E—No. 1.

FURTHER PAPERS

RELATIVE TO

NATIVE AFFAIRS,

(MEMORANDUM OF 29TH SEPTEMBER, 1858.)

(IN CONTINUATION OF PAPERS PRESENTED ON THE 28TH JULY, 1858.)

Presented to both Houses of the General Assembly by command of His Excellency.

SCHEDULE.

CORRESPONDENCE AND MEMORANDA IN NEW ZEALAND.

DESPATCH FROM THE SECRETARY OF STATE.

FURTHER PAPERS RELATIVE TO NATIVE AFFAIRS.

No. 1.

COPY OF A DESPATCH FROM GOVERNOR GORE BROWNE, C.B., TO THE RIGHT HON. SIR E. B. LYTTON, BART.

Government House,
Auckland, New Zealand,
14th October, 1858.

SIR,—

No. 102. MISCELLANEOUS.

I have the honor to forward copy of a Memorandum on Native Affairs generally, and on some Acts of the Assembly relating to them, signed by Mr. Richmond on behalf of my responsible advisers. The Acts here referred to shall be forwarded separately, and will form the subject of other despatches.

C. W. Richmond, 29th September.

2. The memorandum is, as might be expected from a gentleman of Mr. Richmond's known abilities and legal knowledge, a very able production, setting forth the views of my responsible advisers, grouping them skilfully, and placing them in the most favourable point of view.

3. Having, in the course of my despatches to yourself and your predecessors, and in various minutes addressed to my advisers, indicated the greater part of the measures referred to (though the merit of shaping them into law is entirely due to my advisers), I cordially agree in much that is stated in the memorandum. I cannot, however, assent to the inference implied, though not directly asserted in the memorandum, that the true end of British policy, and the true principles of administration in reference to the Natives were neither understood or effectively carried out until the advent of my present advisers to power. Such an inference would be very unjust to my predecessors, and not less so to the conscientious and experienced gentlemen employed for so many years in the Native Department; but who are not viewed in a favourable light from being what are termed irresponsible officials.

4. The progress of civilization among the natives, though very slow, has been progressive, and it would have been absurd in Governor Hobson to propose what it might be culpable in me to neglect; and even the Acts of Legislation now inaugurated will probably lie dormant, or only come into very partial operation, for some years.

5. In the course of his arguments in favor of the "Native Territorial Rights Bill," the writer uses the language here quoted (sec. 32):—"But what really lies at the root of this objection is a doctrine so mischievous and unfounded that it requires special notice. It is asserted that the native is really entitled to an absolute grant in fee simple of whatever territories his tribe may think fit to make over to him in severalty, however extensive, and that to refuse such a grant—at least to impose any condition which does not operate for the sole and exclusive benefit of the natives—is unfair."

If by these expressions it is intended to invalidate the rights of the aboriginal natives to their unoccupied lands, the subject is one which involves the peace of the colony: the rights of the natives secured to them by the Treaty of Waitangi, and the fulfilment of engagements made by successive Governors, and confirmed by successive Secretaries of State.

6. In refutation of these arguments, I might content myself with quoting the evidence of Mr. Merivale given before a Committee of the House of Commons on 7th July, 1857, in which he states in few words as follows:—"The native title to land in New Zealand is very peculiar: in most colonies of the Crown, the natives have been recognised as possessing certain possessory rights over the soil, and they have been paid comparatively trifling sums for these rights. In New Zealand, by the interpretation put upon the Treaty of Waitangi by the Home Government, it was considered that the New Zealand tribes had a right of proprietorship over their lands—not simply a general right of dominion, but a right of proprietorship like landlords of estates, for which the Crown was bound to pay them." In addition to the conclusive statement above quoted, I have collected and formed into an appendix some of the decisions on this subject, and indicate them below.* For a collection of these authorities, I am much indebted to Mr. Martin, late Chief Justice of this Colony, whose name is never mentioned without respect either by native or European, and whose experience and intimate acquaintance with the Maories cause him to be recognised as an undisputed authority in everything relating to them.

7. In commenting upon this memorandum, the scope of which is so general, some remarks on the relations of Her Majesty's Government and that of the settlers towards the natives will hardly be deemed irrelevant. It was a hackneyed expression of the party who strenuously agitated for, and succeeded in obtaining parliamentary and responsible government for this Colony, that government and

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* 1. Treaty of Waitangi.
2. Report of Select Committee of House of Commons, 1837.
3. Sir R. Peel, House of Commons' debate on New Zealand affairs, 1845.
4. Lord Normanby to Governor Hobson, Parliamentary Papers, 1846, p. 39.
5. Royal Instructions to Governor Hobson.
6. Lord John Russell to " " 1841.
7. Mr. Under Secretary Hope to New Zealand Company, 1843.
8. " " " " 1843.
9. Sir R. Peel in House of Commons on the above, 1845.
10. Lord Stanley to Lieutenant-Governor Grey, 13th June, 1845.
11. Governor Grey to Secretary of State, 24th November, 1845.
12. " " " 10th December, 1845.
13. Mr. Gladstone to Governor Grey, 26th May, 1846.
14. Governor Grey's Address to Legislative Council, 12th December, 1847.
15. Instructions by Governor Hobson to Missionaries and others when requesting them to obtain signatures to the Treaty of Waitangi.
16. Major Bunbury's explanation of Treaty to Natives.
17. Lord J. Russell to Governor Hobson on the above.
18. Circular by Governor Hobson to Native Chiefs on the above.
19. Lord J. Russell on the above.
20. Prospectus of New Zealand Association, 1837.
21. Decision of Supreme Court of New Zealand as to rights of Natives.
22. Extracts from Kent's Commentaries, iii, Lecture 51.
23. Sir H. Douglas, House of Commons, debate, New Zealand Affairs, June, 1845.
24. Remarks by Chief Justice Martin.

taxation without representation are tyranny. It is needless, therefore, to say that in asking for local self-government, the colonist did not demand the right of governing any but those who would possess through their representatives a right to share in it. Nothing more was ever conceded; but, on the contrary, on granting responsible government in Her Majesty's name, I excepted the right of governing the natives, and my so doing was approved by Her Majesty's Government, and acceded to by the Assembly.

8. It may be asked, therefore, on what grounds one portion of Her Majesty's subjects could demand the right of governing another portion, not allied to them by blood or interest, and who are unrepresented in their Councils. It could not be because the natives desire it, for it is well known that the Maories refuse to acknowledge any authority but such as emanates directly from Her Majesty.

9. The settlers desire that a large military and naval force should be maintained at the expense of the Imperial Government for the purpose of restraining and keeping the Maories in subjection; but Her Majesty could hardly be expected to retain them in the Colony for the sole purpose of coercing a part of her subjects who yield her a willing obedience, and forcing on them a government which (with or without reason) they fear and distrust.

10. If the right to govern ceases to depend on that of representation, the Maories might demand that the Government should be transferred to them as being (especially in the northern island) greatly in the numerical majority. To say that they are savages and have no rights, but should be made hewers of wood and drawers of water, admits of an easy extension in the same direction—viz., that of reducing them to slavery, which might be done with equal reason on the same plea. The government of aboriginals is not conceded to the representatives of the civilized races either in British America or in other English Colonies. If it were so, the English residents in Ceylon, or even in India, might reasonably claim to govern the coloured population of those countries.

11. In section 46 of the memorandum, the writer deprecates a narrow jealousy of interference by the colonists; but what jealousy could equal that with which the English settlers of one Province would view the management of their political affairs by those of another? Yet it will scarcely be alleged that the interests of the Maories and the Europeans are more identified than those of the English settlers in two different Provinces.

12. The expediency of subjecting the management of Native Affairs to the control of the Responsible Ministers, (which is inferred throughout the memorandum) is based upon the assumption that the interests of the Natives may be safely confided to the Colonists: but this is an assumption not borne out by experience. I might refer to a Petition from New Plymouth forwarded in my Despatch No. 45 of 9th June last, and to other proofs of conflicting interests. Again, with reference to the political status of the Natives, it is provided by the Constitution Act that every man (without distinction of race) occupying a tenement of a certain annual value shall be entitled to a vote in the representation of the Colony. In the course of last Session a Bill, prepared by my advisers, was passed by the House of Representatives containing an enactment that no man should in future be entitled to vote except in right of property held by title derived from the Crown. Had this Bill become law, the effect of it would have been almost the entire disfranchisement of the Native race. In his speech upon this measure in the Legislative Council, Mr. Swainson, the late Attorney-General, said:—"he "thought it would redound but little to their credit if, after achieving a large measure of representative "self-government, the very first act of the Colonists, in the exercise of their newly acquired constituent "powers, was to deprive their fellow subjects of the political privileges which had been conferred upon "them by the British Parliament * * If it was intended to deprive the Natives of any "political privileges which they now possess, or if it were believed that such a provision would have the "effect of disfranchising any portion of the Native race—then he felt assured that the measure could "not have been brought before the Legislature with the knowledge and approval of the Representative "of the Crown. He believed indeed that no true friend could advise the Governor of the Colony to "assent to it; and he did not hesitate to affirm that it would be better for the Governor of New "Zealand to cut off his right hand than give to such a measure the sanction of his name." Owing to the opposition it encountered in the Legislative Council the clauses containing this enactment were rejected, and the natives still enjoy the electoral privileges conferred on them by the Imperial Parliament. Instances might be multiplied, but the task is invidious; and, after all, the jealousy is one which all classes entertain of those whose interest is not identical with their own.

