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CONFISCATION OF NATIVE LANDS.

DESPATCHES FROM THE GOVERNOR.

(Presented to the Imperial Parliament 20th May, 1864.)

No. 1.

(No. 9.)

COPY OF A DESPATCH FROM GOVERNOR SIR GEORGE GREY, K.C.B., TO HIS GRACE THE DUKE OF NEWCASTLE, K.G.

Government House, Auckland, 6th January, 1864.
(Received 14th March, 1864.)

MY LORD DUKE,—

I have the honour to transmit to your Grace the documents named in the margin, relative to a paper by Sir William Martin, late Chief Justice of New Zealand, objecting to some of the plans proposed by the Government for the termination of the troubles now existing in this Colony.

2. The Colonial Secretary has appended a memorandum, expressing his views upon Sir William Martin's paper; I wish also to bring the following remarks under your Grace's consideration:

Sir William Martin says, para. 16, "If those men, after giving the best proof of their intentions not to 'levy war' against the Queen, yet seeing their territory entered by an armed force, and property destroyed by that force, stood up to resist, ought we not in fairness to conclude that they resisted, not because they were traitors, but rather because they were New Zealanders, or because they were men?"

3. I believe that this passage refers to the majority of the Waikato chiefs, who at native runangas held to consider the question, refused, before the commencement of the existing troubles, to join the other natives in their proposed attack upon the European settlements.

4. On this I would remark, that two officers and nine soldiers had just then been most shockingly assassinated at New Plymouth, by the order of some of the Upper Waikato chiefs. I believe that the so-called Maori King knew that these orders had been issued, and either would not, or, most probably, was powerless to interfere. He, however, never gave me any warning that such an intention existed.

5. Just after these murders, plots were formed by the same people, and their adherents in the Lower Waikato, for an attack upon the settlement of Auckland. The natives who formed these plots were all well armed, and had long been preparing themselves for such enterprises. They had drilled their men, dressed them in uniforms, appointed them to different ranks.

6. Was it to be expected that a civilized people, who knew that the question of whether they were to be attacked or not was discussed in runangas or councils (which anyone could enter and then vote), and was only decided in the negative by a small majority, which any night might become a minority, should delay for a day to take the requisite measures for the protection of their families and properties; and what would have been said of the Government which, having the then recent and lamentable example at New Plymouth before its eyes, had hesitated to provide for the safety of the Queen's subjects? Under such circumstances, must it not be held that Her Majesty's forces may be moved into any part of her possessions, for the protection of the quiet and peaceable against the armed and turbulent who are plotting their destruction; and that the mere fact of their having marched across a certain stream to attain this object cannot be regarded as an act which justifies the turbulent in entering an European settlement, and in murdering inoffensive and unarmed settlers, or in attacking Her Majesty's forces?

7. I say this, not as an answer to Sir William Martin's views, which would probably agree with my own on this point, but because I fear that his remarks might, as they stand, be misunderstood by persons at a distance.

8. In my Despatch, No. 177, of the 5th of December last, I enclosed a native statement, which showed that when General Cameron, early in July last, moved to provide for the protection of the settlement of Auckland, the native attacking forces were already in motion, and that when he crossed the Mangatawhiri, their leading parties had already passed up the Maramarua to occupy Paparata, or some other point on the line which they intended to take up.

9. I now enclose for your Grace's information the copy of another native statement, from a totally independent source, which shows that the Waikato natives did their utmost, at the period of time to which I allude, to induce William Thompson to join them with his tribe in a simultaneous attack upon the European population.

No. 1.

Governor Sir Geo. Grey, K.C.B., to the Duke of Newcastle, K.G., 6 January 1864.

Enclosure 1.
Mr. Fox to Sir G. Grey, 31 December, 1863.

Enclosure 2.
Sir William Martin, to Mr. Fox, 16 Nov. 1863.

Enclosure 3.
Memorandum by Mr. Fox on Sir W. Martin's Paper.

I have, &c.,
G. GREY.

PAPERS RELATIVE TO

Enclosure 1, in No. 1.

MEMORANDUM for His Excellency.

Encl. 1, in No. 1.

His Excellency is requested to forward the enclosed copy of a paper by Sir William Martin to Her Majesty's Principal Secretary of State for the Colonies, in accordance with the request of the writer. The Colonial Secretary has appended a memorandum at the end of the document.

31st December, 1863.

WILLIAM FOX.

Enclosure 2, in No. 1.

Auckland, 16th November, 1863.

SIR,—

Encl. 2, in No. 1.

I beg to submit, through you, to the Government certain considerations relative to the plans now proposed for terminating the troubles of the Colony. My remarks have grown to a bulk which I had not contemplated, but which yet appeared to be necessary in order to exhibit in their true relations various important facts which are often overlooked or unknown, and so to arrive at a fair view of the whole case. The extent of the subject, and the rapid progress of business in the Assembly, have prevented my submitting the considerations as I purposed to the Assembly itself. I now venture to ask for them from the Government such attention as their relation to a question so novel and so momentous may entitle them to.

May I also request you to move his Excellency the Governor to submit these considerations to his Grace the Duke of Newcastle.

The Honourable W. Fox,
Native Minister.

I have, &c.,

WILLIAM MARTIN.

(See Memorandum by the Colonial Secretary at the end of Sir William Martin's paper.)

OBSERVATIONS ON THE PROPOSAL TO TAKE NATIVE LANDS UNDER AN ACT OF THE ASSEMBLY.

1.—Introduction.

1. Land may accrue to the Crown in various ways:—

First. From foreign enemies by conquest—that is to say, by military force controlled and regulated by the usages of war, as understood amongst civilized nations.

Secondly. From subjects, by operation of law; and this in one of three modes, namely:

(a.) By forfeiture upon conviction of treason in a court of law.

(b.) By Act of Attainder, resorted to by Parliament in extraordinary cases, where a regular trial for treason is not practicable; in which cases, however, though the forms of the law of treason be departed from, the substance is to be closely adhered to.

(c.) Or, thirdly, by a special legislative enactment, authorising the Executive Government to take the land of a subject for the purpose of public defence, or for any other national purpose; the land being in such cases taken under such restrictions and upon such terms of compensation to the private owners as Parliament may prescribe in the Act.

Lastly. Land may fall to the Crown by cession; and that either from a foreign State or from a subject.

2. The first point, then, to be cleared up is this, which of these modes is applicable in this case? And this again depends on the question to be presently considered, "What is, in point of law, the relation of persons of the native race to the Crown of England?"

Are they subjects or foreigners? For the purpose of this inquiry it will be necessary to refer (which I will do as briefly as possible) to the history of the original colonization of this country, a subject which, though often discussed, appears to be not even yet generally understood. It will be necessary, also, to go even further back, even to the principles on which our English colonization had proceeded in earlier times, in order thereby to render more clear the peculiarity of the mode in which the colonization of these Islands was undertaken.

2.—Principles of English Colonisation.

1. There are two modes of colonising; one, by which the people of the territory colonized may be locally brought within the dominion of the Crown, yet may remain in nearly everything else as independent as before; and a second, by which they may be brought (as far as possible) even from the beginning within the law and political system of the colonizers. By the one system they remain (at least for a time) foreigners; by the other they become subjects. The former has been exemplified in North America; the latter, here in New Zealand.

No more authoritative exposition of our national law of colonization can anywhere be found than that which is to be found in the "Commentaries" of the celebrated Chancellor of the State of New York (Chancellor Kent's Commentaries on American Law, Lecture 51), and which I subjoin in the Appendix to these remarks, No. 1.

2. Our forefathers, then, in entering upon the colonization of North America, asserted their right

and their intention to appropriate that region to our nation as a field for colonisation to the exclusion of all foreign nations. As against the natives of the country, they asserted no rights except such as were involved in the claim to colonise. They prohibited all sales of land to foreign powers; and in order to ensure to the Crown the direction and control of the colonisation, they prohibited all private dealings for land between natural-born subjects and the natives, subject to these two restrictions, the right of the natives to their lands, and their right to govern themselves, were recognised. To express this more briefly, that which was assumed in the outset was the external dominion, for it is in the nature of such a dominion that it can be assumed in a moment.

A Proclamation in the London Gazette suffices. Notice is thereby given to foreign nations that such a portion of the earth's surface belongs to the Crown of England; that England is prepared to hold it against the world. It was necessary to assume this kind of dominion at once, in order to prevent foreign nations getting a footing in the territory intended to be colonised. The internal dominion, that, namely, by which all persons and things within the territory should become subject to one Legislature—was left to be acquired gradually, as indeed, in the nature of things, it could not be acquired in any other way.

3. As the progress of colonisation gradually reached the territory of one tribe after another, treaties were made from time to time with those tribes severally. These treaties were made not for the purpose of assuring to the tribes the dominion and ownership of their lands; on the contrary, every such contract assumed and presupposed that dominion and ownership. Those treaties were made only for the purpose of defining and recording the relation thenceforward to subsist between the colonising power and the native tribe, the terms agreed on between the buyer and the seller of the land, the boundaries of the land to be ceded, and the like. About 230 treaties of this kind are printed in the United States "Statutes at Large," vol. vii. (Boston, 1856.) The whole course has been consistently followed up to the present time in our remaining North American Colonies. In the New Zealand Debate, June, 1845, Sir Howard Douglas thus stated the policy and practice of Great Britain in the Canadas: "There the soil has been obtained by compact with the Indians. Every part of the vast region now settled has been obtained by regular conveyances and compacts from the native tribes. I have been a party to such compacts as a Commissioner to treat with numerous and extensive tribes in what were then remote and unsettled parts." (New Zealand Debate, June, 1845, p. 125.)

4. In the first occupation of New South Wales (which indeed cannot be spoken of as colonisation, for the true colonisation of New South Wales began at a later time), the old policy of England was disregarded, and the evils which were consequent upon the course taken in Australia were among the causes which led the Parliament of England to reconsider the whole subject of the relations of England to the native races dwelling within the colonial possessions of the Crown, and finally to a determination to revert to the sound and just principles on which our earliest and greatest Colonies had been founded. But there was a special circumstance in the case of New Zealand which could not be disregarded. The Government had recognised the independence of New Zealand, and in the view of other nations had abandoned any right which might have been grounded on the discoveries of Captain Cook. It was not, therefore, any longer open to the Government to assume that which had been expressly abandoned. It was thought necessary and right to obtain by an express compact the assent of the native population to the establishment of the English Government in the land. It was also deemed to be expedient, whilst obtaining that assent, to bring the natives at once (as far as possible), within the protection of that Government and the dominion of law.

So, whilst in North America the external dominion was at once assumed, and the internal dominion left to be acquired afterwards in such way and to such extent as might be defined by treaties to be made for that purpose, in this case of New Zealand the attempt was made to acquire at once both the internal and the external dominion by one treaty made once for all.

5. We have seen that under the old system the native tribes stood as small but almost independent nations, encompassed on every side by the dominion of a great nation. Such a system, however tolerable when applied to the wide surface of the continent of North America, would have been inconvenient in the extreme if applied to numerous tribes occupying a small country, and necessarily intermixed with the colonists scattered throughout the country; and there were special considerations of justice and humanity which led the Home Government to desire to establish in New Zealand some settled form of government, which might restrain and protect both the natives and the settlers who were then flowing into these islands.

This object is prominently brought forward in the instructions issued by the Marquis of Normanby to Captain Hobson in August, 1839, when that officer was on the point of proceeding to New Zealand, and in Lord Glenelg's letter to Lord Durham; from which I subjoin a few passages in Appendix No. 2.

6. On the face of the treaty into which Captain Hobson invited the natives to enter, the same object was expressly stated:

"Her Majesty Queen Victoria, of the United Kingdom of Great Britain and Ireland, regarding with Her Royal favour the native chiefs and tribes of New Zealand, and anxious to protect their just rights and property, and to secure to them the enjoyment of peace and good order, has deemed it necessary, in consequence of the great number of Her Majesty's subjects who have already settled in New Zealand, and the rapid extension of emigration both from Europe and Australia which is still in progress, to constitute and appoint a functionary, properly authorised, to treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands. Her Majesty, therefore, being desirous to establish a settled form of civil government, with a view to avert the evil consequences which must result from the absence of the necessary laws and institutions, alike to the native populations and to Her subjects, has been graciously pleased to empower and authorise me, William Hobson, a Captain in Her Majesty's Royal Navy, Consul, and Lieutenant-Governor of such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent chiefs of New Zealand to concur in the following articles and conditions," &c.

