

No. 8.

MEMORANDUM by the PREMIER to His Excellency the GOVERNOR.

MINISTERS respectfully lay before His Excellency the attached Memoranda by Dr. Pollen on sundry letters from Sir George Grey, which Memoranda have been approved of and adopted in Cabinet.

2. Ministers desire to represent to His Excellency that, in their opinion, it is not expedient to treat Sir George Grey differently from any other Superintendent. If another Superintendent addressed such letters to the Governor, he would probably be told that his criticisms on the action of Governor, Executive, and Assembly were in excess of what his position warranted; and he would be asked to address his communications, in usual course, to the Colonial Secretary. Since any consideration extended to Sir George Grey only provokes longer and more confused letters, Ministers think it would be better at once to place him on the footing of other Superintendents.

3. As a further reply will have to be sent to Sir George Grey's letter of 27th May, Ministers suggest that a communication in the following terms be addressed to him by the Colonial Secretary:—

"Your Honor's letter of May 27th to the Governor has been submitted by His Excellency to Ministers; and I have the honor, with Lord Normanby's approval, to return you the following reply to it.

"I am to remind your Honor that the conduct of Her Majesty's Executive in the colony is amenable to the deliberation and action of the Assembly, and that it is inexpedient to discuss their proceedings with you.

"The subject of the sale of the Piako Swamp has been under the consideration of the Assembly, and your Honor amply exercised your right, as a Member of the House of Representatives, of commenting upon it. The Governor thinks it altogether unnecessary to discuss the question with your Honor.

"Regarding your request to take legal proceedings, the nature of your Honor's desire is not clear. If you wish to sue the Crown for injury sustained by any persons in the Province of Auckland, permission will be given, if you show the Government clearly what you desire, and that you do not propose to wantonly waste the revenues of the province, or subject it to liabilities for expenditure of a doubtful character; or, if your Honor is prepared to hold the province harmless of cost, permission to sue the Crown will be given you without such conditions.

"If your desire is to assume the power, and sue on behalf of the Crown, permission so to do cannot be accorded to your Honor. You cannot even advise the Crown, much less act for it, unless you constitutionally attain to the position of one of Her Majesty's Executive in the colony."

JULIUS VOGEL.

Wellington, 9th June, 1876.

Enclosures in No. 8.

MEMORANDUM on the Letter of the SUPERINTENDENT of AUCKLAND to His Excellency the GOVERNOR of date 18th May, 1876.

I UNDERSTAND that this letter has been referred to me for explanation, or for such information regarding the subject of it as I may be able to afford. The necessity for any remark upon it arises, in my opinion, only out of the fact that His Excellency may be invited, or may think it necessary, to transmit the letter itself to the Secretary of State for the Colonies. Here all the circumstances of the case are well known, as the subject was discussed in the General Assembly last Session, and was made matter of inquiry before Select Committees of the Houses. The whole is, as the letter itself shows, but a *réchauffé* of a stale subject, with an ingenious flavouring of personalities for party purposes.

In order to make the subject intelligible to those who are not conversant with our Native land laws, it is necessary to premise that there have been two systems of dealing with Native lands operative for certain periods in this colony. During the first of these periods, from the Treaty of Waitangi down to the year 1862, the Crown's right of pre-emption was rigidly maintained excepting for the time when Governor Fitzroy's Proclamations were regarded as having the force of law. These Proclamations having been revoked, there was passed in 1846 an Act of the Legislative Council intitled "An Ordinance to provide for the Prevention, by Summary Proceeding, of Unauthorized Purchases and Leases of Land." The 1st clause of this Act was as follows:—

"1. If any person shall, after the passing of this Ordinance, purchase, or by writing or otherwise agree to purchase, any estate or interest in land from any person of the Native race, or shall by writing or otherwise agree with any such person for the purchase of the right of cutting timber or other trees, or of the right of mining, or of the right of pasturage, or for the use or occupation of land; and also if any person, who shall not hold a license from the Government for that purpose, shall, after the passing of this Ordinance, be found using or occupying any land not comprised within a grant from the Crown, either by depasturing any sheep or cattle thereon, or by residing thereon, or by erecting any house or building thereon, or by clearing enclosing or cultivating any part thereof, or who shall be found without such license aforesaid to have cut timber or other trees thereon, or to have gotten any mineral therefrom, every such person shall, upon conviction of any of the offences hereinbefore mentioned, forfeit and pay any sum not less than five pounds nor more than one hundred pounds, to be recovered in a summary way: Provided that no person shall be convicted of any of the offences aforesaid except on the information or complaint of the Surveyor-General, or of some other officer duly authorized in that behalf by His Excellency the Governor."

In the northern province, for reasons which it is not necessary to set out, this law was generally observed; but in the southern part of the North Island it was deliberately and openly violated, and