13. Finally, in reference to the management of Native affairs, I beg to refer to my despatch, No. 94, of 21st September, 1856, which was accompanied by letters from persons of all classes acquainted with the subject. Considering the differences of rank, religion, and occupation, it is very remarkable that 36 out of 38 of those letters expressed in various forms but one opinion, viz: that it would be neither prudent, just, nor expedient, to remove the natives from the immediate and direct government of the Crown, and subject them to a government consisting of a constantly changing body of persons elected by the Colonists. Among these letters I might call particular attention to one from the Bishop of New Zealand, who discusses the question at length, with his usual ability.

14. I should also observe that though the Governor is subject to change as well as the Responsible Ministers, the change in his case is one of person, and not necessarily one of opinion: his responsibility and his instructions remain unaltered;—but a change of Ministry implies a change of opinion, and (judging by other Colonies) such changes are far from being unfrequent.

15. The difficulties and intricacies which have arisen from the juxtaposition and relative interests of the two races, have led to the admission of those who possess the confidence of the Assembly to a participation in the management of Native Affairs as a matter of expediency, the extent of which is briefly as follows:—I admit the right of the Assembly to legislate in the manner it thinks proper, reserving to myself the right of veto as provided for by the Constitution Act. I retain to myself the executive and administrative part of Native Affairs, admitting my Responsible Advisers to full information, and granting them the right to advise me; but reserving to myself the right to act upon my own judgment when I differ from them. This arrangement was announced to the Assembly when Responsible Government was granted: has been approved by Her Majesty's Government, and accepted by the Assembly.

I see no reason to think that any alteration in this arrangement would be either advisable or advantageous; and, until I receive further instructions from you, it is not my intention to admit of any departure from it—nor do I learn that such is desired.

16. Arguments in opposition to his own views, are put forward and refuted by Mr. Richmond, on which it is unnecessary to remark, as they are not those I have used or rely on, I therefore forbear to add to the length of this despatch by commenting in greater detail. In justice, however, to that zealous and experienced gentleman, the Native Secretary, I attach some remarks of his.

D. McLean,
Native Secretary.
30th October, 1858.

I have, &c.,

(Signed) T. GORE BROWNE.

The Right Hon. Sir E. Bulwer Lytton, Bart.,
&c., &c., &c.

Enclosure 1 in No. 1.

ARCHDEACON KISSLING TO HIS EXCELLENCY THE GOVERNOR.

St. Stephen's, Auckland,
July 23, 1858.

SIR,—

In compliance with your request, I beg to make the following notes on the subject named to me yesterday by His Lordship the Bishop of New Zealand.

1. In the Native Bills—the subject of enquiry—there seems to be a proviso which in my opinion very much impairs the proposed system of Native Policy, viz., that the powers conferred by those Bills upon the Governor shall be only exercised with the consent and by the advice of the Executive Council.

2. This limitation of the power vested in Her Majesty's Representative will not be comprehended by the Native Race. Their notions do not go beyond primitive government. The Queen is regarded by them in the relation of a mother, and the Governor as Her Representative and their friend. No special respect is paid by them to a changeable Ministry elected by the European population. Hence whatever may be the results of the proposed system of Native Policy, to the Governor alone will be ascribed the merits or demerits of those measures. Her Majesty's Representative in this Colony is thus obviously placed in an anomalous position by the proviso above referred to.

3. The said proviso may involve Her Majesty's Representative in considerable difficulties which ought to be carefully avoided. The opinion of the Executive Council, which from its changeable nature can have but little knowledge of Native affairs, will for this very reason no doubt often differ from the opinion given by the Native Secretary, who ought to be (and the present officer is) a man of experience in matters affecting the Natives of New Zealand; and the final decision, on whichever side that decision may be, must put His Excellency on very delicate and unpleasant ground with either of his advisers; perhaps with all of them. It appears to me an unnatural machinery of Native Government, and not likely to work long with beneficial results.

4. Moreover the objectionable proviso may greatly endanger the interests of the Native race. Supposing that the Executive Council considers a question of such importance as to persist in its opinion, while on the other hand Her Majesty's Representative and his Native Department take precisely the opposite view of the question, or the converse may be the case; the Governor may see it necessary to adopt a measure and the Executive Council strenuously oppose it, what must then be the consequences? Either "a paralysis of power" which may do a great deal of harm, or the Responsible Ministry may declare that they will resign their position. What will then be the issue? His Excellency will have to make a choice between two evils, he will either have to yield to coercion or he will have to summon the Colonial Parliament to form a new Ministry; the latter in such a case would probably be considered the greater evil, and the cause of the Natives would have to sustain the injury.

5. It has been argued in the Legislative Council "that Governors are changed from time to time as well as the Ministers," but this analogy is evidently unfair—for though there may be a change of Governors, there will be no change in their responsibility to the Crown. Her Majesty's power remains the same with respect to the Native affairs, but whenever the Ministers are changed it involves a change also of those to whom they are responsible. Moreover Her Majesty will regard her subjects of both races with impartiality, while the Representatives of *one* race only may be under the influence of local and partial interests to a considerable extent—indeed it can be scarcely otherwise expected from the common and selfish nature of man.

6. In the House of Representatives the encroachment, if I may use the expression, upon the Governor's powers has been supported and defended by what has been termed "a most felicitous comparison:" it has been stated that the proposed system of Native Policy was "like a mast with two stays, if one of them gave, the other may hold till the damage was repaired." On the other side it may be safely maintained, that if the Native Policy proposed be based on truth and justice, it will need no two stays, it will not be like "a mast," but like a noble edifice standing on its own foundation under the protection of God's providence, and by the guardianship of the Crown.

7. Taking all these points into consideration separately and connectedly, I think it would be most unfair if His Excellency were pressed to give his consent without qualification to those Bills affecting the Native race.

I have, &c.,

(Signed) G. A. KISSLING.

His Excellency the Governor,
of New Zealand.

Enclosure 2 in No. 1.

COPY OF A MEMORANDUM BY MR. RICHMOND.

Auckland, 29th September, 1858.

ANALYSIS:

NATIVE AFFAIRS.

During the Session of the General Assembly which has just closed, the following measures, on subjects specially affecting the Aboriginal Natives of New Zealand, have passed both Houses,—

1. "The Native District Regulation Act, 1858,"
2. "The Native Circuit Courts Act, 1858,"
3. "The Bay of Islands Settlement Bill, 1858,"
4. "The Native Territorial Rights Bill, 1858,"
5. "The Native Schools Act, 1858."

Of these the first, second, and fifth have been assented to by His Excellency the Governor. The other two Bills are conceived to affect the security for the New Zealand Loan, guaranteed by the Imperial Parliament, and accordingly in pursuance of the "Act to guarantee a Loan for the Service of New Zealand, 20 and 21 Vic. Cap. 51," clauses have been inserted suspending the operation of those Bills until Her Majesty's pleasure shall have been taken thereon.

2. These measures are of considerable interest, both intrinsically, and as constituting the first attempt of the Colonists of New Zealand, in virtue of the powers of Representative Government now conceded to them, to grapple with the difficulties of the Native question; and on this account, and also because on the subject of the Native Territorial Rights Bill there exists some difference of opinion —due it is believed, in great part, to misapprehension of the scope and purpose of that measure—the Responsible Ministry of New Zealand desire to state, somewhat at large, what are the opinions on the subject of the government of the Natives which the measures embody, and are intended to carry into effect.

I.—*General Principles of Native Policy.*

3. The Policy of the British Government in relation to the Aborigines of these Islands, might, on the first settlement of the country, have assumed either of two shapes. It might have addressed itself to the maintenance of the Natives as a separate race under distinct institutions and a Government wholly or in great measure independent of the ordinary Colonial Government; or, on the other hand, it might have been directed to promote the eventual absorption of the Maories into the European population.

4. Under the former Policy it might naturally have been sought rather to maintain than to obliterate such Native customs as were not repugnant to humanity; and it would have been essential to set up, and rigidly to guard, a territorial division between the Races. The neglect of this latter precaution has forever rendered such a policy impossible in New Zealand. All the principal Maritime Ports of the Colony are in the hands of the Settlers, who, year by year, extending themselves towards the interior from twenty different centres, come in contact with the Natives at fresh points; so that there no longer remains any other alternative than the extinction of the Maori Race, or its union, under one Government, with the European Settlers. However difficult, therefore, the latter enterprise, the mode in which the country has been colonized leaves no choice but to attempt it.

5. There are some who, considering what a chasm intervenes between Civilization and Barbarism, and how impassable the boundaries of Race have generally proved, are of opinion that the fusion of the two peoples is a moral and natural impossibility. These persons refer to the Statistics of Population, which, according to the most accurate Estimates hitherto made, show a decrease in the numbers of the Natives at the rate of about twenty per cent. in every period of fourteen years. They point to the relative paucity of Maori females, and to the abnormal mortality of the Race, especially amongst the children, as facts which make certain its extinction within a short period. Such considerations induce to the abandonment of the work of civilization as hopeless, and favour the adoption of a merely temporising policy. The Race, it is said, is irredeemably savage. It is also moribund. All that it is wise, or safe, to attempt, is to pacify and amuse them until they die out,—until the inscrutable physical law at work amongst them shall relieve the country from the Incubus of a barba-

rous population ; or at least, shall render it practicable to reduce them to the condition, for which nature has intended them, of hewers of wood and drawers of water. An exclusive reliance on the personal influence with the Natives of particular individuals, and on the effect of gifts and flattery upon the more powerful or more turbulent Chiefs would be natural features of such a policy ; which by its demoralizing influence would realize the expectations of its advocates, and render the annihilation of the Maori Race both certain and speedy.

