

Excellency to entertain any such views at the time, and they respectfully submit that His Excellency's recollection of the facts must have misled him. Of the prisoners in custody on the 19th April, 183 were taken at Rangiriri, on the 21st November, 1863. The Suppression of Rebellion Act (the only one under which a "legal trial" by Courts Martial could have been had) did not pass till the 3rd of December. It was therefore an impossibility that the prisoners should have been tried under that Act within the time stated by His Excellency (a week or ten days), and it is scarcely likely that he contemplated doing that which could not by possibility have been done; of which impossibility he must have been aware at the time he speaks of. It seems to Ministers that His Excellency's recollection must, in this particular at least, have failed.

His Excellency says, "As Ministers have stated in another Memorandum the model the Governor had in view when the Suppression of Rebellion Act was drawn was the Act for the more effectual Suppression of Local Disturbances and Dangerous Associations in Ireland, 3 & 4 Will. IV., c. 4, 1833," Ministers presume that His Excellency refers to the Memorandum of the Colonial Secretary, of the 22nd September last. They submit that he does not correctly represent the statement of the Colonial Secretary. His words were, "The Act (Suppression of Rebellion) was originally drafted at the express request of His Excellency, who himself indicated the Acts of the Imperial Parliament of 1796 and 1833 as those which he wished to take as his model." The first of these acts was to "Suppress Rebellion;" the second "to Suppress Local Disturbances and Dangerous Associations." The New Zealand Act contains almost a verbatim copy of the former, with some additions in reference to Courts Martial, and such alteration as necessary to render it applicable to New Zealand. If, therefore, His Excellency desires to discover analogies, he ought to look to the Act of 1798, and not to that of 1833. But neither of these Acts contain the words "at the earliest possible time," and the latter only contains any limit of time.

Ministers think it is to be regretted that His Excellency did not, in April last, state his views of "Law and Equity," as it would perhaps have enabled Ministers to remove some of the misapprehension which appears to have existed in His Excellency's mind for the last six months on this important subject. It is unnecessary to repeat the reasons Ministers have already placed on record for thinking it inexpedient to try the prisoners by the ordinary tribunals of law, which led them to prefer the courts provided by the Suppression of Rebellion Act, under which they have not the smallest doubt whatever that "a legal trial" could have been had in April last, or at any other time after that Act was passed.

October 24, 1864.

WM. FOX.

No. 49.

MEMORANDUM regarding the Treatment of the Maori Prisoners.

The Governor has received the Ministerial Memorandum of the 24th instant, upon the subject of the proposal made at the end of April last to bring to trial, under the terms of "The Suppression of Rebellion Act," Native Prisoners, the majority of whom had been taken in the proceeding November. The Governor has repeatedly stated in general terms the views he held as to the reasons which he thought rendered the mode of proceeding then proposed to be adopted illegal. He thinks a reference to his Memorandum and Despatches will shew that he has stated these, in writing, in terms which sufficiently indicated his opinion.

The Governor has, he believes, in every case of the administration of the ordinary affairs of the Colony, taken and acted upon the opinions of the Attorney General, and thus strictly fulfilled the requirements of Responsible Government. In the case of prisoners taken by Her Majesty's Forces, and specially recommended to the Governor, by the General who took them, for generous treatment, and who it was proposed to try under a special enactment of an unusual character, which could only be brought into operation by an Order signed by the Governor, he thinks a case had arisen in which his direct responsibility to the Home Government, and to the General Assembly, gave him a right to determine whether he would or would not act upon the opinion of the Attorney General. He declined to act upon that opinion; and then, according to the Governor's views of Responsible Government, it was for the Attorney General, or for the Government, to have resigned. Had this course been taken, many difficulties would have been removed from the Governor's way. But, if Ministers did not think it necessary to take this course, then the Governor thinks they became responsible for the course they followed, and that all responsibility for it passed from him.

The Governor wishes to remark that he had no knowledge of the Act of the Imperial Parliament of 1798, and that the Act of Parliament he always had in view, and with which he was acquainted, was that of 1833.

The Governor also desires to state that nothing contained in his Responsible Advisers, Memorandum of the 24th instant alters the views he has expressed regarding the illegality of the courses they advised him to pursue in April last.

On the contrary, he is confirmed in his opinion that the manifest intention of the "Suppression of Rebellion Act" was the prompt punishment of those engaged in rebellion, and that whilst it granted vast powers, it required, for the protection of those to be arrested and detained under its provisions, that they should be brought to punishment at the earliest possible period after their arrest.

If he had lent himself to what he regards as a mere colorable compliance with the law, such as he thinks is recommended in the Ministerial Memorandum of the 24th instant, for the purpose of bringing to trial under the Suppression of Rebellion Act, at the end of April, prisoners who had then been in confinement for five months, and were then, and had been for the greater part of that time, imprisoned within a few hundred pards of the Supreme Court of the Colony, and who had been specially recommended to him for generous treatment, he thinks he would have been severely and justly blamed for such a proceeding, and that no theory of Responsible Government would have been held to justify him in such an act.

Auckland, 25th October, 1864.

G. GREY.