PAPERS RELATIVE TO

In conformity with this intention, by the third and concluding article of the treaty :

"In consideration thereof, Her Majesty the Queen of England extends to the natives of New Zealand Her Royal protection, and imparts to them all the rights and privileges of British subjects."

7. It is plain that the framers of the treaty desired to bring all the natives of these islands into the position of subjects of the Crown; but it is not to be conceived that they contemplated the introduction at once amongst the New Zealanders of the minute and technical forms of English law; they regarded only the substance of the law; the substantial fruits of settled government: legal protection for life; legal protection for property. The power which accepts the position of a Sovereign, and promises to regard certain men as its subjects, does thereby undertake, at least, the duty of protecting the lives and properties of those men. This is a proposition, which, I think, no Englishman will question. Such, then, was our undertaking.

8. We are not left to mere inference on this point. Captain Hobson distinctly put the question in a letter; in answer to which Lord Normanby instructed as follows (15 August, 1839): "It is impossible for me to prescribe the course to be pursued for the prevention of cannibalism, human sacrifices, and warfare among the native tribes; but I have no difficulty in stating that, if all the arts of persuasion and kindness should prove unavailing, practices so abhorrent from the first principles of morality, and so calamitous to those by whom they are pursued, should be repressed by authority, and, if necessary, by actual force, within any part of the Queen's dominions." And shortly after the signing of the Treaty of Waitangi, Lord John Russell wrote thus to Governor Hobson:—

"At the same time you will look rather to the government welfare of the tribes now to be connected with us than their supposed claims to the maintenance of their own laws and customs. When those laws and customs lead one tribe to fight with, and drive away, and almost exterminate another, the Queen's sovereignty must be vindicated, and the benefits of a rule extending its protection to the whole community must be made known by the practical exercise of authority." (Parl. Pap., 11 May, 1841.)

3.—Relation of the Government to the Natives till 1853.

1. It was plain that many years must elapse before our colonisation should extend over the whole country. It was hoped in the outset that by good management during those years the Natives would gradually learn the meaning of the Queen's sovereignty by practical experience of the benefits flowing to themselves from it, and so would come to an intelligent appreciation and acceptance of the new system of things. The contrast seen and felt between the effects of lawlessness and law; the manifest benefits of an order of things which should allow the natives to accumulate property and enjoy the fruits of their labour, would (it was hoped) wean them gradually from their old habits into ours, until a more complete establishment of our system should become practicable. The Secretaries of State had (as we have seen) not directed any actual and forcible exercise of authority, except in very strong cases, and where the common instincts of humanity would work in our favour.

The work of collecting signatures to the Treaty of Waitangi was hasty and incomplete in the extreme. It was especially imperfect in the central districts of this island.

The efforts of the new Governor were chiefly directed to the north, which at that time was the seat of his government; to the south, where the New Zealand Company's settlers were establishing themselves; and to the southern island, which the French threatened to occupy. Subjects to the Crown were to be gathered in from year to year, not by mere signatures, but by acts of practical assent, gradually growing into the habit of willing obedience to a power recognised as beneficial. Discussion was avoided. To let the authority of the Crown quietly grow in the land was the great object.

2. And certainly the spectacle of our criminal trials did produce a great effect on the minds of all the natives who witnessed them, or who heard the story of them as it was carried throughout the land. Tardy they thought our procedure to be, and even cruel; but men accustomed to the indiscriminate vengeance of tribe against tribe were struck with awe at the sight of a system which slowly, yet surely, tracked out the single shedder of blood, and smote him alone. The execution of Maketu was approved everywhere; even in the north, amongst his own people, it was not resented. Less than two years afterwards I met his father on the road from the Bay of Islands to the Waimate. My companions were in advance of me, and had told him that I was the judge who presided at his son's trial. He came up, shook hands with me, said not a word, and passed on. The principle that, in all cases when a crime was committed against a pakeha, the Governor might require the accused to be delivered up for trial was then accepted. Even Taraia, in complaining of the interference of the pakeha in a quarrel between two native tribes, admitted that principle.

On one occasion I heard a discussion, on the shore of the great lake at Rotorua, which was prompted by my presence there is no doubt, but not by any words of mine. The speaker contrasted, in strong terms, the law of the pakeha with a then recent war between Rotorua and Waikato, in which some 500 lives had been lost, whilst the murderer whose crime had caused the war was still living.

3. But it is unnecessary to enter into detail.

It is admitted on all sides that a great progress in the right direction was in fact made. One of the late responsible Ministers has recently described the state of things just ten years ago in the following words: "In the year 1853 the Maori tribes were perfectly peaceful throughout the Colony. In 1860 the war began. All the progressive symptoms of disaffection, as well as its more immediate causes, are to be sought for during the intervening period. At the end of the former year (1853) Governor Sir George Grey left the Colony.

"His policy towards the natives may be called distinctively one of conciliation, but was not unaccompanied by the operations of active government. Resident magistrates were administering justice in native districts. Arms and warlike stores were denied to the aborigines. Land purchase operations were conducted with great caution. Maori land was offered to Government more freely than funds

could be provided for the purchase, and the tribes were in a singular state of peace among themselves.”
—(Letter to Lord Lyttelton, by Mr. Crosbie Ward, p. 31.)

This may be taken as a correct general statement, but it should be understood with this qualification, that a very large part of this island still continued to be without the presence of any officer of the Queen, although even those portions of the island were indirectly affected for good. The administration of justice in the resident magistrates' courts was serving as an example and even as a means or practicable education to the native people. Some of the more advanced and influential amongst them were acting as assessors in those courts.

In the remoter parts there were occasional outbreaks of violence amongst the native tribes, which the Government did not attempt to repress by actual force, but rather to check and terminate by peaceful means.

It is remarkable that the sense of nationality was even then beginning to stir amongst the people; and that the project of setting up a king was even started and agitated, in the year 1852, by Matene te Whiwhi; but in the then state of men's minds his proposal did not find acceptance. Sir George Grey's first administration proved that the strong suspicions as to our intentions, which the natives had from the beginning entertained—suspicions first awakened and manifested in the Harbour of Sydney in 1814, when Samuel Marsden was about to sail on his first voyage hither (Nicholas, vol. i., p. 41); strongly expressed again at Waitangi; ultimately breaking forth in Heki's northern war—that those strong suspicions could by good management be quieted, so as to allow our colonisation a free and peaceable course, and even to attach to the Crown a considerable part of the native population. It is sometimes suggested that the distrust or disaffection now so widely spread among the natives is to be traced to prejudices instilled into their minds by ill-disposed people. Such persons were certainly not less numerous during Sir George Grey's first Administration than at present. The fact is, the natives trust to their own observation more than to any reports or suggestions of any pakehas. Such persons may be troublesome, but they are not dangerous to a Government which does its duty. After that time it seems to have come to be believed that what Sir George Grey was doing with great prospect of success had actually and completely been done; that in so short a time we had acquired complete dominion, internal as well as external. Assertions to this effect have been made in a variety of ways, directly and indirectly, in proclamations and in other public documents. I cite only the words addressed by Governor Browne to the natives assembled at Kohimarama (10th July, 1860):

“It is your adoption by Her Majesty as her subjects which makes it impossible that the Maori people should be unjustly dispossessed of their land or property. Every Maori is a member of the British nation; he is protected by the same law as his English fellow-subject; and it is because you are regarded by the Queen as a part of her own especial people that you have heard from the lips of each successive Governor the same words of peace and good-will.” In these assertions the Executive Government has been supported by the authority of the judges of the Supreme Court. There can be no doubt that we now claim the internal as well as the external dominion of this island; that the native people are to be regarded as subjects of the Crown of England; and there can be as little doubt that the claim which we thus make (if wisely and reasonably acted upon) is as much for their good as for ours. If they be subjects of the Crown, they must be subject to some law; for the Crown has never been regarded by Englishmen otherwise than as a power acting according to settled usage and law; but to what law?

Under the single Sovereignty of the Queen of England there are many systems of law. Within Great Britain itself, the Scottish system differs from the English; even within England itself, there are many peculiar customs or laws (such as, for example, the copyhold tenure, and the manifold varieties of local custom within that tenure) which differ from the common law of England, yet are of full force and validity within their own bounds. In our Indian possessions, divers races of men, under divers systems of law, dwell together under one Sovereign.

The original theory appears to have been this, that bloodshed was to be suppressed to that extent, at any rate the criminal law was to be enforced; but that, in other respects, the natives were to be left to their own usage. Thus much we have found in the instructions of the Secretaries of State; and it may be fairly presumed that other portions of the criminal law were to be introduced when, and in so far as practicable, that property also might be protected by the Crown as well as life.

How much further than this can we go?

8. At this point many questions arise, which connect themselves with the main subject of our inquiry. In particular, this question presents itself: How far are our lands holden by persons of the native race of these islands, according to native tenure, subject to the English rule of forfeiture to the Crown?

The case stands thus: no native can in any way enforce any right of ownership or occupation of land, held by the native tenure, in the courts of the Colony. The native is excluded from the political franchise, even in cases where there is, in fact, a right of individual occupation, on the ground that his right, whatever it might be, is not in the technical sense a “tenement.” The native owner receives in respect of such lands from our legal system no protection; from our political system no privilege. Is he subject to the severest penalty imposed by our system, that of forfeiture?

9. A kindred question also arises here, namely: “Is the Colonial Assembly competent to deal with such lands, the owners being excluded from any participation in the electoral franchise? How far can the Colonial Assembly lawfully exercise, in respect of such lands, a function similar to that which undoubtedly belongs to the Imperial Legislature, though it is in practice very cautiously and considerably exercised by that Legislature even over those who are directly represented therein—I mean the right of taking the land of the subject for purposes of national defence, or other purposes of national concern?” A like right is now claimed and proposed to be exercised by the Colonial Assembly over the lands of persons not represented therein. Moreover, it is intended (as it seems) to exercise such a power in an unlimited and discretionary way, not only for the establishment of military posts or villages, but generally for the dispossession of the natives and the location of immigrants, wherever the Government may please, within such districts as the Government may have pronounced to be in a state of

rebellion. The power to take the land without the consent of the native owners is now, for the first time, claimed by the Colonial Assembly; and the intention to exercise such a power is avowed, not only in cases where treasonable acts may be proved, but also in cases where no such acts may be proved. In which latter cases there is clearly no ground for asserting that the native owners have disclaimed or repudiated the benefit of the assurances so repeatedly given in the name of the Crown in all parts of the country that land should not be taken without the consent of the owners. It is material, also, to remember that no announcement of a contrary purpose was ever made until after the present troubles had arisen, and after our troops had entered on Maori land, and then it was made by the Executive Government alone, without any sanction from the Legislature or from the Crown.

10. These questions must be left to be finally settled at home. It may, probably, be found necessary to resort to the Imperial Parliament in order that they may be conclusively disposed of, so as to bind all subjects of the Crown.

Whatever be the ultimate decision on these points, it is obvious that the natives, being British subjects, cannot be in a worse position in this respect than other subjects; cannot be subject to a more strict or severe rule than other subjects. It follows, then, that the lands of the natives cannot in any case pass to the Crown, other than by some one of the modes by which the lands of a British subject may pass, as indicated in the outset of these remarks.

11. Leaving now on one side all questions of strict law, I proceed to other considerations, not to be disregarded by any reasonable man, as affecting the extent to which the rule of law, whatever it may be, should in practice be carried out; for every thoughtful man will see that the case of subjects over whom sovereignty has been acquired so recently and exercised so imperfectly, is practically very different from that of hereditary subjects of an ancient monarchy rising against a government which has been long recognised and established.

These considerations need to be distinctly stated, because they are, to many amongst us, almost wholly unknown, and because they appear to be imperfectly apprehended, even by many of our public men.

Whatever the relation between Sovereign and subject may be defined to be in this case of New Zealand, the relation must in this, as in all other cases, be a mutual one.

If the Sovereign power has rights, it must also have duties; if the duties undertaken by the Sovereign have been fully performed, the Sovereign may claim a strict performance of the duties of the subject. If it has failed or been unable to perform them, it should deal less rigidly with its subjects.

