No. 4.

Sir WILLIAM MARTIN to the Hon. D. McLEAN.

SIR,— Auckland, 15th September, 1871.

When I had the honor of forwarding to you the draft Bill for consolidating and amending the laws relating to Native Reserves, I appended thereto a few notes, which were intended to serve as an explanation of the principle and the objects of the proposed enactment. The leading considerations in favour of the measure were in that way laid before the Government. Part of the subject was left untouched—namely, the objections which lie against the proposals contained in the latter part of Mr. Fenton's draft Bill. These objections are now stated in the enclosed remarks, which I respectfully submit to the consideration of the Government.

I have, &c.,

The Hon. the Native Minister, Wellington. WM. MARTIN.

Enclosure in No. 4.

Native Reserves.

WITH Mr. Fenton's draft Bill for consolidating the laws relating to the Native Land Court, is incorporated a series of provisions for consolidating the laws relating to the Native Reserves. Hitherto the enactments relating to these subjects have been kept distinct, and it does not appear that any advantage will arise from uniting them, but rather the contrary. The enactments referred to are open to weighty objection.

1. Whilst this draft Bill proposes to repeal wholly all former enactments relating to Native reserves, it makes no provision at all for the reserves in the Southern Island. This defect is a consequence of the proposal to tie the administration of the Native reserves to the Native Land Court, which has no officers in that Island.

2. There is no distinction made in section 143 between two classes of lands which are clearly distinct in their nature, and in respect of the rights which attach to them; namely, lands excepted out of sales, and remaining still in the hands of the Native owners subject to no trust, and lands which have passed out of the hands of the Native owners and have become subject to a public trust. This is not a mere error of classification having no practical consequence; for it is distinctly proposed (in section 148) to give to the Native Reserves Trustee power in respect of any estates which shall have been by operation of the proposed Act divested out of the Commissioners of Native Reserves or delegates of the Governor and vested in the Native Reserves Trustee, to bring, at his discretion, any such estate into the Native Land Court, to be dealt with under the provisions of the proposed Act—that is to say, to be dealt with as if such estates were still Native land; and the proposed jurisdiction is to be subject to this limitation only, that before any final order of the Court is made, the consent of the persons interested shall be proved to the satisfaction of the Court. This amounts to a power given to the Native Reserves Trustee, through the action of the Court, to abolish the trust which it is his business to carry out, and to distribute the trust property amongst the persons interested for the time being, as so much private property of their own.

Also in section 157, it is proposed to give the Native Land Court a power of awarding the Trust property, or any proceeds of it, to any claimant in a summary way; thus conferring on the Native Land Court a summary jurisdiction in respect of trust property which the Supreme Court does not possess.

3. The need of setting apart sufficient lands for occupation and cultivation by the Natives is recognized in section 150 of the draft. It is there proposed to attain that object by a series of operations recurring on every occasion of a new piece of Native land being brought before the Court for inquiry into the title. The Native Reserves Trustee, or some agent of his, is to attend at every such sitting of the Court. This can hardly fail to be very inconvenient to the Native Reserves Trustee; whilst the substitution of an agent for the Trustee would sacrifice one of the essentials of a sound system, namely, the direct and personal responsibility of a public officer.

Moreover, as an application to the Court for inquiry into title is, in the greater number of cases, not made until some arrangement has been entered into for sale of the land to which the application relates, the intervention of the Native Reserves Trustee would generally come at the most inconvenient time.

4. There is no proper definition of the powers of the Native Reserves Trustee. The clauses in section 153, which are copied from "The Maori Real Estate Management Act, 1867," are for the most part applicable to trusts of a very different description—namely, to private property held on trust for the benefit of individuals under some temporary disability.

5. There is no definition of the objects or purposes to which the income of the reserves is to be applied.

6. By section 159 it is proposed to empower the Court, on the application of the Native Reserves Trustee, to direct in what manner the money to arise by sale or mortgage of any land comprised in any Native reserve shall be invested or applied. Now, seeing that the funds so to be dealt with are public funds, and that there is nothing in the proposed Act to prescribe the objects for which the money is to be applied, this is a vast discretion, and far too large to be conceded to any Court or Judge. It is the very function of a Court to enforce a rule on others, not to dispense with all rule for itself. The first thing needed is that the objects to which the moneys are to be applied should be defined by law; and then, that the actual distribution of the funds should be made by an officer directly accountable to the Government.

7. By section 159 it is proposed to give to the Native Land Court a power of undoing all that has been hitherto done, even by the Court itself, and all that may hereafter be done under the proposed