal there were two features which the present wants.

1. There were to be Native Chiefs on the board.
2. It was to be constituted by the General Assembly of the Colony, and therefore subject to its general control.

The Board now proposed to be constituted is to be an entirely *irresponsib'le*, probably a secret Board, which is to be independent of the ordinary Government of the Colony. It is to entirely supersede the General Assembly over two-thirds of the Northern Island, and it would seem inevitable that it must come into perpetual collision with the ordinary legislature.

The reserve of Native Affairs from the control of the Ministry has already been the occasion of much difficulty, and a good deal of jealousy. The House of Representatives with remarkable prudence has declined a contest on the subject, has acquiesced in an arrangement which recognises to a certain extent its interest, and admits of its indirect control; and it has done so because the present arrangement is obviously a temporary one.

But this Bill proposes to stereotype and enforce in perpetuity an arrangement which is now only felt to be tolerable because temporary. It makes the Governor and his nominated Council absolute for half the Colony. It restores all the evils of nomineeism which it has been the struggle of late years to sweep away. The General Assembly is no longer to be the Parliament for the Colony, but only for the English settlements. The Constitution Act is to be repealed for half the Colony.

As one who has taken a share in the government of the Colony for some years, I most earnestly protest in the passing of this Bill, *without the knowledge of the Colonists*. Their lives and fortunes are involved in this measure. They are totally ignorant that any such measure was about to be proposed, and they ought to be allowed time to petition Parliament on the subject.

There is no instance upon record in which Parliament has interfered to destroy or curtail the rights of a free Legislature, unless compelled thereto by the call of pressing grievances. In the present case no grievance exists, or has even been alleged.

I cannot regard the consequences of this Bill without alarm: because, in the first place, it is most unlikely that any Ministry will be found who will take the responsibility of governing the country with the Native policy wholly beyond its grasp. I therefore fear a permanent lock in the government of the country.

Secondly, No such Board as this can sit and act without funds; and knowing the feeling and temper of the General Assembly, I do not believe that one penny will be voted for Native Affairs if the Native policy is permanently taken out of its hands. It cannot therefore be too distinctly urged upon Parliament, that if it determines to take these matters out of the hands of the General Assembly, it must at the same time vote the supplies necessary for maintaining this Native Council, and carrying into effect its policy in New Zealand.

Thirdly, I dread more than all a return to that narrow and temporising policy out of which the discussions in the General Assembly and the wide interest awakened thereby in Native Affairs, has raised the Colony and the Government. I am certain the Natives will be the heaviest sufferers by this Act.

If it could be asserted with the slightest truth that the General Assembly had starved the Native Department, or had exhibited any narrow jealousy of the Natives, there would be some ground for this spoliation of its powers; but when the very opposite is the notorious fact, when there is every probability that the policy commenced by the General Assembly will be carried to a much greater extent, I can see no grounds for an invasion of the Constitution of the Colony.

Lastly, I dread the result of this measure on the present war. I dread beyond expression the consequences of placing the two races in a position of antagonism at a very moment when sound policy would suggest the merging of their interests in a common Government.

The present Bill creates two Governments in one Colony; and I know of nothing which can protect a community so governed from the proverbial fate of a house divided against itself.

JAMES EDWARD FITZGERALD.

London, July 5th, 1860.

COPY OF A DESPATCH FROM SIR CHICHESTER FORTESCUE TO GOVERNOR GORE BROWNE, C.B.

Downing Street,
27th August, 1860.

[No. 56.]

SIR,—

I communicated to you in my Despatch No. 47 of 26th July, the copy of a Bill making provision for the establishment of a Council to assist and advise you in matters relating to the management of the Natives of New Zealand and conferring certain powers upon the Governor in conjunction with such Council. I have now to inform you that this Bill has been withdrawn.

I need hardly explain to you the objects with which it was introduced. They will be evident to you on a mere perusal. Her Majesty's Government entertained the hope that, by giving you in the management of purely Native Affairs, the assistance of a body not immediately involved in local politics and likely to command the confidence of the Native population, while consisting of eminent Colonists deeply interested in the prosperity and welfare of New Zealand, they might accomplish several objects which are at the present moment of urgent importance. They hoped that the co-operation of such a Council might enable you to act more effectively than has been hitherto possible in the civilization of the Maori race, in the amelioration of their laws and customs, and in reconciling them to British Supremacy and British Law. They hoped that it might also be the means of inducing the Natives to acquiesce in the transfer of their lands under rules framed by persons whose knowledge of their usages and interest in their welfare was indisputable. They felt that the mode of extinguishing the Native titles, whether by direct purchase or otherwise, involved questions too intricate to be properly treated in this country, and too dangerous to be left to the public of the English settlers,—an opinion, which (it may be said with every respect) cannot possibly be unbiassed, and they believed that the demands of that public opinion could be more liberally and promptly dealt with through such an institution as I have described than through continual references to this country, involving as such references are apt to do, delay, suspicion, and controversy. Again, they considered that while the existing system appears to oblige you in Native Affairs to look for advice to persons who, however capable of giving it, possess no recognised and public character, the institution of the proposed Council (comprising, as was intended, a Member of the Colonial Ministry,) would invest your Advisers upon Native questions at once with greater authority and greater responsibility than can be the case at present. Lastly, they were induced to apply to the Imperial Parliament for the legislation which appeared to be necessary to effect these objects. First, because such legislation was, in their view, within the spirit of the Constitution Act, being intended to operate only within those limits of Imperial Authority which that Act had laid down. And, secondly, because, such being the case, immediate and Imperial action would have the advantages of preventing further delay, where too much had already taken place, of avoiding the discord and party strife which the previous reference of such questions to the Colonial legislature might possibly occasion, of giving stability and authority to the improved system which it was proposed to establish, and of enabling the Crown to exert its powers efficiently for the benefit of its subjects of both races, instead of resting satisfied with putting a veto upon enlightened measures of local legislation which might impose conditions upon the Governor, to which the Crown could not properly be advised to assent.