This is a principle of natural equity, which I suppose all will admit.

This being so, let us inquire how much was done (in the interval of time to which Mr. Crosbie Ward refers in the above cited passage) by way of practical assertion of that sovereignty—by way of practical discharge of the duties involved in the undertaking to be Sovereign.

4.—Relation of the Government to the Natives generally, from 1853 to 1861.

1. Nearly at the close of the period now under review, Governor Browne recorded his views of Native affairs in a memorandum, dated 25th of May, 1861, in which I find the following statements: "Some of the most populous districts, such as Hokianga and Kaipara, have no magistrates resident amongst them, and many such, as at Taupo, the Ngatiruanui, Taranaki, and the country about the East Cape, have never been visited by an officer of the Government. The residents in these districts have never felt that they are the subjects of the Queen of England, and have little reason to think that the Government of the Colony cares at all about their welfare."

And further, "In New Zealand, the Government is and always has been unable to perform its duty for want of a sufficient number of agents trained and qualified for the service required of them."

And further, that "unless the Native Department be entirely remodelled, the Government will never be able to take its proper part in establishing institutions for the native race, or obtain any real hold upon their confidence."

It happened, during the latter period of 1858 and the earlier part of 1859, that not less than three intertribal wars were going on at one time in one district of this island, the Bay of Plenty, practically, at any rate, unrebuked by the Government, a state of things which at that time was little noticed in the public papers.

2. Unfortunately, whilst the Queen's sovereignty was not manifested through the greater part of the island in the beneficial exercise of its proper function of protecting life and property, it was constantly presenting itself in all parts in the exercise of one accidental function naturally tending to produce jealousies and disputes amongst the natives and dissatisfaction with the Government.

The function of land buying (not at the best a dignified one for the Crown) had, however, been made a means of quietly extending the influence of the Government, so long as that function was exercised with great prudence and care, and with due regard to the interests of the natives. But it may readily be understood (without entering further into the subject) how different might be the effect of another sort of management. If the pakeha was very keen to buy, and not particularly careful or scrupulous as to the mode of buying; if the inquiry made into the title of the seller was loose and scanty, and money was freely paid; it will be easily understood that there would be many Maoris found ready to sell—not always sound titles, which all sellers are rather apt to keep to the last, but any kind of claim, however remote, or disputed, or unsound.

Many will be found who, desiring for some purpose the countenance of the Colonial Government, will be indifferent about the risk of embroiling their own people with that Government. It will be understood how by such doings as these a whole population may be disquieted and irritated to the last degree. Yet so little feeling was there in some quarters about a system which was tormenting and exasperating the natives on all sides, that this unworthy practice even acquired a jocular name. It was called "laying a ground bait."

3. I need not dwell much on the mischiefs of a system which has been practically condemned by

the General Assembly in passing the "Native Lands Act, 1862," which has introduced another mode of acquiring native lands. During the debates on that Bill (August, 1862), the failure of the old system and the evils it had produced were admitted on all sides.

The Native Minister (Mr. F. D. Bell), on moving the second reading, said, "Sir, it is vain to hope that you will revive the native confidence in you by the mere offer of political institutions. You may stimulate the political activity of village rangas, but unless you can at the same time secure the attachment of the native people by some bond of common interest, and prove that this bond is the best guarantee for their own prosperity and wealth, you have done little towards bridging the gulf that separates the civilized man and the barbarian. The grievance they complain of is, that the more land they sell the more they become impoverished. This arises simply and naturally from the one great mistake we have made in always trying to give them the least price they would accept for their land, in order that we might ourselves get the greatest price we could by its sale. If you had said at the commencement that the Crown would obtain the native land on a plan to secure the advancement of the race, you would have had no distrust or dissatisfaction in the native mind; but by always buying from them on the pretence that you wanted land for the purpose of colonization, without making provision (at least in the North Island) for their own improvement, you have at last brought the natives to believe that your real object is to impoverish and degrade them."

4. Mr. Mantell (formerly Native Minister) is reported to have said that "this Bill simply proposed to give to the natives the right we guaranteed to them by the treaty of Waitangi. Since that time we had managed to surround that ownership with so many qualifications, that *de facto* we had deprived them of any interest in those lands. This question lay at the very root of the differences between ourselves and the natives, which were the curse of New Zealand. Hitherto the negotiations of the Government for the native lands had been conducted on no principle at all. Of course the officers felt interested in making purchases as soon as possible, and for as little as possible. To that he attributed all the difficulties which now troubled us. As a Commissioner for extinguishment of native title, he soon perceived it was a very dirty business, which he would never have entered upon had he known its nature beforehand, and one which had been at the bottom of all our unfriendly relations with the natives."

5. The effect of this course of proceeding on our part was to drive the Maoris to some joint action in their own defence. What that was, I leave the Maori to state in his own words. See extracts from Renata's Letters to the Superintendent of Wellington (23 July, 1861), and to the Superintendent of Hawke's Bay (February, 1861), in Appendix No. 3.

6. Arrangements had been formerly made to provide for the future interests of the native sellers, and to give them some continuing benefit out of the transfer of their lands. Even these, which should have been sources of attachment and confidence, became causes of irritation and distrust. The sellers had stipulated to receive a Crown title for those reserved portions, by virtue of which they might let those lands on lease, or otherwise dispose of them as they pleased; and promises were made by the Government to that effect.

But it happened that in numerous instances such promises remained unfulfilled during the whole period from 1853 to 1862.

In the single Province of Wellington there were not less than 22 such cases. (Appendix 1862.)

Mr. Crosbie Ward has condensed into a single sentence enough to account for much of the existing distrust, and of the troubles that spring out of it.

"Promises (he says) of hospitals, schools, further payments out of the proceeds of land-sales, and other advantages which had been made to the natives when they ceded their land, were forgotten or disregarded." (page 33.)

"Forgotten or disregarded," such things might be by us, but were they likely to be so by the natives? Which party is the more apt to forget? That which is confident of its strength, or that which knows itself to be the weaker, and that its only real security is in the good faith of the stronger?

Can we wonder that when Sir George Grey, shortly after his return to the Colony, proceeded to confer with the chiefs of Waikato, and to hold out certain advantages to all who should enter into his plans, he was met by the suggestion, that there was little security for the performance of his promises; that another Governor would come, and then the new promises would be disregarded, just as the old ones had been?

7. I may notice, in passing, a point which has been occasionally put forward as a proof of our great attention to the interests of the natives, namely, the enactments passed from time to time relating to the administration of land in native cases, or native districts; I should be sorry to deny the value of some of those enactments, but it should be borne in mind that the practical operation of such of them as had been passed before the commencement of the period now under review, was, during this period, so limited as to have little effect beyond the boundaries of the English settlements; and under the Acts passed in 1858 for constituting native districts and native circuit courts, only two such districts were constituted, the Mangonui District, and the Bay of Islands District, so that those Acts had no operation beyond the northern extremity of this island.

8. Having sketched the relation of our Government or non-government, to the native population in general, I proceed to consider the same subject in reference to the two districts which have become the principal seats of disaffection and disturbance; first, Taranaki, and then Waikato. Here, as before, I confine myself to the period which has been under review hitherto, namely, the period to which Mr. Crosbie Ward has assigned (I think correctly) the causes and growth of disaffection.

5.—Relation of the Colonial Government to the District of Taranaki.

1. In the August of 1854, a feud broke out in the neighbourhood of New Plymouth, which continued to rage for five years until September 1859. I have no intention to enter into the details of that miserable story; but it is necessary to state clearly the origin of the feud; for which purpose I will borrow the words of Colonel Nugent's Report on the subject to the Government. "From inquiry, I

found that the first affray, in which Rawiri, the native assessor, one of the most respected natives of the Puketapu tribe, and six others (were killed), by Katatore, partly arose from Rawiri attempting to cut the boundary of a piece of land which he had offered for sale to Mr. G. Cooper, the Land Commissioner of the Taranaki district. It appears that Katatore had, long ago, stated his intention of retaining this land, and had threatened to oppose anyone who should offer to sell it; Rawiri, however, on account of some quarrel with Katatore, proposed selling the land, and was desired by Mr. Cooper to cut the boundary."

"Rawiri proceeded accordingly, with 22 others, on the morning of the third of August last, and had succeeded in cutting some part of the boundary line, when Katatore and party rushed down from his pa, and, after warning Rawiri twice, without effect, to desist, fired and killed him and six others; four were severely wounded, and four slightly wounded."

"I fear that further bloodshed may be expected; and as unfortunately it has arisen about a land question, Katatore will have all the sympathy of those who are opposed to the sale of land. The relations and friends of the deceased Chief Rawiri, who are principally resident within the settlement, and who are called the friendly natives, as being in favour of the sale of land, are determined to have revenge for the death of their people."

2. Unfortunately it happened that this feud during its course was aggravated by unwise acts and violent language on the part of some of our people; a course which could only render the Maoris more apprehensive of evil to themselves, and more determined to stand aloof from us. See Colonel Nugent's Despatch, dated 20th September, 1855—(Parliamentary Paper, July 1860, p. 143).

3. In a letter written a few days after that date, Mr. Riemenschneider (a minister of the Lutheran Church, resident in the midst of the Taranaki tribes), reported to the Native Secretary the state of feeling among the natives of his district. He stated that "any intervention by military force in the feud would be generally viewed as the first step in a general and grand movement on the part of the Government to dispossess the natives by physical force of their inherited soil; which if once permitted by the latter to be successfully entered upon by the former, would most certainly be proceeded with, and be carried out through the whole length and breadth of the island, until every inch of land would have passed away from the native owners into the hands of the Europeans, and the aboriginal inhabitants of the country themselves would have been totally exterminated."

"Thus fully (he adds) the whole case has repeatedly been argued before me, during the last fortnight, by the natives in the Taranaki district, and there can be no doubt that they are in earnest about it."

"The most sober and quietly disposed amongst them declare, in a manner not to be mistaken, that they will rise, because they feel convinced that it will be necessary for the defence and preservation of their life, liberty, and possessions, against a system of violence and oppression threatening them and theirs."

4. From that time until July, 1859, the deadly feud was going on. In the course of this time, in the month of January, 1858, Katatore himself was waylaid and murdered. This was a murder of revenge, and one which we might have punished, without seeming to be fighting for a piece of land. Still the Government refrained from interfering, beyond issuing a proclamation in the following month, February, 1858. That proclamation warned the natives against assembling with arms within the boundaries of a certain district. The proclamation was accompanied by an official comment in the Maori Messenger, which, after explaining the reasons of our non-interference, proceeded thus:—"While indulging this hope, we are startled by the news of another and more frightful murder. Blood is spilt on land which the Queen has granted. This cannot be allowed to pass in silence. The Governor has therefore spoken his word. He still says, 'I shall not interfere. Both parties are doing wrong, but it is not my present intention to employ force against either, while they keep outside the limits of the English settlement, but I will allow neither to come armed within these limits. I will not permit fighting in my presence.'"

5. The effect of this state of things on the natives may be gathered from the letter of Ritatona Te Iwa. (See Appendix, No. 4.)

The consequences of these continued troubles were most disastrous to the native interests. The Ngatiawa tribe had been one of the most industrious and thriving in New Zealand. "In 1854, William King's tribe possessed 150 horses, 300 head of cattle, 40 carts, 35 ploughs, 20 pairs of harrows, 3 winnowing machines, and 10 wooden houses." (Dr. Thompson, New Zealand, vol. 2, p. 224.) In 1858 most of these indications of prosperity had passed away; fragments of threshing machines were seen lying among the ashes of a burnt pa; oxen lying dead between the hostile encampments, cultivations abandoned, and fences broken down.

6. Thus, then, it came to pass that through five years of deadly strife, the Queen's sovereignty was never manifested by act.

There was nothing to show that it was a reality; a power able and willing to protect life or property. In saying this, I have no intention to cast blame upon any one. It would be an ill use to make of our present troubles to find in them means for assailing the characters of public men. In fact, all such considerations would lead us away from the point to which alone I am looking, which is, not the comparative merits of our public men in our eyes, but the way in which our Administration, taken as a whole, must have presented itself in the view of the natives.