6. To the present Advisers of the Crown in New Zealand such a Policy appears false, cowardly, and immoral. In common with the whole intelligence of the community whose opinions they represent, they believe it to be at once the interest and the duty of the Colonists to preserve and civilize the Native people. Though not blind to the indications of physical decay which the Race exhibits, nor to the great difficulties in the way of a Policy of Fusion, they do not permit themselves to despair. And they believe that the true course—a course which, however small the prospect of success, the British Government would still in honor and conscience be bound to pursue—is to take all possible measures for bringing the Aborigines as speedily as may be under British Institutions.

7. In order to the correct apprehension of the position of the Native question, it ought to be fully understood that the British Government in New Zealand has no reliable means but those of moral persuasion for the government of the Aborigines. It is powerless to prevent the commission by Natives against Natives of the most glaring crimes. Within the last twelve-month blood has been spilt in Native quarrels in at least four different places in the Northern Island,—at New Plymouth,—the Bay of Plenty,—Hawkes' Bay,—and the Whanganui River ; in one instance, within the limits of a British Settlement. In the cases, which happily are not numerous, in which aggressions are committed by Natives against Settlers, the Government is compelled to descend to negotiation with the Native Chiefs for the surrender of the offender. The development of the material resources of the extensive wilderness still in the hands of the Natives, which comprises nearly three-fourths of the total area, and some of the most fertile portions, of the Northern Island, depends absolutely on their will. Without their consent it is impossible to survey, or even to traverse the country. Much less could the Government undertake the execution of roads, bridges, or other Public Works, in Native territory. Considerable difficulty was lately experienced in the establishment of a Mail route between Auckland and Napier, though the mail bags are carried by Maories. And it was very recently represented, by the Chief permanent officer of the Native Department, that it would be inexpedient, and even dangerous, for the Government to make a gift to certain Waikato Natives of a few bags of Clover Seed, lest the present should give rise to disputes respecting the ownership of land, and the Government be blamed by the Natives for having introduced among them a cause of dissension. These instances may serve to illustrate the nature of the present relations of the Colonial Government with the Natives.

8. Whether a Government reduced to such timid shifts, and with nothing beyond a moral hold upon the allegiance of a self-willed, suspicious, and warlike race, can succeed in subjecting that race to the salutary restraints of law, and in preserving it from the destruction which must result from a continuance of its own barbarous usages, is a problem which remains to be solved. There can be no doubt that the presence of an increased Military and Naval Force of sufficient strength to command respect for the British power,—now very lightly esteemed by the New Zealanders,—would greatly forward any efforts for the permanent amelioration of their condition. In the legislative measures proposed and carried by the present Government it has, however, been assumed as a condition, and steadily kept in view, that the Colony will remain practically destitute of any Force available for the maintenance of law and order amongst the Natives, and that reliance must be placed solely on the good sense of the people, and their innate capacity, under wise guidance, for self-government.

9. Accordingly, nothing more has been attempted than to facilitate the voluntary acceptance by the Natives of English Institutions. And, fortunately, many Maories are sufficiently intelligent and far-sighted to perceive the necessity for promptly taking advantage of such a facility. The old Maori regime is fast falling into decay whilst a substitute is naturally sought in a spontaneous imitation of British usages. Native Chiefs in various places affect to administer justice with the forms which they have observed to be used in the Police Courts of the Colony, and attempts have been made at many Native Villages to enact, and put in force, local regulations on various subjects. The leaders in these movements are mostly young men of standing, educated at the Mission Schools ; who though they appear destitute of the requisite knowledge, judgment, influence, and force of purpose to effect, unaided, the needed reforms, may yet, it is hoped, be counted upon to second the endeavours of an European Magistrate.

10. The Policy of the British Government in New Zealand has generally been identical in its main purpose with what is now proposed. It seems, however, to have been expected that the Natives in the neighbourhood of the European Settlements would naturally aggregate themselves about these centres as so many nuclei of civilization, adopting the laws and usages of the Settlers, and resorting to the European Tribunals for the settlement of their differences. This expectation, if such there were, has been in great measure disappointed ; and the social organization of the two Races remains as distinct as ever, even in the immediate vicinity of the Towns. In a few cases Magistrates have been stationed in purely Native Districts. But placed there independently of the will of the people, and utterly without power to enforce their own decisions, their position has been a false one ; and they have done nothing to supply the needed reconstitution of Maori Society. It appears to the present Advisers of the Crown that there has been no proper adaptation of British Institutions to the present condition of the Aborigines. It is unreasonable to expect that they should accept our Laws without those local modifications of detail which even British Citizens require. It is now therefore proposed to

attempt to operate from Native centres, by means of Institutions, English in their spirit, if not absolutely in their form, devised to supply the peculiar necessities of the Native Tribes, and to secure their confidence and support.

II.—*Proposed Legislative Arrangements, "Native Districts Regulation Act."*

11. The first step in this system was to provide the machinery of a simple local legislation,—such as was indicated in Ministers' Memorandum on Native Affairs of the 6th May, 1857. This object is accomplished by the "Native Districts Regulation Act,"—which vests in the Governor in Council the power of making local regulations for Native Districts on various subjects. It is intended that the Natives in their several Villages should themselves initiate legislation upon the different subjects to which the Act extends—the Government practically confining itself to suggestion, and to reducing to shape and consistency the propositions of the irregular Native Meetings known as Runangas, which are already being held in many parts of the country.

12. The Act enables District Bye-Laws to be made for the prevention of cattle-trespass; for the impounding of cattle; for regulating party fences; for preventing disease amongst sheep; for the landing of cattle; for the suppression of nuisances; for the promotion of the health, cleanliness, and convenience of the inhabitants of Native Villages; for the prevention of drunkenness; and for the regulation of the sale of spirits; together with other regulations upon Police subjects. Matters of this kind in New Zealand are now left, it may be observed, as regards the European population, entirely to the Provincial Legislatures. But these bodies have (with trifling, if any, exceptions) properly confined themselves to legislation suited to the wants of the Settlers; leaving the care of the Natives, as a matter in which the whole Colony is concerned, to the General Assembly. The Act under consideration also enables the enactment of Regulations "for the suppression of injurious "Native customs, and for the substitution of legal remedies and punishments for injuries in cases "in which compensation is now sought by means of such customs." Under this clause it is hoped that the Native Taua or robbing party, which is constantly resorted to for the redress of real or fancied injuries, more particularly in cases of dispute respecting women, and which pillages indiscriminately the supposed offender and his innocent relations, may be superseded, and fall into disuse. The clause relating to the regulation of the sale of spirits will, it is expected, be taken advantage of in some neighbourhoods to render more stringent and effectual the existing prohibition against the supply of intoxicating liquors to Natives. The Act also contains a provision under which it is hoped that petty differences between Members of a Tribe respecting the occupation of common property may be adjusted.

13. It will be at once apparent how essential to any advancement in civilization it is, that some suitable law should exist upon many of the subjects just enumerated. A Native has no inducement to raise his condition by erecting a house, by cultivation of the land, or by acquiring property in live stock, if the customs of his people afford him no protection; if his neighbours' horses and pigs consume his growing corn, and the half-wild dogs, which swarm in every Pa, worry his sheep; or, what is by far the worst evil, if a Native Taua, under pretext of some real or pretended injury committed by some of his relations, is allowed, at one swoop, to dispoil him of all his acquisitions.

III.—*Proposed Judicial Arrangements, "Native Circuit Courts Act."*

14. The new judicial arrangements which appear requisite are effected by the "Native Circuit Courts Act, 1858." This Act establishes itinerant Courts of a new description as a substitute, in Native Districts, for the summary jurisdiction of Justices of the Peace. Justice will be thereby rendered more easily accessible; and the institution of Native Juries, with functions resembling those of the Leet Jury, will tend to inspire a confidence in the administration of justice which has never yet existed. A great point will have been gained, if, in the more serious criminal cases, the Natives, after a preliminary investigation before the Circuit Court, corresponding to the examination before trial conducted by Justices of the Peace, can be induced to make presentment of the offences, and to forward the offenders for trial before the Supreme Court. A Resident Magistrate specially commissioned by the Governor is to preside over the Court, assisted, as in the present Resident Magistrate's Court, by Native Assessors. The support of the Native Chiefs is to be conciliated by considerably increasing the number of these Assessors, who will receive a small annual payment. In order to check the excessive severity into which the first zeal of the Natives is apt to hurry them, a veto upon every determination of the Court is given to the European Magistrate.

IV.—*Treatment of Mixed Districts, "Bay of Islands Settlement Bill."*

15. The two measures just referred to are intended to be put in operation in parts of the country which may be described as progressive Maori Districts. Districts over the whole of which the Maori Territorial right subsists, and in which there has latterly existed (as has been fully reported to Her Majesty's Government) a marked political activity, accompanied by a disposition to resist the further extension of European settlement. There are other Native Districts still too little advanced for any measure of the kind. On the other hand, there are localities in which the population is already so much intermixed as to require a distinct treatment.

