

Sub-Enclosure 3 to Enclosure 2 in No. 1.

Native Secretary's Office,
28th June, 1858.

REPORT BY ASSISTANT NATIVE SECRETARY ON NATIVE TERRITORIAL RIGHTS BILL.

The objects contemplated by this Bill, as set forth in the Preamble, are,

1. To provide for ascertaining and regulating the territorial right of the Native Tribes in New Zealand.

2. To empower the Governor to make free grants to individual Natives of lands over which the Native Title shall have been ceded for the purpose, such Grants to be in certain cases inalienable and in other cases alienable to Europeans.

I.—*Certificates of Native Title.*

To effect the first object it is proposed to issue certificates of title to claimants desirous of the same, upon satisfactory proof of ownership.

Clauses 1 to 4.

With respect to the first four clauses, the only point upon which I would take exception is the limitation of the power of the Governor to issue the proposed certificates of title by making the consent of his responsible advisers necessary, the practical effect of which may be to interfere with the successful working of the measure by subjecting its administration to the changing Policy of a Representative Government in which the Natives themselves have no share. To secure the success of any measure affecting the Natives it is necessary that it should be carried out with uniformity, impartiality, and consistency; any other mode of proceeding must naturally destroy the confidence in the Government which is essential to the successful working of any system of Native Policy.

Minute by Ministers.—
For Ministers' remarks on this opinion see paragraph 38 et seq. of their Memorandum of 29th September, 1858.

C. W. R.

Clauses 5 and 6.

I believe the Natives would in many cases, gladly avail themselves of the assistance of the Government to define and permanently fix tribal boundaries, and even to a certain extent, to individualize their titles, but they would view with suspicion any attempt to impose restrictions or to interfere in any way with the Native tenure, unless prepared for an absolute cession to the Crown in the usual way.

Minute by Ministers.—

The fifth section empowers the Government to give effect to the wishes of the Natives themselves respecting the succession to their property, so that if they are desirous of giving greater certainty to their proprietary rights, they may have the opportunity of doing so. Ministers believe that such a facility would often gladly be taken advantage of, could any Government be found so factious as to attempt to impose restrictions; no doubt such an attempt would be viewed with suspicion.

C. W. R.

For this reason, I do not think it desirable that the proposed certificates should prescribe the mode of devolution of Native Title, or in any way attempt interference with the tenure. I am disposed to think that a simple recognition by the Government of tribal and other boundaries as acknowledged by the parties interested, and of the exclusive right of the persons proving their title to land comprised within certain boundaries, would be found to meet the requirements of the case.

For this purpose, such boundaries, with the names of the duly ascertained owners, might be registered by the Government after notice given, and the proposed certificates might be merely certified copies of such records with plans annexed, the names of children or of persons who by marriage might acquire an interest in the registered land, might then be added from time to time upon substantiation of claim, and by consent of the holders of the certificate or certified copy of the Government register.

Clauses 7 and 8.

Great caution is necessary in dealing with questions of disputed Native title, whether arising in respect of lands comprised within a certificate, or lands not so comprised. The Government should interpose as an arbitrator only when requested to do so by both parties, as has been the practice hitherto. With respect to certificated lands, the Government may confine itself to ignoring the claims of all other than those whose names shall appear in the register. To allow the Native Circuit Courts any jurisdiction in questions of this nature, beyond that which may be exercised under the Resident Magistrates' Ordinance would, in my opinion, be found most inconvenient, and might result in serious consequences.

Minute by Ministers.—

Ministers regret to be obliged to agree in thinking that there is no immediate prospect of a change in what has been the practice hitherto—namely, to leave such disputes to be settled by battle and massacre.

The viii. sec. is merely permissive, and therefore harmless enough. The Bill gives no jurisdiction to the Native Circuit Court.

C. W. R.

II.—*Crown Grants to Natives.*

Clauses 9 and 10.

With respect to the issue of Crown Grants to Natives, the subject is beset with so many difficulties that I feel great hesitation in expressing an opinion upon it. On the one side the refusal to confer a legal title where an equitable one exists may be regarded as the withholding of a just right. Serious objections also arise to imposing upon Native holders of Crown Grants any restrictions which are not imposed upon Europeans, nor do I think the Natives would in many cases be willing to accept Grants containing such restrictions. On the other hand, there is reason to fear that if unrestricted facilities are afforded to the Natives to obtain individual Crown Grants for their property, advantage might be taken of the law by Europeans who would prompt and assist the Natives to apply for and obtain such Grants for the purpose of acquiring their lands by individual purchase, instead of purchasing