All that I wish to be noticed and remembered is the fact itself. These were the very cases which, in the beginning of our colonization, had been specified by the Secretaries of State, as cases in which the Colonial Government would be bound to interfere. When the time came the Government did not interfere. Let us not therefore criminate men who endeavoured to do the best under very difficult circumstances; who did not interfere only because they did not judge it possible to interfere with effect, and who therefore acquiesced in a state of things which was a great calamity for both races. At any rate, we did not act. If so, let us honestly admit that to have been the case. Let us not go on tacitly assuming, or even broadly asserting, that we have throughout fully performed our part. Let us avow

that the work we have undertaken in the beginning was, after a time, found to be a larger and more arduous work than we had supposed, and that we did, in fact, give up the attempt to perform it. Let us not take a one-sided view of the case. Let us not ignore the fact that the power of the Queen's sovereignty was not exerted for the benefit of these people. Can we, then, in the name of the Sovereign, enforce against them the extreme obligations of subjects? Can we visit them with the heaviest penalties for disregard of an authority which has not itself fully performed its own undertaking?

I dwell on this point because of a fallacy very current amongst us at this time. Much is said and written about re-establishing the Queen's authority or the authority of law throughout this island; whereas, the truth is that, in the greater part of this island, the Queen's authority has never at any time been established in any real or practical sense.

7. To resume my sketch. The feud at last wore itself out, and peace was made between the tribes. A few months after that, military force was employed at the Waitara, in a case unconnected with crime. The Queen's power, which had not interfered to save men's lives or their property, did interfere to take possession of a piece of land. When military operations ceased at the Waitara, the Government retained possession of the land which had been occupied by the soldiers outside the disputed block, announcing, at the same time, an intention of restoring it to the native owners, subject to certain regulations. That outside piece has, in the issue, bred even more trouble to the Colony and to England than the original block itself. The original block had, at any rate, been occupied under a claim of purchase; but the retention of the land outside of that block, the southern tribes (and other tribes too) appear to have regarded as an indication of the purpose of the pakeha to take land by force. So, out of the English land which they had occupied in the course of the hostilities, they retained possession of the portion nearest to them, namely, the Tataraimaka block. This was the state of things in the Taranaki district at the close of the period now under review.

6.—Relation of the Government to Waikato.

1. During that unhappy period of fierce intertribal warfare at Taranaki, the king movement was growing up in Waikato. The authors of it "expressed no disaffection towards the Government, but urged the necessity of maintaining peace, order, and good government in the country; which, they argued, the Governor was unable to do. 'I want order and laws,' Thompson said; 'a king could give these better than the Governor. The Governor never does anything except when a pakeha is killed. We are allowed to fight, and kill each other as we please. A king would end these evils.'"

Paora said: "God is good; Israel was his people; they had a king. I see no reason why any nation should not have a king if it likes. The gospel does not say we are not to have a king; it says, 'Honour the king; love the brotherhood.' Why should the Queen be angry? we shall be in alliance with her, and friendship will be preserved. The Governor does not stop murders and fights among us; a king will be able to do that. Let us have order, so that we may grow as the pakeha grows. Why should we disappear from the country? New Zealand is ours; I love it."—(Buddle, *King Movement*, page 9.) To all, Taranaki appeared to furnish an obvious proof of the truth of what was urged by the leaders of the movement, and of the necessity of making some effort to save themselves.

2. In the month of April, 1857, Governor Browne visited the Waikato district. On the 9th May he reported to the Duke of Newcastle the result of his observation of the state of things. "It was clear that they (the natives) did not understand the term 'king' in the sense in which we use it; but although they certainly profess loyalty to the Queen, attachment to myself, and a desire for the amalgamation of the races, they did mean to maintain a separate nationality, and desired to have a chief of their own election, who should protect them from every possible encroachment on their rights, and uphold such of their customs as they were disinclined to relinquish. This was impressed upon me everywhere; but only on one occasion at Waipa, did any one presume to speak of their intended king as a sovereign having similar rank and power with Her Majesty; and this speaker I cut short, leaving him in the midst of his oration."

"The objects of a large section of the natives were distinctly expressed at the great meeting at Paetai on the 23rd April, 1857, at which the Governor was present, and at which it was understood by them that his Excellency promised to introduce amongst them institutions of law, founded on the principle of self-government, analogous to British institutions, and presided over by the British Government." "I was present," says the Rev. Mr. Ashwell, referring to that meeting, "when Te Wharepu, Paehia, with Potatau, asked the Governor for a magistrate, laws, and runangas, which he assented to; and some of the natives took off their hats and cried 'Hurrah.'" (Report of the Waikato Committee, 1860, p. 2.)

In the proposal then made and accepted lay all that we could desire. It needed only to be heartily and wisely followed up to secure to the Government the guidance and control of the whole movement.

3. Nor did the chiefs of Waikato make only general proposals. They invited co-operation also on specific points. Amongst other things they had set themselves vigorously to check drunkenness amongst their people; and with no small success. There was, in fact, a marked and painful contrast in that respect between the state of the central district under its own management, and that of the northern under ours. Fines had been levied to a considerable amount, about £110, but only, as far as Mr. Gorst could ascertain, from persons who had expressly agreed to be bound by the system. An old man, the treasurer of the fund, brought the money to Auckland, and desired the Government to keep it safe until the use to be made of it should be determined. The chiefs found themselves hampered in their proceedings by the fact that the pakehas resident in the district could not be restrained by them from selling spirits to the natives. In consequence, in July, 1859, letters were sent from Waikato to Auckland praying the Government to put a stop to the importation and sale of spirits in the Waikato. Amongst the signatures (more than 400) were the names of Thompson, Matutaera, and the leading men of the king party. The Native Department, the responsible Ministers, and the Governor agreed in thinking that the thing could be lawfully done, under the Native Districts Act, 1858, and that it ought to be done.

Accordingly, answers were sent to the effect that the request should be complied with; but nothing further was done. In November, 1861, Mr. Gorst, who had been appointed resident magistrate of the district, becoming acquainted with the matter, urged the chiefs to write to the Government, which they declined to do, saying they had been deceived, and that it was useless to write. Upon this, Mr. Gorst, supported by William Thompson, applied to the Government, and the desired Order in Council was made (16th December, 1861) but the grace and the political benefit of the co-operation had been lost.

4. During the Waitara troubles Thompson did his utmost to prevent his people from taking any active part in them, but in vain. After a time he was induced to proceed himself to Taranaki and to withdraw the Waikatos; which he succeeded in doing, hoping thereby to terminate the strife. Thereupon the Government took advantage of his success to withdraw the troops from Taranaki, and to transfer them to the Waikato. Upon this Thompson was exceedingly sore, and even began to suspect that the friends whose advice he had followed had joined in misleading him.

Then came the manifesto addressed to Waikato, in May, 1861, the details of which it is unnecessary to consider. The substance of it was a demand that the natives should make at once an unreserved surrender of all they had done for themselves, and be content to receive in exchange vague assurances of some good to be done for them hereafter by a power which had, up to that time, done next to nothing, and in whose promises they had ceased to trust.

The result was, what such a document could not but produce at such a time and in such a state of men's minds, an increased bitterness and exasperation.

7.—Our present Position and Policy.

1. If we could put ourselves in some degree in the place of the Maori, and regard from his point of view the course of things which I have briefly reviewed, we should have less difficulty in understanding how it is that amongst a people, not less shrewd than ourselves, there has grown up a conviction that our policy is selfish and one-sided, and that their only safe course is to have as little as possible to do with us beyond trading in our markets.

That much good work has been done for the benefit of this race no Maori would deny, though he would probably attribute it as much to the religious bodies as to the Government. But good work of one kind which has been done cannot supply the place of good work of another kind which has been left undone.

Schooling cannot be a substitute for material comfort and wealth. They are not attached to our system, because it has presented so little to be attached to. It has secured to them no permanent and substantial share of the benefits of our colonization.

2. How important this consideration is,—how much might have been effected by a fairer and less selfish course of proceeding on our part, may be inferred by the facts before our eyes. If we see that a part of the natives, who by virtue of irregular and illegal contracts with the settlers have become possessed of wealth, are thereby led to value a connexion with the pakeha, and to trust his promises, and (though naturally not without a certain sympathy with their countrymen) are indisposed to take any active part in the quarrel; such a result ought to lead us to see and allow for the defects of our old system, and to take a more considerate view of the case of that larger portion of the native population which, by not disobeying our law, has been shut out from the sources of material prosperity and contentment. Thus, too, the Government has failed to provide for itself that "material guarantee," of which we hear so much just now, in its only trustworthy shape; the same guarantee as all good and wise Governments trust to, namely, the wealth and prosperity of their subjects.

3. Let us honestly ask ourselves these questions:—How far is the loyalty of Englishmen to their Government connected with a sense of the benefits secured to them by that Government? How long does the loyalty of any European nation last towards its Government, however ancient and venerable, when that Government has ceased to secure those substantial benefits to its subjects?

At last we have made an attempt to retrieve our position by the "Native Lands Act," an Act which, if wisely worked, will necessarily and almost imperceptibly make us masters of the country, whilst it will benefit our subjects.

But this measure had not come into operation when the present troubles began.

I should not have spent many words on this point, but for the language which is often heard, and which is used with evident honesty by many ill-informed people amongst us. Why should the Maoris distrust us? it is asked. In return it may be asked, "Is not a distrust of the wielders of power one of the most habitual feelings amongst ourselves?" What is our whole system—House of Commons, trial by jury, municipalities, newspapers—but one elaborate manifestation of this feeling? How can we expect the New Zealanders to be free from it towards the strange race, whose power they see to be so vast, and of whose disposition towards themselves they feel so little assured?

From acts and omissions of the Government, from translations of local papers, from the words and demeanour of private persons, they form the best estimate they can of our intentions. We may be sure the persuasion or misgiving is real and deep which leads men with few rifles, without bayonets, and without artillery, to stand up in opposition to our power.

4. The declaration made by the Governor at Taupari, soon after his return, that the name of the Maori King should not be made a cause of war, greatly diminished the excitement of the native mind.

The "face-to-face" policy, the practice of open conference and free discussion, effected much in the way of restoring confidence. But as there was no disapproval expressed in the name of the Queen of the doings at the Waitara, no pacification or amnesty, there remained in the minds of many a suspicion that the new Governor was to carry out what they regarded as the new policy of the Colonial Government, only with more of preparation and plan.

5. Still there was no actual outbreak, or (so far as I know) symptom of an outbreak, until the resumption of our land at Tataraimaka, when Rewi and his section of the Maniapoto determined to renew the war. If I am rightly informed, he came with his followers into central Waikato, and proposed to the tribes

there to join him in an attack on the fort at the Ia, as a beginning of the renewed conflict, which they, or at least the majority of them, declined to do. So he was forced to abandon that plan. Shortly after that, our troops, in apprehension of an attack, which was no longer contemplated, crossed the Mangatawhiri into Waikato.

6. Though these two years have not saved us from another civil war, yet they have made a material change in our position for the better. We are stronger, because we are avenging bloodshed; and the Waikato confederation is weaker, because it has become plain that the so-called king is (as Thompson recently called him) "a dumb king," who has no power to rebuke evil-doers, and to prevent crime: and also that the whole affair of the kingship is likely to lead to nothing but trouble. The Maoris generally believed their countrymen to be wholly in the right in the former contest. There is no such general conviction now. Public opinion is a great power amongst the Maoris as amongst ourselves. This conflict has not been desired or brought about by the Maori race, but by a small and turbulent minority chiefly belonging to one tribe.

7. To sum up the whole, our local adversary is Rewi, and his section of the Maniapoto, together with so many as by a variety of reasons are induced to join him; our general adversary is the distrust, so widely spread in the mind of the native population. What Mr. Gorst wrote in June, 1862, is equally true now.

"The Maori king is kept up by a feeling of distrust and opposition to the English Government; but it is the existence of this distrust, not its manifestation in the form of the Maori king, that is dangerous. Even if the Maori king had never been thought of, the moment that a question arose which brought the interests of one race into prominent antagonism with those of the other, some sort of organization must have been invented to give unity to the Maori side; it is hardly possible that anything could have been invented weaker than the king. As it was, the king, being already in existence, was seized upon for the purpose, and has grown to his present dimensions and formidable aspect subsequently to, and I believe in consequence of the Taranaki war. This danger is a formidable one, but would not be removed by the destruction of the king, though his being voluntarily abandoned by the Maoris would be a sign that it had ceased to exist. To secure safety, we must cure the disease, not stop its symptoms; we must remove the distrust, not Matutaera."