16. The "Bay of Islands Settlement Bill" is intended to meet the case of a district of the latter class. Under the operation of the Acts for the settlement of the old Land Claims of the North, and

by purchase from the Natives, the Government already is, or shortly will be, in possession of considerable detached portions of land on the western, or mainland, side of the Bay. The Bill enables the Government to take possession of certain adjacent lands in the hands of Europeans, compensating the owners for the loss of their property. It is contemplated to increase the tract of land thus acquired by further purchases from the Natives. Upon this territory it is intended to establish a new settlement. Notwithstanding that the anchorage of Kororareka, or Russell, is the best in the Bay, that town can never become the outlet of the district. It is cut off from all communication with the mainland. Its site on a rugged peninsula is inconveniently confined, and, as a military position, it is indefensible. After a careful inspection of the district, the north western arm of the Bay, into which the Keri-keri falls, has been decided upon as the best site for the Port Town of the intended Settlement. The inhabitants of the Bay District, European and Native, are almost without exception, desirous of seeing the Government provided with the necessary powers for undertaking the systematic colonization of this part of the country ; to which, although it contains the oldest of the British settlements, a regular stream of emigration has never yet been directed. It is part of the scheme, to dispose of a considerable proportion of the sections in the new settlement to Natives, either gratuitously, or in exchange for their inland possessions. The proceeds of the remainder will be devoted to Immigration and Public Works.

17. The Ngapuhi, who inhabit this part of New Zealand, are perhaps the finest of its Tribes. They have been longer and more closely in contact with Europeans than any other, and are at the present time, more loyally disposed, and more anxious to promote European settlement. It is hoped that the present scheme may induce them to ascend another step in the social scale, by acquiring separate holdings in an European community, the local affairs of which will be administered by old and experienced settlers, individually known to the Natives for a long series of years, and possessing a thorough knowledge of their character.

v.—*Individualization of Native Title, "Native Territorial Rights Bill."*

18. The "Native Territorial Rights Bill" affects the most difficult and delicate question with which the British Government in New Zealand has to deal ; and the Legislature in touching on it has shewn a corresponding caution.

Remarks by the Governor—Vide my despatch, No. 103 of 15th Oct., which covers this Bill.

19. The subject has two aspects ; the one relating to the civilization of the Natives, the other to the promotion of the settlement of the country by Europeans. Ministers hold that these two objects, truly viewed, are ultimately inseparable. The purpose of the measure is however, to place in the hands of the Government a new and powerful instrument for the civilization of the Natives, and by no means to increase the immediate facilities for the acquisition of land by Europeans.

20. It is notorious that the most frequent and bloody Maori feuds arise, and have always arisen, from disputed title to land. The four existing quarrels which have been referred to have all this origin, and others that could be mentioned are at this moment smouldering. It is equally indisputable that the communistic habits of the Aborigines are the chief bar to their advancement. Separate landed holdings are indispensable to the further progress of this people. Chastity, decency, and thrift cannot exist amidst the waste, filth, and moral contamination of the Pas.

21. In order to strike at the root of these evils, the Bill provides,—first, for the ascertainment and registry of Tribal Title —Secondly, for the issue of Crown Grants to individual Natives of Lands ceded for the purpose by their respective Tribes.

22. The propriety of making at least an attempt to provide means for the extrication of Native Title from its present entanglement, for reducing it to fixed rules, and for subjecting it to the jurisdiction of regular Tribunals, can hardly admit of a doubt. Even if it appeared that such an attempt might involve a certain amount of risk, that surely, ought not to deter a great Christain Power from some effort to avert the shame and the sin of remaining, what Her Majesty's Representative in these Islands is at this moment, the passive witness of murderous affrays between Her Majesty's subjects, almost under the guns of Her garrisons.

23. But no such risk is really incurred. The interference of the Executive Government to adjust land disputes remains under the Bill purely optional. The Bill throughout all its provisions is permissive, and the plan must by no means be confounded with the Compulsory Registration of Native Title provided for by the Royal instructions of 1846. Ministers are aware that good can only be effected by proceeding with the greatest caution. They desire nevertheless to make a timely step in advance, as being not only the justest, but the safest, course—as the surest means of avoiding future complications. This is a case in which it would be found that "a froward retention of Custom is as "turbulent a thing as an innovation."

24. The Grants to individual Natives will effect a gratuitous transmutation of the Native Title of occupancy into an English fee-simple. It is a difficult question whether lands so granted should, or should not, be alienable to Europeans. Perhaps no general rule can be laid down. In some cases it might be desirable to secure the heirs of a spendthrift Chief against the effects of his extravagance. In other cases no sufficient reason might exist for withholding the full powers of ownership. It has, therefore, been left discretionary with the Government to impose restrictions on alienation. Occasionally it is probable that the power of restraining alienation might be usefully employed to prohibit acquisitions of land by Europeans in remote districts. At all events, it will be seen that under the provisions of the Bill, the Government retains, undiminished, its present power of checking dispersed settlement of the country by Europeans.

Remarks by the Governor—See remarks by Native Secretary p. 45

The last purchase of ¼ of a million of acres averaged 1s 6¼d per acre

The effect of this would be to induce Europeans to select coveted plots of land and to leave in the hands of the Maories large tracts—the alienation or retention of which is supposed to convey or retain a right of Sovereignty.

25. Although the measure was not framed with any direct view to colonizing objects, it cannot be doubted that the proposed Registration of Native Title, (too long neglected), would facilitate the operations of the Land Purchase Department, and the acquisition, by cession from the Tribes, of fresh territory. At present there are no fixed rules whatever as to what shall be recognised as valid claims to share in the money paid for the surrender of the Native right. Absurd and vexatious disputes constantly attend the negotiations of the Department, and are only settled by a large expenditure of Colonial Funds.

26. Under the second division of the Bill, a small extent of land might come into European hands by purchase from the Native Donees. Upon all such transactions the XI. Section imposes a Tax of Ten shillings per acre, payable by the purchaser. The fund thence accruing, it is provided, shall be expended in public works and improvements on the land, or in its neighbourhood. Ministers consider that it is by no means desirable that such purchases should become at present the favourite mode for the acquisition of land by European Settlers; and the amount of the proposed tax is designedly placed sufficiently high to prevent many such transactions taking place. Ten shillings per acre is the ordinary price of Waste Lands in all the Provinces of the North Island, and the amount of the Tax will consequently operate, differentially, in favour of the ordinary mode of purchase.

Remarks by the Governor—The Constitution Act made provision for the purchase of Native lands, and a loan was by no means indispensable though very advantageous. So long as lands are bought at an average of 1s. 6½d. per acre and never resold at less than 10s it will not be difficult to obtain funds for their acquisition, Provision is also made for a sinking fund for this purpose by the Land Revenue Appropriation Act of this Session.—Vide Mr. Stafford's Memorandum, par. 67, enclosed in my Despatch No. 99, of 11th Oct., 1858.

27. So long as the loan for the extinction of Native Title holds out, and it is possible to obtain the cession of Tribal rights over considerable tracts of country, through the operations of the Land Purchase Department, it appears preferable that the European settler should purchase of Government, rather than of Natives holding Crown Grants. At the present rate of expenditure the Loan will not, however, last for more than five or six years, and an immense area will be left still subject to the Native Title. It therefore behoves those who direct the affairs of the country to look forward and consider of a substitute for the present system, which at the expiration of that period may be capable of being worked on an extensive scale, and may supply the two essentials,—Land and a Land-fund. The best plan which has suggested itself to the present Advisers of the Crown is, that the Native Title, being first carefully ascertained by proper officers, should be gradually commuted into English fee-simple. That the land should remain unburthened whilst in Native hands, but that a Tax should be paid by the European purchaser, and that its proceeds should be devoted to the improvement of the country. The present measure, in its secondary aspect of a Colonizing measure, may be regarded as a cautious experiment of such a plan on a very small scale. If found to work well, the principle might, in future years, be extensively acted upon.

VI.—*Objections to "Native Territorial Rights Bill" discussed.*

28. It now becomes necessary to advert specifically to certain objections which have been raised to the Bill under consideration. The first is that the power of issuing Grants to Natives is vested in the Governor in Council, instead of in the Governor solely,—thereby necessitating the concurrence of the Responsible Ministry of the day. This is alleged to be a departure from the terms of His Excellency's Memorandum of the 15th April, 1856, establishing Responsible Government.

29. By the Memorandum of 15th April, 1856, the Governor reserves to himself the right of acting upon his own responsibility, in opposition to the advice of Ministers, upon Imperial questions; including questions affecting the relations of Government with the Native Tribes. Obviously the Memorandum could only affect the existing powers and prerogatives of the Crown. It was not competent to the Governor to stipulate as to the conditions under which new and extraordinary powers should be conferred by the General Assembly upon the Executive;—nor did his Excellency attempt to do so.

Remarks by the Governor—A new power is offered, and where an offer is made the power of refusal is implied. For the reasons given in my despatch on the Territorial Bill I declined the offer. The question is however really brought to an issue in paragraph 32 of this Memorandum, and discussed in my despatch.