These were the grounds on which the Bill was introduced. It was withdrawn because, under the circumstances, it could not be so passed as to carry with it that authority without which it would be worse than useless. From a misapprehension (as I think) of its provisions, it was threatened with an obstinate opposition on behalf of certain influential Colonists, who considered that it invaded the existing privileges of the Legislature. And it was viewed unfavorably in other quarters from an apprehension that any fresh Parliamentary interference in this direction would be used as an argument for throwing on Great Britain more than her share of the cost of any future Native War. You are aware that the course of public feeling in this country tends on the one hand to concede to the Colonies as fully as possible the right of governing themselves, and on the other to impose on them the correlative duty of defending themselves. In both these respects the Bill was represented as being, in itself or in its consequences of a retrograde character.

At an earlier period of the Session it might have been possible to remove these misapprehensions, and to obtain the cordial concurrence of Parliament in the proposed measure.

When the exceptional circumstances of the present Session had delayed its discussion in the House of Commons until the month of August, it was found that this could not be hoped for. It has therefore been decided to withdraw the Bill, and, in dealing with this question to rely for the present on the powers which the Crown undoubtedly possesses under the Constitution Act.

How and to what extent those powers should be exerted is a matter on which it would be premature at this moment to indicate an opinion.

I shall probably take no decided step till I learn the result of the proposed meeting of the Native Chiefs, which may indefinitely lessen or enhance the difficulties of the question, and will probably throw some light upon the future relations between the races. On this head I will merely now say,—first, that Her Majesty's Government consider it their duty not merely to maintain the nominal authority of the Governor in Native Affairs, but, as far as they properly can, to furnish him with the means of effectively exercising that authority. And next, that they are not at all disposed to insist on any theory respecting the direct or indirect purchase of land from the Natives which would interfere with its ready acquisition by the settlers, provided that the sales are not conducted upon a system which should endanger the peace of the Colony or involve the Crown's Representative in heavy responsibilities without a corresponding control.

Before concluding this Despatch, I think it right to point out to you the main provisions of the Bill now withdrawn.

In the first place it authorised the Governor and Native Council to declare Districts in which Native Law was to prevail and (within those districts of course) to declare, record and amend the Native Law. This power (I am advised) Her Majesty already possesses, and the Bill merely recognises a particular mode of exercising it.

Next, it authorised the Governor and Native Council to make various rules and to exercise various functions in connection with the extinguishment of the Native Title. By the 73rd Section of the Constitution Act the Crown is already at liberty to declare the conditions on which the Native Title may be extinguished. Under the Constitution Act, therefore, the Crown might prescribe as a condition of such extinguishment what the Governor and Council acting under instructions from the Crown, would, by the Bill have been empowered to prescribe or do. The Bill would not have transferred power from the Colonial to the Home Government but would only have furnished a machinery for the exercise of a power already given. I need hardly remind you that the powers of encumbering the Native land before it reaches the hands of the Colonial Government, or of enabling the Natives to alienate their lands to individuals, would have been in no case exercisable by the Governor or Council without the consent of the General Assembly. These were the principal provisions of the Bill, and in pointing them out I have, I think, answered in the main, the charge of invading the functions of the Colonial Legislature. I must, however, admit that there are one or two points of detail in respect of which the Bill confers upon the Governor and Council a power not conferred on the Crown by the Constitution Act. Of these the most important is that which authorises the Council to make rules under which the Natives may lease land for not more than five years. The power was given because it seemed calculated to facilitate the operations of the Council in the interest of the settlers, and the limitation was added lest under cover of a lease the land should be virtually alienated without consent of the General Assembly. It would not have been inserted if it had been supposed likely to cause dissatisfaction in the Colony.

I have drawn your attention to these features of the proposed Bill, not because I wish you to take any step calculated to provoke controversy where no happy result can be attained without the cordial co-operation of the Imperial and Colonial Governments, but in order that you may be aware of the spirit in which Her Majesty's Government have acted in a matter, in which their conduct will of course be canvassed, and may be impugned in New Zealand.

I have, &c.,

C. FORTESCUE,

(In the absence of the Secretary of State).