I regret that Mr. Gorst is not now in the land, as I know that he would be able to testify, after seeing Waikato in both the better and the worse mood, to the reality and depth of the fear and distrust there entertained as to our purposes, and to his conviction of the readiness with which they would accept our law, if only they could feel it safe to do so.

8. What then is our tone and fitting policy, whereby we may overcome not only our local but our general difficulty? If it be true, and a deliberate review of the whole connexion between the two races forces me to believe it true, that the natives have not fallen short of their part in the original contract more than we (who understood it better) have of ours; that they have not, as a nation, sinned more against us than we, the superior and protecting power, have against them; if this be so, then the course which it becomes us to take is plain.

After proving the extent of our power, and the folly of resistance on their part, it will be our business to show that we intend to use that power, neither vindictively nor selfishly, but as becomes a great, generous, and Christian nation; a nation which is enlightened enough to see in the distrust of an intelligent people an indication rather of its own shortcomings than of their infatuation, and is more willing to reform its administration than to destroy its subjects.

9. Every plan which may be proposed for terminating our present troubles must be estimated by its fitness to secure the end, which all alike profess to aim at, or rather, I should say, to open a way by which that end may be reached. For that which all acknowledge to be the real end, namely, the establishment of law and order throughout this island, the substitution of a willing obedience on the part of the natives in lieu of the present distrust and fear, is obviously one which cannot be reached by war, but only by wise legislation and careful administration after the war. No policy which shall leave behind it the seeds of another civil war, which shall tend to augment instead of removing distrust, can be the true policy for us. Solely by its fitness to secure this great end, and not by any reference to local or limited interests, must every proposed policy be judged.

Nor must we measure our policy by reference to those natives only who are now in arms in Waikato, but to all who in all parts of the island are watching for the issue of this contest, and endeavouring thereby to discern our real motives and purposes. If at the close of the present conflict, the Government shall retain not only such lands as it shall be judged necessary to hold as military positions, in order to secure the Colony against like troubles hereafter (and that upon payment of proper compensation in cases where the right to compensation may not have been legally forfeited), but if we also proceed to seize land for other purposes, and for such purposes oust from their lands persons who have done us no wrong, it is to be apprehended that we shall appear to be breaking our promise as soon as we are strong enough to do so, and to be making the punishment of crime and the establishment of law a pretext for getting land; and if so, that we shall be sowing the seed of fresh troubles, and shall not be brought by all this burdensome and costly war to the attainment of our great end.

It is often urged that the natives ought to be made to pay the cost of this civil war. However applicable such a principle may be to the case of an ordinary war between two independent nations, it does not appear to be applicable to the case of the present civil war, or to the peculiar relation subsisting between the Queen and her native subjects. We, before the world, and to the natives themselves, avowed that in establishing British authority in New Zealand, we had for our object (in part at least) the benefit and advantage of the native race. A great nation voluntarily took upon itself a sort of guardianship over a small and uncivilised nation. Under such circumstances, it appears to me to be for the honour of England to avoid even the appearance of being actuated by self-seeking motives.

10. A former Native Minister (Mr. Richmond) stated his opinion as to the policy to be pursued in native affairs, in these words: "The fears of the natives can be calmed, and the peace of the country secured, only by a policy which sincerely seeks not theirs but them." That was a fine application of the apostolic words. Moreover, it was, I firmly believe, a correct statement of the only policy which can

heal the troubles of this island; but the policy so recommended bears no great resemblance to that which we are now invited to enter upon. Let us bear in mind that the whole train of events of late years has not appeared to the Maoris to show such a disposition on our part as Mr. Richmond's words express, but the contrary, that, if it is to be shown at all, this is our opportunity.

11. Even yet we have not gained the position which we claimed for ourselves in the beginning. We are not yet asserting for the Queen her true position as the equal and impartial judge and avenger of all crimes committed in the land, but we are avenging a crime against the pakeha, and one which is not unconnected with the late strife. Yet, though our present position is not all that it should be, it is our wisdom not to throw it away, but rather to make it a step towards something better. We have already damaged it by our indefinite threats of seizure of land. But the natives in this, as in other cases, will look to what we really do in the end, more than to what we now talk of doing; to our deeds more than to our words.

12. It should be borne in mind that, whatever may be decided at home to be the liability of the native landowners, no law on the subject has ever been laid down in the Colony. That the first intimation of an intention to take land was given in the Proclamation, which was dated on the 11th of July last, but which was not actually published to the natives until the 14th, our troops having entered the Waikato territory early on the morning of the 12th.

13. The example of Ireland may satisfy us how little is to be effected towards the quieting of a country by the confiscation of private land; how the claim of the dispossessed owner is remembered from generation to generation, and how the brooding sense of wrong breaks out from time to time in fresh disturbance and crime.

If we really succeed in attaining our great object in preparing the way for law, and so converting the nominal sovereignty of the Queen into a reality, such a change in our circumstances will be an equivalent for a very considerable cost.

14. Moreover, it is just and right to discriminate between the various sections of the Waikato population, who are at this moment in arms, and to inquire whether the rebellious or treasonable character is to be imputed to all alike. This is to be done, as a matter of course, in dealing with any subjects of the Crown; but it becomes in this case especially necessary, from the habit so common amongst us of confounding the various sections of the population which occupies the region of the Waikato and Waipa, under one common name of Waikato. The real source of our troubles is in the tribe of Maniapoto, especially in that section of the tribe of which Rewi is the chief, whose proper district lies near the head of the Waipa, about abreast of Kawhia; amongst the natives themselves that tribe is sometimes included in Waikato, by reason of a common descent from the same ancestors; sometimes distinguished from Waikato, as not being locally settled on that river. The turbulent and violent members of this tribe appear to have controlled the puppet-king, and over-borne all the remonstrances and efforts of Thompson. The latter, though he certainly does not trust us, and is now forced to support the king that he set up, has always endeavoured to keep the peace, and to borrow our laws and usages, yet so as to keep aloof from the Government. Probably the king party counts amongst its adherents the very worst and the very best of the whole native population; both conceited and wilful men, who have courted a conflict with the English power, and men who heartily desire and seek after union and peace. The sense of nationality and the common distrust combine them against us now.

15. As to the population of the middle or lower Waikato on this said of Taupiri, I suppose it may be safely said that the majority, however little attached to our rule, had always endeavoured to live at peace and avoid a collision. Unless I am greatly misinformed, they had, just before the commencement of the present troubles, given the best proof of such a disposition, by refusing to support Rewi in his proposal for attacking the troops at the Ia. If so, that was a clear proof that the majority (at any rate) did not intend to "levy war" against the Queen, inasmuch as they actually prevented Rewi from doing so in their district. If when, immediately after that our soldiers entered that district, they then stood up to resist what they would deem an invasion, we can fairly account for their so doing, without imputing to all of them that treasonable purpose which (at least as to the majority) their recent conduct had disproved.

16. It should be remembered that the proclamation announcing the purpose of the Government in entering on their land, came after the entry of the troops on their land; and that even when it came, there was much in the claim it put forth, namely, a claim to take such land as the Government might choose, without any mention of quantity or compensation, which was likely to alarm and excite them. If those men, after giving the best proof of their intention not to "levy war" against the Queen, yet seeing their territory entered by an armed force, and property destroyed by that force, stood up to resist, ought we not in fairness to conclude that they resisted, not because they were traitors, but rather because they were New Zealanders, or because they were men.

17. Nor are we yet, so far as I can discover, in a position to impute any traitorous purpose (as is commonly done) to the whole population of the native villages between Auckland and the Waikato, which was ejected under the proclamation of the 9th of July. It should be remembered, that the tendering of an oath of allegiance was coupled with a demand to give up their arms, not a word being said about future restitution of those arms, or even compensation for them. It should also be remembered that our troops were directing their march across their district towards Waikato at the same time. The summary dispossession of several hundreds of persons in winter time can only be regarded as a military proceeding deemed to have been rendered necessary by the emergency. It will need to be covered by an act of indemnity. Those who declined to give up their arms were directed by the terms of the proclamation to retire to Waikato beyond Mangatawhiri. This proclamation was issued on Thursday evening. On the next Sunday morning the General crossed the Mangatawhiri. If in the freshness of their alarm and exasperation, many of the men joined their kinsmen, who had already risen to oppose the entry of the troops on their land, can we pronounce their act to amount to a "levying of war" against the Queen's authority, in the sense in which those words are used by our law of treason? If it were possible for such troubles as these to occur in England,

would these several classes of men be all alike convicted as traitors in an English court, and all alike punished as traitors by an English Government?

18. We are now at the commencement of a new system of management in native affairs. There has been something anomalous in the first start; a government in which the assembly has so large a part, should be from the nature of the case a Government by law; yet proclamations have been put forth wholly unwarranted by law. The Executive Government has claimed to exercise powers which neither the law of England nor of the Colony has conferred on it. Let us regard them as military and extraordinary measures, and let us for the future see that in an adherence to the law of England is our only strength and safety. The Crown can act on no rule but that which is furnished by the law and usage of England, and nothing could be more unreasonable or unseemly than that we, whilst seeking to bring the native people to accept our system, should be ourselves departing from it, violating the very law of which we are the professed upholders and champions. In fact, if we do not hold fast to this principle, there remains no limit to the extent of extravagance to which in the present excitement, the minds of men may be carried, so as to forget not the mere form of law, but even those fundamental principles of fairness and equity which lie at the foundation of our English law, and of our whole English system.

19. A few words may be proper with reference to the general drift of the preceding statements. It may be said, with some show of truth, that this is a one-sided statement; it is in some sense one-sided, it is the setting forth of that side of the question which is constantly dropped out of sight, while the other is made as prominent as possible; yet if ever we are to see our way to a policy that shall heal the troubles of this island, we must consider both sides; our policy must be fitted to the facts as they are in truth, not as we may desire them to be.

If I speak of these things, it is not because I have any pleasure in speaking of them. As an Englishman, and for many years a servant of the Crown, I can have no feeling about these things, but one of sorrow, if not of shame: yet it is necessary to speak, because our people are as apt to forget these facts as the natives are to remember them. I know how ignorant the larger part of our population is of the history of the Colony; how little they in general possess of that personal acquaintance with the natives which would enable them to discover how abundant is the material for good in these people, with all their mistrust and stiffneckedness. I know how many misleading influences are at work; how the crimes committed on the Maori side are set forth, whilst crimes committed on our side pass unrecorded; how many persons in their ignorance readily accept the current mis-statement, that native disaffection is only to be accounted for by a sort of infatuation or judicial blindness.

20. In truth, I am far from regarding this subject from one point of view only. The true interests of both races are inseparable. I see the risk of our entering upon a course of policy, which, if adopted, will, I believe, entail upon us a chronic smouldering war, attended with heavy loss and demoralisation to our real settlers, ill compensated by the increased wealth of a few capitalists in our towns, and which will, if persevered in, deprive this island of all attractions in the eyes of the better class of English immigrants.

I know the time has come when the folly of Waikato should be checked, and crime be punished; yet so checked and so punished as may become a Government which has not fulfilled its own purpose, nor performed its own duty; as may become a Government which will not accommodate itself to supposed local interests, or narrow views, or popular clamour; but will look straightforward to that which, being just and reasonable, will in the end secure the real interests of all the Queen's subjects within these islands. Let us so act, and we shall prove ourselves worthy of the power which England has entrusted to us.

Appendix No. 1.

"The Supreme Court of the United States, in the case of Worcester, reviewed the whole ground of controversy, relative to the character and validity of Indian rights within the territorial dominions of the United States, and especially in reference to the Cherokee nation, within the territorial limits of Georgia. They declared that the right given by European discovery was the exclusive right to purchase, but this right was not founded on a denial of the right of the Indian possessor to sell. Though the right to the soil was claimed to be in European governments as a necessary consequence of the right of discovery and assumption of territorial jurisdiction, yet that right was only deemed such in reference to the whites; and in respect to the Indians, it was always understood to amount only to the exclusive right of purchasing such lands as the natives were willing to sell. The royal grants and charters asserted a title to the country against Europeans only, and they were considered a blank paper, so far as the rights of the natives were concerned."—(*Kent's Commentaries*, p. 383.)