30. Looking at the question as one of abstract constitutional principle, no Ministry could propose to entrust a power vitally affecting the relations of the Settlers and Natives, and the pecuniary resources of the Colony, to the discretion of a single individual, however elevated his position, who must commonly possess only a limited experience and a transitory interest in the affairs of the country. Even in a Crown Colony, acts of so high a nature are often required to be done with the advice of the Executive Council. It appears surprising that the General Assembly could by any person be expected to make over, without any guarantee for its exercise in accordance with public opinion, a power greater than was ever entrusted by the Imperial Government to the Governors of this Colony,—but, a power, which, it is not forgotten, was by one of those officers illegally assumed, and employed in a manner of which the evil effects have not, after a lapse of fourteen years, entirely passed away, Ministers feel assured that the Colonial Legislature could never be brought to sanction the concession of such an unlimited discretion; more especially considering the effect of its possible abuse upon the future produce of the Territorial Revenue, and the heavy liabilities of the Colony to the Home Government and the Public Creditor. The power is virtually a power over the Public Purse, which, to a limited extent and under due guarantees, the General Assembly has shown itself willing to concede to the Executive for the good of the Natives; but which it is in vain to expect it will ever absolutely alienate.

Remarks by the Governor—If lands over which the native title has not been extinguished are the property of the Crown, it is so; but if not, the assertion is unfounded.—See despatch which accompanies this memorandum.

Remarks by the Governor—See my despatch which accompanies this Bill.

Remarks by the Governor—Would a purchaser obliged to pay this tax give as much to the native vendor as if he were exempted from it.

31. The second objection taken to the Bill, which it seems requisite to notice, is, that the imposition of a payment upon alienation to Europeans is an unjust exaction from the Native Donee. To this it is answered, that no Native is obliged to take a Grant, or, having obtained one, to sell to an European. By accepting the Grant, the Native's position is vastly improved, even though the power of alienation should be altogether withheld. But there is another sufficiently obvious fallacy in the objection. It is assumed that the acreage tax reduces, *pro tanto*, the purchase money. It is overlooked that the tax is applicable to the improvement of the land sold, and thereby increases its value—in most cases to a greater amount. The sum payable into the Treasury is no part of the price of the land. It is the price of the improvements.

32. But what really lies at the root of this objection is a doctrine so mischievous and unfounded that it requires special notice. It is asserted that the native is really entitled to an absolute grant in fee simple of whatever territory his tribe may think fit to make over to him in severalty, however extensive, and that to refuse such a grant—at least to impose any condition which does not operate for the sole and exclusive benefit of the natives—is unfair. To make the Crown's right of pre-emption productive of a land fund—either in the way in which it is now made productive, viz., by means of sales of land ceded to the Crown at a low rate and disposed of at an increased price, or by the proposed tax on alienation—is regarded as essentially unjust to the natives, who, it is thought, ought fairly to receive the whole purchase money. In accordance with this view, the difference between the price paid to the natives, and the selling price of land, has been sometimes represented to be a contribution by the natives to the Revenue of the Colony, entitling them (if justice were done) to the expenditure for purely native purposes of a largely increased proportion of the Colonial funds. And as to the present system of purchases, it is regarded as nothing less than systematic fraud practised by a civilized power upon its ignorant subjects.

Vide my despatch on this memorandum, and the authorities quoted in the appendix.

Remarks by the Governor—Certainly. In return for the great pecuniary advantages, the Colonial Government is bound to take paternal care of the welfare and for the civilization of the native race.

33. This doctrine, it will be seen, reduces the Crown from the possession of a substantial power over the whole territory of New Zealand—which power it is bound to employ for the benefit of all its subjects—to the condition of a bare trustee for the Maories. But the Crown's right of pre-emption (which no officer of the Crown, at least, will venture to question) was reserved avowedly for colonizing objects—*i.e.*, to enable the Government to promote and systematise the settlement of the country. The exercise of the power for these objects, even if inconsistent with the pecuniary interest of the natives, could not be reasonably objected to on their behalf. The natives have always fully understood and acknowledged the right of the Crown to impose such terms as it pleases upon its own European subjects who seek to settle the country. But it has been already demonstrated that it is altogether a mistake to suppose that any pecuniary interest of the natives is interfered with, by the employment of the Crown's right for the purpose of raising a revenue in the way proposed. The enhanced price received by Government is really the price, not of the land, but of the improvements which the Government undertake to execute out of what are improperly called its profits. This is strictly true of the country as a whole, though it may not be so of every hundred acres of land sold. The enhanced value of the land is due to the Immigration and Public works which the Colonial Land-fund has been the means of carrying on.

Remarks by the Governor—*Vide* Lord Normanby's despatch to Governor Hobson, parl. pap., 1846, p. 39.

34. The notions above combated arise from a narrow view of Native interests which those who devote an exclusive attention to Maori questions appear, unfortunately, somewhat apt to contract. The affairs of New Zealand can only be successfully administered on the basis of a hearty belief in the real identity of the interests of the two races. In a large view it is quite as important to the native as to the European that the resources of the Colony should not be crippled by the destruction of its Land-fund. And, if the possibility of diverting the territorial revenue of the northern island into the pockets of the natives were a reality, instead of a glaring economical fallacy, it is certain that such an accession of wealth to men only partially emerged from complete barbarism would speedily prove their ruin.

Remarks by the Governor—However their views may be stigmatised, these persons are among those who enjoy the greatest respect, and it will not be denied that their opinions are entirely disinterested.

35. The real effect of acting upon such doctrines would be to hand over large tracts of country to a class of land-jobbers, destitute of the means of rendering their purchases available. The traffic in land would fall into the hands of a set of middlemen, whose transactions and connections with the Natives,—not always of a lawful or reputable character—gave them special influence. Intending immigrants learning that land was no longer attainable except through private hands, and that the country lay unimproved, would be deterred, and the hope of a regular colonization would be not merely deferred, but destroyed. In short, it will appear that the proposition of the objectors to the Bill to confer on the Governor an unlimited power of granting lands to Natives, which shall be alienable to Europeans without any payment into the Colonial Treasury, is simply asking the Colonial Legislature to authorise, and invite, a renewal of Governor Fitzroy's proceedings on the issue of the well-known "Penny-an-acre" proclamation of 1844, and thereby to endanger at once the peace and public credit of the colony, and the prosperity of all Her Majesty's subjects within its limits.

Remarks by the Governor—I am not aware of any opinions held by persons conversant with the Maories and their affairs at all likely to tend to such consequences.

Remarks by the Governor—This is not the view taken by those who object to particular provisions in this Bill; nor is it their wish to renew such a proceeding.

36. To avoid a tedious detail of minor objections to the Bill, Ministers transmit herewith copies of Memoranda by two of the permanent officers of the Native Department who disapprove of the measure, and suggest one of the character which has already been indicated. The few comments which Ministers feel it necessary to make on those Memoranda appear in the margin of the copies. Ministers would regret that Her Majesty should be advised to withhold assent to this Bill, chiefly because that course would deprive the Executive of the colony of a useful engine for the civilization of the Natives; but they conceive that the absence, for a time, of any legislation on the subject, though prejudicial, would be infinitely preferable to the highly dangerous and unconstitutional measure which it has been proposed to substitute for the Ministerial Bill.

Three Enclosures.

VII.—*Relations of Responsible Ministry with Governor on Native affairs.*

37. Before passing to the consideration of the remaining Bill, ministers desire to make a few general remarks in exposition of their opinions on the important subject of their own relations with the Governor respecting the conduct of Native affairs. These opinions, it will then be seen, have consistently influenced the framing of the measures of the late session. This is more especially necessary because some of the objections to the "Native Territorial Rights Bill" appear to shew the existence of misapprehension on this subject.

38. It results from what has been already asserted respecting the true ends of British policy, and the true principles of administration, that the present advisers of the Crown are absolutely opposed to any attempt to conduct the public business which may be conceived to fall within the vague

designation of Native affairs, by means of a department, separate from the ordinary departments of Government, wholly independent of Responsible Ministers, and looking directly to the Governor as its head. They have clearly expressed this opinion in a former memorandum—that of 22nd August, 1856; and understand that His Excellency, the present Governor, does not dissent from it.

39. Under the present system of Government in New Zealand, it is vain to expect that cases in which Europeans and Natives are in dispute can be satisfactorily dealt with by irresponsible officials; yet such cases constitute the most difficult and menacing class of questions requiring the interference of Government. To ensure the success of comprehensive measures of Native policy, it is already most desirable, and in future years will become essential, to enlist the support of the settlers. It would consequently be the height of impolicy to attempt to exclude from influence upon Native questions, the leading public men of the colony, who are, many of them, well acquainted with the character and wants of the Maories, and without distinction of party, anxious to promote their welfare. Such a course would naturally tend to raise up influential opponents to the system pursued, who would have frequent opportunities of frustrating the efforts of Government. The intentions of the Executive would be suspected, misunderstood, and misrepresented. All political parties using the now powerful instruments of public opinion, would combine to assail the Government policy, and to decry its agents. Of these agents, the very persons would become odious to the settlers. The fatal jealousy of race would be aroused, and it is fearlessly asserted that no such administration could long endure the pressure to which it would be subjected, or could possibly succeed in a charge so difficult as that imposed upon the Government of this colony. In addition to all this, it is impossible that the relations between the Executive and a free Legislature could ever be satisfactory under such arrangements. The legislation which will be from time to time required upon Native subjects can only be conducted by Members of the Assembly representing the Government, and they only can obtain the necessary supplies for Native services. Had it been desired to attempt in New Zealand such a system of exclusion, it would have been necessary to frame the Colonial Constitution in a very different way.

Remarks by the Governor—There is no desire or intention to exclude from proper influence the gentlemen to whom the Assembly entrusts its confidence, but the argument here used is one addressed to the fears, and not to the sense of justice by which Her Majesty's Government and Her Representative can alone be influenced.

40. In contradistinction to such a plan, Ministers desire to see the department of Native affairs conducted by one of the Ministry as its acknowledged head, but subject to the supervision and control of the Governor as fully as before the establishment of Responsible Government, with a recognized right on the part of His Excellency to interfere, if need should arise, even in the details of administration, and of being authentically informed of the opinions, on every case as it arises, of the permanent officers of the department, who would of course be irremovable except by His Excellency's consent, and with whom he would always be entitled to communicate personally. Thus much Ministers consider is due to Imperial interests, so long as a Military force is maintained in the colony at the cost of the Mother country. They believe, however, that Imperial interests and the good of the Natives would very rarely, under such a system, appear to require the active interference of the Governor in opposition to the Ministry.

41. The personal relations of the Governor with the Native Chiefs should by all means be preserved, and a certain sum should be at His Excellency's free disposal for acts of hospitality and liberality. The Governor's name should also be used in all official communications with Natives.

42. Ministers understand that the system last described, is that actually in operation under His Excellency's Memorandum of 28th August, 1856, replying to the last cited Memorandum, although, in consequence, mainly, of the want hitherto of a Native Minister, it has scarcely yet been brought effectively into play.

43. The foregoing observations refer necessarily to the ordinary executive powers of Government. Large measures of policy could generally be carried into effect only by the aid of the Legislature, which would impose its own conditions. Ministers are of opinion that those conditions should be such as to render the Governor and the Ministry jointly responsible for important acts not belonging to the ordinary routine of administration; such for example, as the definition of the districts within which the "Native Districts Regulation Act," or the "Native Circuit Courts Act" shall be brought into operation, or the exercise of the Legislative powers conceded to the executive by the former Act. More especially, should such joint responsibility be imposed in cases where the Revenue is affected, as by the gratuitous alienation of the Waste Lands of the Colony, under such measures as the "New Zealand Native Reserves Act, 1856," or the "Native Territorial Rights Bill" of the late Session. On the other hand, the final determination respecting the appointment and dismissal of officers of the department, and respecting the expenditure of supplies duly appropriated for Native services, should rest with the Governor solely.

Remarks by the Governor—There are no Waste Lands in New Zealand except those which have been acquired from the Natives and transferred to the local Government, over which the responsible advisers of the Governor have full power.

44. The usual objections to the system just indicated are—(1) That Native Policy would become a party question; (2) That it would be rendered unstable; and (3) That the settlers alone are represented in the General Assembly, and cannot be trusted with the interests of the Natives. As to the first objection, Ministers do not believe it at all probable that the Native question would ever become the battle-horse of faction in the General Assembly,—at least in any manner adverse to Native interests. Possibly, indeed, two parties might occasionally be found competing to secure the good will of the Natives, and to conciliate the influences generally arrayed in their support. Some evil might arise from this; but, as already pointed out, the alternative course proposed by the objectors is one which would marshal in opposition to Government all political parties amongst the settlers, thereby incurring a far greater danger.

Remarks by the Governor—These opinions are not shared in by all. (*Vide* extracts from Mr. Busby's speech in Auckland Provincial Council 15th Oct., 1858.)

45. Again, stability in Native administration is no doubt a prime requisite; but is it gained by placing the power in a single hand, and attempting to exclude the influence of Colonial opinion? The objection overlooks the effect of a change of Governors, which already has been followed in the Colony by a sudden and violent alteration of policy. A change in the permanent head of the Native

Department might produce a similar result. Changes in the personnel of the Native Department have been much more rapid than Ministerial changes have hitherto proved in New Zealand. The utter impotence of a small knot of permanent officers, not perhaps always distinguished by superior intelligence, to resist the current of adverse public opinion in a highly cultivated British community is also overlooked. On the other hand, the steadiness with which Representative Institutions in English hands have ever been found to work is underrated. It is not sufficiently considered that the responsibilities of office, and the momentum of an established system, would exercise their usual moderating influences—influences which would be felt, not only by those actually advising the Governor on Native affairs, but in no small degree by their antagonists.

Remarks by the Governor—The change of person in the office of Governor does not generally entail a change of opinion—the instructions and the responsibility remain unaltered. Ministerial changes imply change of opinion, and the duration of Ministers is not (unless under peculiar circumstances) actually very long.

46. Lastly, the narrow jealousy of Colonial interference betrayed by the third of the above-mentioned objections, appears to Ministers a grave moral mistake; which, if it were ever allowed to exercise a sensible influence in the conduct of affairs, might be expected to generate the very evils it falsely supposes to exist. There is at present no contrariety of interest between the Colonists and the Natives, nor any disposition on the part of the former to injure the latter. But a jealous administration would tend strongly to evoke and foster into activity every bad passion which could disturb the relations of the races; whereas a generous confidence in the good intentions of the settlers towards the Native tribes—a confidence thoroughly merited by the Colonists of New Zealand—would increase the good feelings which now exist, and strengthen every bond of union. Thus only can the idea of fusion be ever realized, and the New Zealanders be preserved from the general fate of Aboriginal races.

Remarks by the Governor—See my Despatch No. 102 paragraph.

47. On the whole it seems clear that under the liberal system, disputes between the races would be less envenomed and more easily healed: that Government would not want either tongues or pens to explain or to defend—to deprecate the excitation of evil passions or to invoke the better feelings, which, (after all) are not often sincerely appealed to in vain: lastly, that Native affairs would be more steadily as well as more vigorously administered, with a better prospect of ultimate success in the true policy of fusion.

48. Ministers have great pleasure in referring in corroboration of these views, to an able letter, communicated to the *Southern Cross* (Auckland) Newspaper, of 27th July, 1858, a copy of which accompanies this Memorandum.* The letter is well known to have been written by one of the most zealous, learned, and able of the Missionaries of the Church Missionary Society. Nothing has given Ministers greater satisfaction than the belief that their opinions are in harmony with those of a considerable number of the Missionary body, and will receive their hearty support, and that many who were formerly disposed to consider that it would have been preferable to attempt the experiment of a separate Government for the Natives, are rapidly coming round to the contrary opinion.

Remarks by the Governor—If this letter is from the gentlemen indicated it would be conclusively answered by others from himself, both anonymous and with his name.

I however append one with a signature which will carry greater weight than can ever belong to an anonymous contribution. Mr. Kissling is also a Missionary and the Bishop's Commissary; his information is second to none, and his opinions are universally viewed with the greatest respect.

—Mr. Kissling to Governor 23rd July, 1858.

VIII.—*Educational Institutions for Natives, "Native Schools Act,* 1858."

49. The last measure on which Ministers have to comment is the "Native Schools Act, 1858." By this Act a yearly sum of £7,000 is granted out of the Colonial Revenue, for the term of 7 years, from 30th June, 1858, in aid of schools for the Education of Natives and Half-castes.

50. The Secretary of State will be aware that an annual sum of £5,900 was, at the instance of Governor Sir George Grey, allocated for the same object out of the sum of £7,000, reserved by the Constitution Act for Native purposes. In 1854 and 1855 there had been a vote in further aid of the schools of £1,300. Owing to the unsatisfactory state of the administration of the fund in the Southern Division of the Colony, it was doubtful, in 1856, whether the House of Representatives would consent to renew this vote, which the House was under no kind of obligation to do. Ministers considering it undesirable to retrench the Educational Fund on account of a temporary abuse, which they proposed as speedily as possible to correct, advised that the full sum of £7,000 should be temporarily provided out of the Civil List, until more satisfactory arrangements could be made.

Remarks by the Governor—The advice was not given as a temporary measure—*Vide* also Sec. 59 of this Memorandum, where it is said "The Schools were safely provided for in the Civil List."

51. The system established by Governor Grey, and which has ever since been acted upon, of distributing the school grant in fixed proportions amongst the three religious bodies who maintain Native Schools, and of again subdividing the grant to each body in fixed proportions between the Northern and Southern Districts, has been found to operate very unequally. The amount of aid received by different schools in the North has varied from £40 per head and upwards, on the average number of pupils, to £6 per head and less. As between the Northern and the Southern Divisions, the case was even worse. Several establishments in the South, which were absorbing, year after year, large sums for buildings and farm improvements, were actually without scholars. Meantime large and flourishing schools in the North, with unpaid teachers, were pinched for want of the funds requisite to provide their scholars with the bare necessaries of life. Such a state of things was satisfactory to no one; and was especially grievous to the laborious managers of the larger Native Schools.

In reference to the Civil List Mr. Richmond in his Speech on 15th July, says, "Over the first (viz. the Civil List) the House had no control."

52. To correct this evil, the new Bill introduces the general principle of proportioning the amount of Government aid to the number of pupils educated and maintained at the several schools, according to a fixed rate per head. The principle is subjected to certain limitations, adapted to check an unseemly competition between different religious bodies, or between different schools under the management of the same body. The change effected by the Bill is welcomed, Ministers believe, by every friend to the cause of Native Education—even by those who under its operation may suffer a temporary diminution of the funds at their disposal.