"The decision of the Supreme Court of the United States was not the promulgation of any new doctrine, for the several local governments, before and since our revolution, never regarded the Indian nations within their territorial domains as subjects, or members of the body politic, and amenable individually to their jurisdiction. They treated the Indians within their respective territories as free and independent tribes, governed by their own laws and usages, under their own chiefs, and competent to act in a national character, and exercise self-government, and, while residing within their own territories, owing no allegiance to the municipal laws of the whites. The judicial decisions in New York and Tennessee in 1810 and 1823, correspond with those more recently pronounced in the Supreme Court of the Union, and they explicitly recognised this historical fact, and declared this doctrine. The original Indian nations were regarded and dealt with as proprietors of the soil which they claimed and occupied, but without the power of alienation except to the governments which protected them, and had thrown over them, and beyond them their assumed patented domains. These governments asserted and enforced the exclusive right to extinguish Indian titles to lands, enclosed within the exterior lines of their jurisdictions, by fair purchase, under the sanction of treaties; and they held all individual

purchases from the Indians, whether made with them individually or collectively as tribes, to be absolutely null and void. The only power that could lawfully acquire the Indian title was the State, and a Government grant was the only lawful source of title admitted in the courts of justice. The Colonial and State Governments, and the Government of the United States, uniformly dealt upon these principles with the Indian nations dwelling within their territorial limits.”—(*Ibid*, 385.)

Appendix No. 2.

[Parliamentary Paper, 8 April 1840.]

“On the other hand, the Ministers of the Crown have been restrained by still higher motives from engaging in such an enterprise. They have deferred to the advice of the Committee appointed by the House of Commons in the year 1836, to inquire into the state of the Aborigines residing in the vicinity of our colonial settlements; and have concurred with that Committee in thinking that the increase of native wealth and power promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Government.”

Again: “To mitigate, and if possible, to avert these disasters, and to rescue the immigrants themselves from the evil of a lawless state of society, it has been resolved to adopt the most effective measures for establishing amongst them a settled form of Civil Government. To accomplish this design is the principal object of your mission.”

Again: “The Queen, in common with Her Majesty’s immediate predecessor, disclaims for herself and for her subjects every pretension to seize on the islands of New Zealand, or to govern them as a part of the dominion of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained. Believing, however, that their own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious, and little more than nominal, and persuaded that the benefits of British protection, and of laws administered by British judges, would far more than compensate for the sacrifice by the natives of a national independence which they are no longer to maintain, Her Majesty’s Government have resolved to authorise you to treat with the aborigines of New Zealand for the recognition of Her Majesty’s Sovereign authority over the whole or any parts of those islands which they may be willing to place under Her Majesty’s dominion.”

Letter from Lord Glenelg to Lord Durham (*ibid*. p. 148.)

“The intelligence which Her Majesty’s Government has received from the most recent and authentic sources, justifies the conclusion that it is an indispensable duty, in reference both to the natives and to British interests, to interpose, by some effective authority, to put a stop to the evils and dangers to which all those interests are exposed, in consequence of the manner in which the intercourse of foreigners with those islands is now carried on.”

“2. The proposal made by the late Parliamentary Committee on Aborigines, appears inadequate to meet the existing evil, and the repression of practices of the most injurious tendency to the natives of New Zealand can, as it would seem, be accomplished only by the establishment of some settled form of government within that territory, and in the neighbourhood of places resorted to by British settlers.”

Appendix No. 3.

Renata to Dr. Featherstone, 23 July, 1861.

“The cause of the Maori setting up his king, was because of the evils arising from the sale of the land of the Maoris, for it was sold by single individuals without the consent of the majority. Hence arose the present difficulties in the eyes of the Runanga, and not from the setting up of a Maori King to fight against the Queen. Nothing of that kind was intended.

“To return to the men who sell the land by stealth to the Governor; he should have seen the fault and condemned it, so that I might have left it for him alone to redress the wrongs of the Maori; instead of which, your servants go and accept the dishonest offers of the Maori, which encouraged him to go on stealing lands, and then the Maori thought of setting up his King to investigate my (the Maori’s) own wrongs. This meeting has arrived at this conclusion: if this work of making a king is a Maori device, it will pass away of itself. Friends, leave the King of Aotea alone, and he will disappear of himself.”

“But do you initiate something good for us both, in order that evil may be ashamed, and that good works may destroy the evil deeds of evil-doers; for evil will never be put down by guns, powder, and balls.”

“It was the wrongs that we suffered at the hands of you Pakehas, that drove the Maori to the Maori King, as a man is driven by rain, or wind, or cold, into a house; it may be a hut of reeds, a house full of fleas, or ever so bad a house, still he will stay in it until a fine day shines forth, and then he will come out. Man should be led; if you drive him, it will not do; look at this, was it by being driven that my Maori forms of worship were abandoned by us? it was by being drawn into the practice of good works, and that is how I come to be in this beautiful house, the church; therefore, address

yourself to the evils of the sellers by stealth of my lands, and cure these, as a good work, from which I may see that you are roofing in a good house, and that there is no deception intended, and then all will be well."

Renata to the Superintendent of Hawke's Bay, February 1861.

"You appear to suppose that by getting hold of a single individual you can gain an advantage over him. Hereafter, whenever the majority consent to a sale, it shall take place. Let us have no more blundering; all our troubles have arisen from faulty working, and on this account it was that the door of land-selling was shut; but when the system of buying is amended, the door will be opened, that sales may be conducted on a regular plan."

"And who was the cause of this? A man goes up to Auckland, and there sells the land; and the first thing the owners hear about it is that the land is gone. Others went off to Wellington, and there sold; and the first I heard of it was that my own place, Okawa, was gone, and several others the same."

Appendix, No. 4.

Ritatonā te Iwa to Riwai and others (from the translation of Archdeacon Maunsell, printed in 1861.)

" March 4th, 1858, Waitara.

"To Riwai, Kiripata, Wiremu Tamihana, Apa, Ture, Wiri, Tei, and Hohepa, to you all; greeting, to you. My friends, my fathers, listen! Here we are involved in warfare; that is to say, in grievous, murderous, cannibal, blood-thirsty calamity. In this very grievous calamity, listen! You are probably imagining that we are going blindly to work. It is not so, but we are proceeding on a clear course. What makes it clear is this, that as far as regards the reference to the Governor, that has been done. As for murder, we have no intention of murdering; we leave murder to Ihaia and Nikorima. Our chiefs will act in broad daylight, and indeed they are acting now in broad daylight. As regards the reference to the Governor, that has been made by the chiefs. You have already heard that Waitere (Katatore) was killed on the 9th day of the month of January. We had to wait till February for the Governor's answer. The answer came, that the Governor could take no steps in the matter; but let there be another murder, then the Governor would consent. Hence our chiefs concluded that the course taken by the Governor was wrong, because this is Ihaia's second murder. The words of the former Governor are not attended to now; for steps were taken in the case of the quarrel with Rangihaeata, at the Hutt, on that occasion promptly. In the case of this murder, no steps are taken."

Enclosure 3, in No. 1.

Memorandum by the Colonial Secretary, on Sir W. Martin's "Observations on Proposal to take Native Lands, &c."

Encl. 3, in No. 1.

I have carefully read Sir William Martin's able and elaborate paper. His main aim appears to be to show that a general or even extensive confiscation of the lands of the natives who have engaged in rebellion, would be beyond the power of the General Assembly, and would be unjust and inexpedient. There is much in Sir William's argument from which I am not inclined to dissent, and many of his premises may be admitted more or less unreservedly. But I cannot concur in the conclusion at which he has arrived.

The subject is not one which can be regarded by the Government of this Colony as a mere abstract question. We have to deal with a people in actual rebellion, the largest and most powerful tribes being openly committed, and three-fourths of the whole Maori population sympathising, to an extent which renders the enforcement of law by the ordinary tribunals exceedingly difficult, and as regards large sections of the race, absolutely impossible.

The magnitude of the emergency is such as to require the active operations of nearly 10,000 British troops, supported by five men of war, and 9,600 men of the Colonial forces. A portion of the Province of Auckland, 40 miles wide, by 20 deep, has for six months past been desolated and rendered uninhabitable by the inroads of the rebels, which have extended to within 15 miles of the capital; a very large amount of property, representing the investment and industry of 20 years, has been destroyed; unarmed men engaged in peaceful occupations, and women and children, have been massacred in cold blood; while the whole Northern Island is kept in a condition of insecurity and alarm, destructive of its prosperity, and almost absolutely putting a stop to its colonization.

The problem to be solved by the Government, is not merely how to put down the existing rebellion; it is of no less consequence to prevent its recurrence. Experience has proved that mere military defeat has little more than a temporary effect on the Maori, and that as soon as he has had breathing time, he is ready to renew hostilities, by which he loses little or nothing, but gains much plunder, and inflicts ruinous loss on his ultimately victorious opponents. There are only two methods by which periodical outbreaks can be prevented; one, the continued maintenance of a large military and naval force, such as at present is provided by the Imperial and Colonial Governments, and which converts the Colony into a camp; the other, the introduction and settlement of so large an European population as may render insurrection hopeless in the eyes of the natives, and easily repressible, should they be mad enough to attempt it. To secure this end, population must be introduced into those districts now

sparsely inhabited by the rebels, and from which they make their inroads into the settled districts; and it is only on the lands of the rebel tribes, at least in the Province of Auckland, in which it can be so established. The Government proposes to confiscate (that is, to take without compensation) no lands except those of which the owners have been engaged in open rebellion, or actually aiding and abetting it by overt acts. The law recently passed by the General Assembly does not enable the Government to confiscate any lands but these. It is true it enables the Government also to take other lands, whether those of Maories or Europeans, for public purposes; such as the establishment of military villages, or the like, on paying full compensation, to be assessed by a legally constituted tribunal. This is in accordance with a principle of constitutional law, which vests such a power in the supreme authority of every civilised people.

The idea of confiscation of land is not new to the Maori race, nor in any way abhorrent to their moral sense. It has for centuries been the law of the victor among themselves, accompanied by the reduction into slavery of the conquered tribe; and whether viewed as a punishment for rebellion, an indemnity for the cost of its suppression, or a material guarantee for the future, it seems to be based on principles of natural justice. No precaution which could be taken would have an equal effect in deterring other tribes from rebellion, compared with the impending penalty of losing their lands. When Te Rauparaha was taken by Sir George Grey, during the Cook's Straits war, in 1846, and held as a hostage, other natives asked, "What is the good of taking the man; that will not stop fighting; you should have taken his land." The mere announcement of an intention on the part of the Government to confiscate the lands of the Oakura murderers six months ago, is reported by various commissioners and resident magistrates to have had the best effect in repressing the excited sympathies of tribes not yet actually committed. On the other hand, if those tribes which have hitherto only sympathised with rebellion without partaking in it, should, on the cessation of the present disturbances, see those who engaged in them restored to their possessions and all their territorial rights, it would go far to encourage them to resist the enforcement of law and the progress of colonization, whenever it might suit them to do so.

I will not enter upon a discussion on the debateable question whether it is desirable for the natives themselves, rebel or others, to retain possession of immense tracts of land, which they neither use, nor allow others to use, and which maintains them in a state of isolation from the European race and its progressive civilization—I will merely state my own conviction that such a condition is most prejudicial to the native race, and highly conducive to the prevalence of evils, social and physical, which contribute to the rapid decay and extinction of the race.

It seems unnecessary to offer any other comment on Sir W. Martin's argument than one of this practical character. It comes to this: if we are to hold the Northern Island of New Zealand as a British possession, if its colonization is to go on, if the Maori race itself is not to be gradually exterminated by repeated conflicts with a superior power, the proposal of the Government to take the lands of the rebels as an indemnity for the past, and a material guarantee for the future, must be adopted. There is nothing in such a proposal contrary to the first principles of justice, or unusual in the history of national conflicts all the world over, and it is strictly in conformity with the customs of the Maoris themselves. Mere technical difficulties (if there be any, such as govern feudal liability to forfeiture, or the necessity of conferring political franchise, which is alleged to be a condition precedent to the right to enforce submission to law), however interesting as abstract questions for discussion, cannot be entertained by a Government on which the responsibility rests of saving to the British Crown a dependency in imminent peril, and preventing for the future the renewal of a similar crisis.