53. Sir George Grey's Memoranda of May, 1853, accompanying the Despatches last above adverted to, and laying down the principles on which the grant was to be distributed, provide for the presentation to the Governor of annual Reports on the state of the schools. In lieu of these Reports,

* *Vide* Appendix, page 33.

which have not in all cases been regularly presented, the eleventh Section of the Bill requires a yearly inspection of the schools by persons appointed by the Governor. It appears, however, desirable that this inspection should be so managed as to become, as much as possible, a part of the regular internal machinery of the Educational system of each denomination, rather than an external interference on the part of the State. Ministers have always contemplated, (as appears by their Memorandum of 26th March, 1858) that the Educational Boards of the several bodies should at least exercise an influence in the nomination of Inspectors. Especially would Ministers deprecate the appointment of a paid Government Officer as Inspector of all the schools. They are convinced that no such appointment could be universally satisfactory.

IX.—*New Financial Arrangements for the Native Services, and their bearing on Policy.*

54. The general Financial effect of the "Native Schools Act, 1858," is, for seven years, to double the permanent provision for purely Native objects,—and to dispense with the necessity of proposing annual votes. Adequate provision is made for Native Education, whilst at the same time the sum of £7,000, reserved by the Constitution Act, is liberated, and becomes available for its other destined uses.

55. The new purposes to which it is proposed to devote this latter sum, are as follows :—

	£	s.	d.	£	s.	d.
Medical Treatment of Natives in Hospitals, and as out-patients ...				2,000	0	0
Circuit and Resident Magistrate's Courts.						
Magistrates	1,200	0	0			
Assessors	1,000	0	0			
Court Houses	200	0	0			
Travelling Expenses	300	0	0			
Contingencies of Courts	200	0	0			
				2,900	0	0
Maori Newspapers and other Publications ...				400	0	0
Pensions to Natives				200	0	0
Pensions and gratuities under Waka Nene's Annuity Ordinance.						
T. Walker Nene	100	0	0			
Gratuities to Chiefs	100	0	0			
				200	0	0
Presents and Entertainment of Natives ...				500	0	0
Southern Island, Native purposes				500	0	0
For Services not above specified				300	0	0
				£7,000	0	0

56. In addition to the £14,000 of permanent provision thus made up, a sum of £400 per annum for the salary of the chief permanent officer of the Native Department, is proposed to be charged against the annual sum of £4,800, reserved on the new Civil List for the establishment of the General Government. A further sum of £600 for the establishment of the Native Department, is provided for on the Annual Estimates. The total annual charge for Native purposes (exclusive of the salary of the Native Minister, whose labours may, however, it is hoped, not be wholly fruitless of good to the Aborigines,) is now £15,000.

57. This is not merely a more secure, but also a larger provision for special Native purposes than has before existed. In 1856 the total legal provision was £14,872. In addition to this, the House, in an address to His Excellency, presented during the Session of 1856, stated as follows :— "If, therefore, circumstances should arise involving the maintenance of peaceful relations between the "races, and your Excellency should in consequence feel it imperatively necessary before the next "Session of the Assembly to expend upon Native purposes a sum not exceeding £1,000, in addition "to the amount already granted,—this House respectfully begs to assure your Excellency that it will "make good the same in the supplies of the year 1857-58." The contingency contemplated by this Address did not however occur.

* 58. The above mentioned sum of £14,872 includes £1,400 for the salaries, and £882 for the establishments of eight Resident Magistrates. Only two of these Magistracies are now charged to Native Account. The estimate for the remaining six in 1856 was £1,700, 10s. The comparison between the two years, in point of amount, stands therefore as follows :—

	£	s.	d.	£	s.	d.
Provision for Native purposes in 1858... ...				15,000	0	0
Do. do. do. in 1856... ...	14,872	0	0			
Deduct Services not charged to Native Account in 1858 as above	1,700	10	0			
				13,171	10	0
Increase of provision in 1858, exclusive of the Native Minister's salary				£1,828	10	0

* *Remarks by the Governor.—Par.* 58.

The Colonial Treasurer, in his speech in the House of Representatives, 10th June, says: "Before I quit the subject

59. The House of Representatives, in granting so permanent a supply for native purposes, has done so, upon the express agreement that the several sums into which the £7000 per annum reserved by the Constitution Act is proposed to be divided, shall be applied only for the purposes expressed in the above detailed appropriation: provided that, with the consent of Ministers, the appropriation may from time to time be varied. Ministers will thus have an effectual voice as to the application of savings on the several services. Without such a concession, the seven years' grant for the schools could never have been obtained, it being obvious that the grant was virtually not to the schools, which were safely provided for on the Civil List, but for general native purposes. The increase on former years can only be ascribed to increased confidence in the due administration of the supplies under the present system of Government. If, in former years, the votes were less ample, it was because the House was little satisfied with the mode in which they were spent.

60. Throughout the whole of the financial arrangements which have been detailed, it has been the steady purpose of ministers to place the administration of native affairs on a sound and permanent basis—secure, as far as may be, against capricious or sudden changes at the hands of either Governor or Ministry. And, whilst leaving his Excellency's powers of Administration unfettered, they have desired to establish a Conservative influence over Policy. Had it formed a part of their plans to encroach upon the Governor's due influence in Native affairs, a very different course was open to them. But they are satisfied with such an arrangement as they now understand to exist, and have laboured faithfully to restore to Native policy that stability which was compromised by the entire alienation of the funds specially applicable to Native uses. Ministers entertain a firm reliance that the simple facts of the case, as above detailed at some unnecessary length, will satisfy the Secretary of State at once of the liberality and the moderation of the House of Representatives.

X.—*Probable Amount of Maori Contributions to Revenue considered.*

61. In connection with the subject of the last preceding division of this Memorandum, it appears desirable to examine the question of the amount contributed by the Maories to the Colonial Revenue, or, which for this purpose may be considered as the same thing, to the Customs Revenue.

62. In order to arrive at this amount, a processs of the following nature has been sometimes adopted. The native population of the southern island is very small—its numbers probably not exceeding 2000 souls—and is also very poor. Its inconsiderable coutribution to the revenue of the southern island must be more than equalled by the amount of duty received in the port of Wellington (in the northern island) on duty paid goods, shipped coastwise for consumption in the southern island; so that the whole amount of the duties collected in the southern ports may, for the purpose of the following calculation, be considered as paid by the European population. On this assumption (which is, no doubt, substantially correct), and on the further assumption that the amount of duty paid by the respective European populations of the two islands is in the same proportion as the numbers of the two populations, it is of course possible to compute the European contribution to the Customs of the northern island; and the balance is taken to be the contribution of the Maories in the same island.

63. A very slight consideration, however, is needed to shew, that up to quite a recent period such a calculation would be most fallacious, because it overlooks the very different state of the two divisions of the Colony. The northern island contains the seat of government, the two largest towns, the centres of densest population, and all the military garrisons. Its settlements are the oldest and the most advanced, and living is on a more expensive scale. A proportionately larger population afloat in the ports (and, of course, not included in the Census returns) swells the amount of its consumption.

64. A comparison of the consumption of ardent spirits in the two islands, relatively to the numbers of the European population of each, confirms the anticipation raised by the foregoing general considerations. This article furnishes the best test of the difference between the rate of contribution of the two European populations: because the sale of ardent spirits to Maories is prohibited, and, although they are illicitly supplied with such liquors to a considerable extent in the port towns, the Maori population, as a whole, does not consume them. After allowing an ample margin for the existence of such an illicit consumption, it seems, from the best available data, impossible to state the average consumption of spirits by the European population of the north during the four years 1853 to 1856 as

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of native expenditure, I will compare the expenditure under the old system with that under our scheme.

"On the Government scheme you have—

"Civil List	£7000
"Schools	7000
"*Native Department*—	
"Civil List	1200
"Estimates	600
	£15,800

"In 1856 the Provision was—

Civil List—	
"Native Secretary	£ 300
"Magistrates	1400
"Schools	7000
On Estimates—	
"Native Secretary's Department	1500
"Resident Magistrates' do.	882
"Hospital, &c.	2540
"Pensions and Entertainment	550
"Additional	500
	£14,672
"By Resolution of the House	1,000
	£15,672

"A few of the services included in this latter sum are, it is true, now recognised as general colonial services. You will observe that we consider the native department as part of the ordinary machinery of Government, and accordingly do not propose to charge the cost on the sum of £7000, which we conceive is properly applicable to exclusively native purposes."

less than one gallon per head per annum in excess of the southern consumptions, the duty being then at the rate of 6s. per gallon.

65. During the four years, 1853 to 1856, it is probable that the annual rate of contribution per head to the Customs revenue in the northern island exceeded that in the southern island by 10s. per head. With the year 1857, however, a new era commences, and the development of the resources of the southern island, its wool report, and the Nelson gold field, appear to have raised its consumption about to a level with that of the other island. These circumstances, and the increase in the Customs duties made at the latter end of 1856, account for the large yield of the southern revenue of 1857—nearly, equal, on the net revenue, to £2 per head. Still, a comparison of the yield of the duties on spirits wine, and beer, in the two islands—which articles are consumed almost exclusively by Europeans, and produce more than 50 per cent. of the whole revenue—will induce the conviction that the northern European consumption must still be at least equal, per head, to the southern consumption.

66. The following table, shewing the estimated contribution of the Maori population to the Customs revenue, is based on the assumption that the average annual rate of contribution of the European population of the north exceeded that of the southern population by 6s. 8d. per head, down to and including the year 1856—being at the annual average rate of about 33s. per head on the net revenue—and that in 1857 the rate of contribution became equal in the two islands.