(Signed) WILLIAM FOX,
Colonial Secretary.

Sub-Enclosure.

The following is a letter from Waikato to William Thompson.

Sub-Enclosure.

Come, O William, be quick this very day. Don't stay away, but be quick. Hear the word of your ancestors, Tarao and Karewa: "That of one becomes red; that of the other did not quickly become red."

This expression meant that William Thompson should join them in attacking the Pakeha.

The following conversation took place between Wi Tamihana and Te Raihi in reference to this letter:—

RAIHI.—What is your thought as to the meaning of that word?

WI TAMIHANA.—If Aporo is the cause, I am carrying with me money twenty pounds. My letter on that subject has been sent to your residence. If Aporo is the cause, this money shall be placed before the people assembled. They also shall collect some money in addition, to be compensation for the crime of Aporo in reference to Mr. Gorst. You will carry it to Auckland; but if they will not consent to this, I will have done with it. I will not consent to these plans of theirs—plotting to attack the Pakeha. If, however, there is another cause clearly just to my understanding, I will consent.

RAIHI.—What kind of a course will you consider a just cause.

WI TAMIHANA.—That will depend on the nature of the crime (or offence). When I learn that, I shall know if the cause be just or unjust.

RAIHI.—Enough! Go! Be urgent (to condemn them), if you see that the cause is wrong.

WI TAMIHANA.—Yes, I will go there.

He went to Tamahera. On the second day of his being there, he inquired of the men of Waikato, "What is the cause of your coming here?" They replied, "We come to invite you to consent to fight with the Pakeha."

Wi Tamihana did not consent to those plans (attacking the Pakeha); because, in his judgment, he perceived no just cause.

After the soldiers crossed Mangatawhiri, then he first consented to fight, after the loss sustained by Waikato in the battle of Koheroa.

The above is the translation of Te Raihi's statement to me.

6 January, 1864.

EDWARD SHORTLAND,
Native Secretary.

No. 2.

(No. 10.)

COPY OF A DESPATCH FROM GOVERNOR SIR GEORGE GREY, K.C.B., TO HIS GRACE THE DUKE OF NEWCASTLE, K.G.

Government House, Auckland, 6 January, 1864.

(Received 14 March, 1864.)

(Answered, No. 43, of 26 April, 1864.)

MY LORD DUKE,—

I have the honor herewith to transmit authenticated copies of the several Acts* passed by the General Assembly of New Zealand, during its last session, and of Bills which have passed through both Houses, but which I have reserved for the signification of Her Majesty's pleasure, together with explanatory memoranda* by my Responsible Advisers, on these several enactments.

2. I only think it necessary to trouble your Grace with the following remarks:—Firstly, I beg to recommend that the several Bills which I have reserved for the signification of Her Majesty's pleasure, may receive the Royal Assent. Secondly, In their remarks upon the Suppression of Rebellion Act and the New Zealand Settlement Act, my Responsible Advisers observe as follows:—

"In former wars in New Zealand the natives have been permitted to leave off fighting when they thought fit, to keep all the plunder they had obtained, and they have not been subjected to any kind of punishment for disturbing the peace of the country, killing Her Majesty's subjects, and destroying their property. If native wars are to be prevented for the future, some more effective mode of dealing with those who create them must be adopted. The question, then, is, in what way for the future can the peace of the Colony be best maintained?" &c., &c.

3. I do not think that this passage accurately describes past events. For instance, in the war which arose about the Valley of the Hutt, much land was taken from natives which they claimed, although the Commissioner appointed by the Crown had decided against them. Several powerful chiefs were for some time retained in confinement for their conduct on that occasion. The natives engaged in the war were forced to retire beyond the village of Otaki, and other punishments were inflicted on the natives; but without discussing these particulars, I would deal with the general question.

4. There are two modes of dealing with subjects after a rebellion, to treat them with great generosity, or with severity. I believe the former method is found to be the most successful; when, therefore, former wars terminated, the natives were very generously treated, and no large forfeiture of lands declared. In one way this policy was certainly eminently successful; for in the present war our former enemies, had they joined against us, might have inflicted the most serious injury upon us; whereas they have, I believe, to a man refrained from in any way taking advantage of our present difficulties, and many of them have earnestly expressed their readiness to aid us, if we wished them so to do.

5. I do not think the same policy would now succeed to the same extent. The natives have acquired too many arms and too much ammunition. The war has become more a war of races; we have used no native allies in this war. It has lasted longer than any previous war, and more tribes have been drawn into it, and it originated, at least in the estimation of a large number of the natives, in an attempt on our part to establish a new principle, in procuring native lands, and in an overlooking of their interests in other respects. Hence a wide-spread distrust and dislike of the Government has sprung up. The early successes of the natives at Taranaki have also emboldened their young men. All these causes make me think that it is necessary now to take lands from the natives who have been in arms, and to locate an European population upon them. But, acting upon the principle of the great wisdom of showing a large generosity towards defeated rebel subjects, I would not carry this system too far.

6. I would call your Grace's attention to the remarks of my Responsible Advisers upon the New Zealand Loan Act, and to their earnest request that the Imperial guarantee may be given for the large loan they propose to raise. I can assure your Grace that I think this is a case in which Great Britain might most advantageously give this Colony the aid for which it thus asks, for I believe the inhabitants of New Zealand have, in the present crisis, exerted themselves to the utmost to defend themselves, and to save the Imperial Government as much as possible from expense. In this instance, therefore, to aid this Colony to the extent it now asks, would, I think, be at once both just and politic. It is, therefore, a course which I earnestly recommend for your Grace's consideration.

I have, &c.,

G. GREY.

No. 2.

Governor Sir Geo. Grey, K.C.B., to the Duke of Newcastle, K.G., 6 January, 1864.

* Only Nos. 7, 8, 11, and 12 are printed.

Memo. from Ministers, enclosing Acts of General Assembly, dated 5 January 1864.

PAPERS RELATIVE TO

Despatch from the Secretary of State.

(No. 43.)

COPY OF A DESPATCH FROM THE RIGHT HON. EDWARD CARDWELL, M.P., TO GOVERNOR
SIR GEORGE GREY, K.C.B.

Downing Street, April 26, 1864.

SIR,—

Her Majesty's Government have had under their consideration three Acts passed by the Legislature of New Zealand, in order to give effect to the views of your Advisers with reference to the Native War, viz.:

No. 8. An Act to enable the Governor to establish Settlements for Colonization in the Northern Island of New Zealand.

No. 11. An Act for raising a Loan of £3,000,000 sterling for the Public Service of the Colony of New Zealand.

No. 12. An Act to appropriate certain sums to be raised under "the New Zealand Loan Act, 1863," (the last-mentioned Act), "and to provide for the repayment of certain portions thereof."

The most important of these Acts is that which stands first on the list.

It declares in effect that if, in the opinion of the Colonial Government, any considerable number of the members of any native community have been or shall hereafter be in rebellion, the Colonial Government may declare any district within which such community may hold property to be a district for the purpose of this Act, and may at any time thereafter confiscate within that district such lands as they may from time to time consider requisite for purposes of settlement, whether those lands be the property of loyal or disloyal natives or of colonists.

Compensation is to be given according to the judgment of a court to persons (or I presume to tribes or communities) who are to be dispossessed without having been engaged in rebellion.

These courts are not only empowered to refuse, but are positively disabled from giving compensation to any person who shall have aided assisted, or comforted any rebel, or who, (whether engaged in rebellion or not) shall have refused to give up his arms on being required to do so by proclamation.

The law is a permanent law applicable not only to the present conjuncture, but to any case in which the Colonial Government shall hereafter "be satisfied" that "any considerable number" of any native community in any part of the island shall have been in rebellion since the 1st of January, 1863.

I learn from the memorandum which accompanies this Act that the power of the Assembly to pass it has been questioned in New Zealand; and I have thought it right to submit it, together with one which has also been passed by the Colonial Legislature for the suppression of the rebellion, to the Law Officers of the Crown for their opinion. That opinion I cannot receive in time to communicate with you by this mail; but I need not leave you in ignorance of the views which I entertain upon the policy embodied in this important law, or of the opinion of Her Majesty's Government in respect to the measures which ought to be taken as soon as decisive success in arms shall enable you to take them for the pacification and settlement of the Northern Island.

It appears that of the land thus about to be acquired, part is to be granted in lots varying from 50 to 400 acres, to the members of the Colonial Force recently raised, numbering, I understand, about 4000 persons, and part is to be occupied by settlers who are to be introduced from Europe at the expense of the Colony, and are to hold their lands on a species of military tenure. It is supposed that the whole number of settlers, including the above-mentioned Colonial Force, will amount to 20,000.

A scheme of this kind was submitted to the Duke of Newcastle in your Despatch, No. 109* of the 29th of August last. Your Ministry then proposed the introduction of 5,000 men, who were to hold fifty-acre farms upon military tenure, on land to be taken from the insurgent natives. Your Despatch implied that you approved the principle of this scheme, and you stated that you had sanctioned it to the extent of raising 2,000 men for active service.

The Duke of Newcastle adopted your views, but not without a very serious caution as to the danger and delicacy of applying them. He indicated the difficulty of preventing injustice, and the hazard of exciting the apprehension of the natives; he pointed out to the Local Government the responsibility which they would incur of providing against these evident risks; and he added that if the determination of your Government should have the effect of extending and intensifying the spirit of disaffection, and of thus enlarging the sphere or prolonging the period of military operations, these consequences would be viewed by Her Majesty's Government with the gravest concern and reprehension. I need scarcely observe that the Act now forwarded, taken in combination with the scheme proposed by your Government, exhibits a rapid expansion of the principles in which the Duke of Newcastle acquiesced with so much reserve.

The number of settlers, and consequently the immediate amount of confiscation, is quadrupled, the compulsory power of acquiring land within a proclaimed district is, by the terms of the Act, applied alike to the loyal and the disloyal; the right of compensation is jealously limited, and is denied even to the most loyal native if he refuses to surrender his accustomed right of carrying arms, and these powers are not to be exercised exceptionally and to meet the present emergency, or by regularly constituted courts of justice, but are to be permanently embodied in the law of New Zealand; and to form a standing qualification of the treaty of Waitangi.

This being the nature of the law, I proceed to consider some very grave objections which may be urged against it. It renders permanently insecure the tenure of native property throughout the Islands, and is thus calculated to alarm our friends. It makes no difference between the leaders and contrivers of rebellion and their unwilling agents or allies, and is thus calculated to drive to despair those who are but half our enemies. The proceedings by which unlimited confiscation of property is to take place may be secret, without argument and without appeal; and the provision for compensation is as rigidly confined as the provision for punishment is flexible and unlimited.

I concur with your Advisers in thinking it impossible to apply to the Maoris the maxims of English

law in all their application to the details of civilised life. It is necessary to take into account the anomalous position which they occupy on the one hand as having acknowledged the Queen's sovereignty, and thus become liable to the obligations and entitled to the rights of British subjects, and on the other hand as having been allowed to retain their tribal organisation and native usages, and as thus occupying, in a great measure, the position of independent communities. Viewed in the former capacity, they have, by levying war against the Queen, rendered themselves punishable by death and confiscation of property. These penalties, however, can only be inflicted according to the rules and under the protection of the criminal law. Viewed in the latter capacity, they would be at the mercy of their conquerors, to whom all public property would at once be transferred, private property remaining under the protection of international custom. Remembering the difficulty of determining what is private and what public property among the Maoris, it seems to follow that in the interest of all parties the rights of the Maori insurgents must be dealt with by methods not described in any law book, but arising out of the exceptional circumstances of a most anomalous case.

It is therefore doubly necessary that those who administer in the name of the Queen a Government of irresistible power should weigh dispassionately the claims which the insurgent Maoris have on our consideration. In the absence of those legal safeguards which furnish the ordinary protection of the vanquished, the Imperial and Colonial Governments are bound so to adjust their proceedings to the laws of natural equity, and to the expectations which the Natives have been encouraged or allowed to form, as to impress the whole Maori race at this critical moment with the conviction that their European rulers are just, as well as severe, and are desirous of using the present opportunity, not for their oppression, but for the permanent well being of all the inhabitants of New Zealand.

I recognise the necessity of inflicting a salutary penalty upon the authors of a war which was commenced by a treacherous and sanguinary outrage, and attended by so many circumstances justly entailing upon the guilty portion of the Natives measures of condign punishment. But I hold, in the first place, that in the apportionment of this punishment those who have actively promoted or violently prosecuted this war should be carefully distinguished from those who, by circumstances, connection, or sense of honour, or other natural temptation, have been unwillingly drawn into it, and still more pointedly from those who have on the whole adhered to the British cause. Even in the case of the most culpable tribes the punishment should be such as to inflict present humiliation and inconvenience rather than a recurring sense of injury, and should leave them with a conviction that their punishment, if severe, has not exceeded the limits of justice, and also with the assurance that for the future they have nothing to fear, but everything to hope from the Colonial Government. With this view, the punishment, however exemplary, should be inflicted once for all, and those who may have suffered from it should be led to feel that they may engage in the pursuits of industry on the lands which remain to them with the same security from disturbance which is enjoyed by their most favoured fellow-subjects. And I should hold it as a great misfortune if the punishment were so allotted as to destroy those germs of order and prosperity which have been so singularly developed in some of the Waikato tribes.

I do not dispute the right of the Colonial Government to obtain from the punishment of the insurgent Natives some aid in defraying the expenses of the war, or, in other words, of including in the contemplated cession or forfeiture lands to be disposed of by sale, as well as lands to be devoted to the purposes of military settlement. But these expenses have been mainly borne by this country, which has, therefore, a right to require that the cession or confiscation of territory shall not be carried further than may be consistent with the permanent pacification of the island and the honour of the English name.

I must now now invite your attention to some difficulties to which such a scheme would appear to be liable if carried into effect too suddenly, and on too great a scale.

I think it may be generally said that there is not much modern experience of a successful military settlement. In the present case it can scarcely be hoped that the 20,000 persons whom it is proposed to place upon land, will be entirely of the most desirable class; and notwithstanding the intention expressed by your Minister to provide for the introduction of married settlers, with their families, it is to be expected that there will be a great preponderance of males among them, a circumstance which is always productive of many causes of strife in such a state of society. If the settlements should be scattered at a distance from any natural centre, and in the heart of a disaffected country, they might prove unequal to their own defence, and their protection would be extremely expensive, while it would hardly be possible for the Colony to abandon the territories which it had occupied. Lastly, as the immigrants would be without special experience or capital, bound to a distasteful military tenure, and perhaps exposed to the hostility of the Natives, it is to be feared that they would have to undergo much hardship, and would be soon attracted from their farms by the high wages of Australia, or the still nearer gold-fields of Otago.

I am strengthened in these apprehensions by observing that the difficulty of enforcing military service upon Colonists has pressed itself on the notice of yourself and the New Zealand Representatives. In your despatch of the 24th July, 1862, you express your fear that labourers and artisans could not be induced to remain in the Colony if liable to militia service. And a somewhat similar anticipation is expressed in the Memorial addressed to Her Majesty by the House of Representatives, and mentioned in your Despatch of the 6th October, 1862.

This is a matter which more properly belongs to your own Advisers on the spot, responsible as they now are for the conduct of Native Affairs, and I do not urge these objections for the purpose of discouraging, within moderate and practicable limits, a scheme from which you expect the best results, but only that, in order to ensure success, those limits may be carefully considered, in the first instance.

I shall have occasion to recur to the subject of lands taken for sale, in considering the proposal for a guaranteed loan.

Considering that the defence of the Colony is at present effected by an Imperial force, I should perhaps have been justified in recommending the disallowance of an Act couched in such sweeping terms, capable therefore of great abuse, unless its practical operation were restrained by a strong and resolute hand, and calculated, if abused, to frustrate its own objects, and to prolong, instead of terminate war. But not having received from you any expression of your disapproval, and being most unwilling to take any course which would weaken your hands in the moment of your military success,

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Her Majesty's Government have decided that the Act shall for the present remain in operation.

They are led to this conclusion not merely by a desire to sustain the authority of the local Government, but also in no small degree by observing that no confiscation can take effect without your personal concurrence, and by the reliance which they so justly place on your sagacity, firmness, and experience, and your long recognised regard as well for the interests of the Colonists as for the fair rights and expectation of the native race.

I have therefore to convey to you the following instructions as embodying the decisions of Her Majesty's Government.

It is in their opinion very much to be desired that the proposed appropriation of land should take the form of a cession imposed by yourself and General Cameron upon the conquered tribes, and made by them to the Representative of the Queen, as a condition on which Her Majesty's clemency is extended to them. The advantages of such a settlement (in which, however, I need hardly say the position of the Maoris as defeated rebels should be unequivocally exhibited), are too manifest to need explanation.

But if this should be found impossible, you are at liberty, subject to the following reservations, to give your concurrence in bringing the law into operation.

A measure should be at once submitted to the Legislature to limit the duration of the Act to a definite period, not exceeding, I think, two years from its original enactment—a period long enough to allow for the necessary inquiries respecting the extent, situation, and justice of the forfeiture, yet short enough to relieve the conquered party from any protracted suspense, and to assure those who have adhered to us that there is no intention of suspending in their case the ordinary principles of law.

The aggregate extent of the forfeiture should be at once made known, and their exact position, as soon as possible.

A commission should be constituted for the special purpose of inquiring what lands may properly be forfeited. The members of this commission should not be removable with the Ministry, and should be so chosen as to guarantee a fair and careful consideration of the matters brought before them.

It should be clearly understood that your own concurrence in any forfeiture is not to be considered as a mere ministerial act, but that it will be withheld unless you are personally satisfied that the confiscation is just and moderate.

And here I must observe, that if in the settlement of the forfeited districts all the land which is capable of remunerative cultivation should be assigned to Colonists, and the original owner, the Maori, be driven back to the forest and morass, the sense of injustice, combined with the pressure of want, would convert the native population into a desperate banditti, taking refuge in the solitudes of the interior from the pursuit of the police or military, and descending, when opportunity might occur, into the cultivated plain to destroy the peaceful fruits of industry. I rely on your wisdom and justice to avert a danger so serious in its bearing on the interests of the European not less than of the Native race.

Turning to that part of the law which authorises the dispossession of persons who have not been involved in the recent rebellion, I have to observe, that although Her Majesty's Government admit with regret that the tribal nature of the native tenure will sometimes render it unavoidable that innocent persons should be deprived of their lands, they consider that land should not be appropriated against the will of the owners merely because it is in the same district with rebel property, and may conveniently be used for purposes of settlement, but only in cases where loyal or neutral Natives are unfortunate enough to be joint owners with persons concerned in the rebellion, or because it is absolutely required for some purpose of defence or communication, or on some similar ground of necessity. But every such case of supposed necessity should be examined with the greatest care, and admitted with the greatest caution and reserve.

The compensation to be given to persons thus dispossessed is properly by the Act itself made the subject of inquiry in an open court; but the 5th section of the Act ought to be so modified that the powers of the Court may not be limited in any manner which would prevent its doing complete justice to the claims of every innocent person, or extending reasonable consideration to those whose guilt was of a less heinous character, a class which, in the varying temper of the New Zealand tribes, is probably large. I trust that, in accepting any cession or authorizing confirmation of any forfeiture of land, you will retain in your own hands ample power of doing substantial justice to every class of claimant for restitution or compensation.

Finally, when you have taken all the powers, and received all the cessions which you think necessary for the satisfactory pacification of the Islands, you will do well to accompany these measures of justice and severity by the announcement of a general amnesty, from which those only should be excepted who have been concerned in the murders of unoffending settlers, or other like offences of a heinous and strictly exceptional character. In order to mark as much as possible the discriminating character of British justice, the exception from the amnesty should not be couched in general terms, but should recite one by one the specific outrages which remain unpardoned.

Subject to these cautions and conditions, and in full confidence that you will act on the general principles which I have before laid down (and in which I anticipate your cordial concurrence) Her Majesty's Government are prepared to leave in your hands the power with which you have been entrusted by the Legislature of the Colony. In the Despatch in which you have transmitted to me these measures, you have expressed, in terms with which I entirely agree, your own appreciation of a generous policy, and of its beneficial consequences when adopted on former occasions in New Zealand. You give at the same time your reasons, the justice of which I am not prepared to dispute, for determining that the circumstances of the present case justly and necessarily call for measures of severity, such as have not been adopted at the close of former wars; but you accompany these reasons with the expression of your opinion that this severity ought not to be carried too far. I recognise also with satisfaction the statement of your Ministers on the occasion of their first submitting to you their views upon forfeiture and military settlement. They said they felt assured, that as this would be the first, so it would also be the last, occasion on which any aboriginal inhabitant of New Zealand would be deprived of land against his will.

I trust that on their part there will be no unwillingness to co-operate with you in confining the measures of severity, to which it may be necessary to have recourse, within those just and moderate limits to which I have referred.

I now turn to the Act which authorises a loan of 3,000,000 £., for which it is desired to obtain the guarantee of the Imperial Parliament. I observe that of the total sum which it is proposed to raise, 1,000,000 £. is allotted to the expenses of the war, 200,000 £. to the repayment of a debt to the Imperial Government, which has probably doubled since that time, 200,000 £. to the compensation of the Taranaki settlers, and the rest, in the main, to the settlement of the country. The bulk of it appears to be appropriated to the plan of military settlement, to which I have already adverted.

Her Majesty's Government recognise as exceptional the expenses occasioned to the Colony by the native war; and they are not unwilling to entertain the question of extending the guarantee of 500,000 £., which they have already conditionally promised to submit to Parliament, to such a further sum as will cover the increased debt of the Colony to the Imperial Exchequer, and so much of these military expenses, including 200,000 £. for compensation to the Taranaki settlers, as may properly be defrayed, not out of the current revenue of the Colony, but by loan.

But the same reasons do not in their judgment apply to the settlement of the country, which, whether successful or not as a measure of defence, is mainly a matter of colonial interest, inasmuch as its success is calculated to add to the wealth and population of the Colony. To a purpose of this kind the Imperial credit is not generally applicable; and Her Majesty's Government do not consider that the land which it is proposed to acquire under the Settlement Act is of any such definite value as materially to add to the security on which the guarantee of Parliament could be given. The omission of this sum will reduce the whole loan within much narrower limits; and I will consider and write you on a future occasion how far the revenue of New Zealand, pledged by the terms of the Act, and the considerations to which I have referred, may justify Her Majesty's Government in increasing the proposal they have already promised to make to Parliament. Under any circumstances, the sum will doubtless appear to Parliament larger than it has been usual to guarantee to a Colony of the size and resources of New Zealand, and could only be proposed by the Government with any prospect of success in connexion with the peculiar circumstances of the present loan, and in the well-founded hope of a final pacification and settlement.

I must now call your attention to the importance of reducing as rapidly as possible, after the conclusion of the troubles, the large force now maintained in New Zealand, and I confidently expect to receive from you such information as may enable me to communicate to the Secretary of State for War the possibility of a great reduction in the number of men, and consequently in the estimate for the year 1865-6.

I must also remind you, that for the great expense which this country has already incurred in putting down the present insurrection, the Home Government only calls upon the Colony for that almost nominal contribution which it has already engaged to pay. The arrangement at present in force respecting the amount of the military contribution, and the proportion of it which is to be returned to the Colony, to be employed for the benefit of the Natives, will terminate with the close of the present year. In consenting to guarantee a large loan for the Colony, the Imperial Government will feel it necessary to require that, if at the close of that period the Colony should continue to require assistance of the Mother Country, a much more adequate contribution shall be made to the Imperial Exchequer. I am, however, unable at this moment to convey to you any definite decision on this part of the subject. It is under the consideration of the Government, and I shall take an early opportunity of addressing you again upon it.

I conclude by expressing an earnest hope that the operation in which General Cameron has been engaged may already have terminated the war, and shall rejoice when I am able to congratulate you on having succeeded, by the wisdom of your own measures, and those of your Government, by the skill of that distinguished Commander, and by the valour of the Queen's Troops and Seamen, and of the Colonial Forces engaged in the conflict, in restoring the blessings of order and good government to the country entrusted to your care.

Governor Sir Geo. Grey, K. C. B.

I have, &c.

EDWARD CARDWELL.