I.	II.	III.	IV.	V.	VI.	VII.
Year.	European Population of Southern Island.	Net Customs Revenue of Southern Island.	European Population of Northern Island.	Estimated Contribution to Customs Revenue of European Population of Northern Island.	Net Customs Revenue of Northern Island.	Estimated Contribution to Customs Revenue of Maori Population of Northern Island.
		£		£	£	£
1853	10,500*	11,873	23,000*	33,673	52,416	18,743
1854	12,310	20,004	25,244	49,354	75,852	26,498
1855	14,864	19,556	27,328	45,063	73,353	28,290
1856	17,465	21,851	30,728	48,294	65,591	17,297
1857	19,500*	38,600	32,178	63,695	79,689	15,994

* These numbers are assumed.

67. It should be explained that the European population of the northern island in 1854 and 1855 is taken from the Statistics lately published by the Colonial Government, but with the addition of 2500 souls to each year for the military population, and of a further amount of 2500 souls needed to correct a manifest error in the Auckland census for those years. There are no returns of population for 1853, and the returns of the population of the southern island for 1857 are not yet compiled, but the numbers given must in every case be very near the mark. The amount of Customs revenue is the net, after deducting cost of collection.

68. The figures in col. vii of the table purport to shew only the contributions of the Maories of the north island. These figures may, however, be taken as shewing the contributions of all the Maories, both of the north and south. For the small contributions of the latter would, as already stated, seem to be fully compensated for by the shipments coastwise from the northern to the southern island of duty-paid goods.

Remarks by the Governor—As these calculations are not assumed to be accurate, I make no remark on them. I do not, however, see reason to think the mode of calculation here used more correct than the estimate in my Despatch No. 56, of 31st May, 1856, which, I may also observe, approached far nearer to that made in Sydney, at the same time the tariffs being very similar except that the duty on Spirits was higher in Sydney.

The undermentioned return of goods supplied by four Merchants in Auckland to the East Coast alone, would shew that they and their cus-

69. These figures, whilst they entirely dispel exaggerated notions respecting the magnitude of the Maori contributions to the revenue, yet clearly evince to what an extent the aborigines have contracted the wants of civilized men. Their contributions are quite as large as could be expected when it is remembered that to the duties on spirits, wine, and beer, manufactured tobacco, coffee, and some other articles, yielding about four sevenths of the whole revenue, they contribute little or nothing. Even supposing that the sum of 10s. be taken, as above suggested, as the amount of the excess of the annual contribution to revenue of the northern population up to the year 1857, it will still appear that the natives contributed to the revenue during the years 1853-54-55 a larger sum than did the settlements of the southern island—a fact which is sufficiently surprising.

70. It will be seen that a considerable advantage must occasionally—in years such as 1854 and 1855, when agricultural produce was at an extraordinarily high price—have been derived to the Colonial revenue by the balance of the Maori contributions remaining after defraying the expense of services for their special benefit. In consideration of that balance, the Maori population is free to participate in all the advantage of civil government; and actually does already share in very many—more particularly in the use of roads, bridges, jetties, and other public works. On the roads of the Provinces of Wellington and New Plymouth it is, for example, common to meet with a greater number of Maori bullock-carts than of vehicles belonging to Europeans. The native produce of Waikato reaches the Auckland market by the Onehunga road; and it often happens that every second

craft alongside the pier of the port of Auckland is owned by Maories. If the natives do not, to an even greater extent, participate in the expenditure on public works, it is mainly due to the circumstance that they are, in many parts of the island, indisposed to cede territory, and would oppose the execution of public works on lands over which their title has not been extinguished—even in cases in which it might appear politic and just to undertake such works. And it would be a great error to represent that they derive no benefit from the various institutions for the administration of law and the preservation of order in the European settlements: since those institutions are essential to the existence of the civilized community, to which the natives owe—to speak of no other advantages—a market for their produce and for their land. They benefit both directly and indirectly by the establishments of the the Governor, Supreme Court, Post Office (of which they make no small use), Police, and Gaols. The magistrates in all the settled districts of the northern island are called upon not unfrequently to decide civil cases between Europeans and Maories, and sometimes even pure native disputes. Even by the legislative branch—with which, at present, the natives have the least concern—it would be untrue to allege that they are not benefitted.

71. The practical conclusion is that, in those years in which the demand for native produce has brought the aborigines large profits in the European markets, and in which they have consequently largely availed themselves of the advantages of a civilized state, their contributions to the revenue have constituted a fair, but not, it would seem, more than a fair, equivalent; whilst in years of slack demand those contributions probably do not exceed the sums returned to them by Government in direct and exclusive benefits.

(Signed) C. W. RICHMOND.

tomers sell and consume a very undue share of merchandize, if the statements here given are accurate—

	£
A.B. shipped in 1855,	8311
,, in 1856,	3315
C.D. shipped in 1855,	10,893
,, in 1856,	8570
E.F. shpd. in 1855 / ,, in 1856	15,760
G.F. shpd. in 1855 / ,, in 1856	5630

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

COPY OF A MEMORANDUM BY THE NATIVE SECRETARY.

25th June, 1858.

In reference to some of the provisions of the "Native Territorial Bill," I beg to submit the following observations.

1. The change contemplated by this Bill would confuse the Native mind, disturb existing Treaties with them, cause new complications in reference to Title, and very much increase the difficulty of obtaining land in blocks of sufficient extent, to promote systematic English settlement.

2. Nothing will complicate, or retard, the purchase of Land from the Natives so much as the existence of different modes for its acquisition.

3. Land is now being acquired in large quantities, the Native Title to the whole of the available land in the Wellington Province, excepting about One Million of Acres, is already extinguished, large blocks contiguous to each other are being acquired, at a moderate cost, in the Auckland Province, and it does not appear that a change would induce speculation and competition, in acquiring only isolated spots of the best land, would tend to a peaceable settlement of the country.

4. It is true that the Bill proposes certain restrictions and prohibitions, but when a spirit of speculation in land is once created and sanctioned by Legislation, it would become a most difficult and invidious task for the Government in many cases to enforce such restrictions.

5. The Natives themselves who are much interested, do not desire any change, excepting perhaps a few who are deeply involved in debt, and who would make any sacrifice to be relieved from their creditors. It would not, therefore be just to compromise the interests and wishes of the people generally, for the sake of those few. It is well ascertained that the New Zealand tribes regard their land as a National property, the cession of which when decided on, they prefer making as a National Act to Her Majesty, even while they are aware, that the sums to be realized by such cessions are inconsiderable. Nor do they generally attach so much importance to the pecuniary consideration received for land held by them in common, as to the future consequences resulting from its alienation.

6. The limits and restrictions imposed by this Bill, together with the charge of 10s. per acre on all land when transferred to Europeans, would be regarded by the Natives as an unfair interference with their rights, and an unjust exaction of money, for land to which they had established a valid title, at their own expense.

7. For these and other reasons which might be adduced, I consider the Bill in its present shape open to serious objections, inasmuch as the first object proposed by it, that of accurately defining Native Title, might be attained without attempting to modify such Title in the manner therein contemplated, and the second object proposed by it, viz., that of facilitating the acquisition of land by persons settling in the Colony, is one for which existing arrangements fully provide.

The foregoing are the objections I have to offer to the first Bill, of which a draft has been referred to me. I have now to offer some observations on the second Bill which is before the House of Representatives.

Much of what I have already stated with regard to the first Bill is also applicable to the second. The 8th clause provides that the "Native District Registration Act, 1858," may have jurisdiction over lands to which the Native Title is unextinguished. I do not consider that jurisdiction should be given

Minute by Ministers—In general reply to this Memorandum it is sufficient to state:—

First, That the greater part of the arguments used by the Native Secretary apply to a Draft Bill never introduced or even approved of by Ministers, to which the Native Secretary was quite unjustified in referring.

Secondly, That the Native Secretary concludes by recommending a measure substantially identical with—indeed copied in all its provisions from—the Bill introduced by Ministers and reserved for Her Majesty's assent, but destitute of any safeguard against the rashest action on the part of the Executive.

The points of real difference between the Ministers and the Native Secretary are discussed in Memorandum of the former dated 29th September 1858.

C. W. R.

Minute by Ministers—No part of the Bill contains any such provision —the clauses referred to

to a Court composed of a promiscuous Native jury to adjudicate on the conflicting questions of Territorial Rights that may be referred to it; as it is evident that the New Zealand Chiefs would not abide by the decision of Courts, the members of which might in many instances be the slaves of the Chiefs on whose rights they were called upon to pass judgment. The confidence with which the Natives refer to the Governor for the adjustment of such questions should not be in any way shaken or disturbed.

are contained in the "Native Districts Regulation Act." But the jurisdiction of the Circuit Court can only arise under regulations approved of by the Governor in Council, it is therefore absolutely discretionary with the Executive whether such a jurisdiction shall ever be created.

C. W. R.

The charge of 10s. per acre (v. 11th clause) on alienation to Europeans is open to the objections I have pointed out in the previous Bill, and the proposal to expend the money within the District in which such alienation takes place, is calculated to benefit not so much the Native settler as the European purchaser.

If found beneficial, the Act might of course be extended. It appears unreasonable to insist that the Colonial Legislature shall altogether abandon its control over a subject which on all hands is admitted to be one of great difficulty and magnitude. It is not questioned that the limit of area imposed by the Bill, viz, 50,000 acres per annum, amply suffices for all present requirements of the Native population.

C. W. R.

The limitation in Clause 12 would be destructive to the operation of an Act, which if found beneficial in its tendency should not, I submit, be subject to such restrictions, inasmuch as only a fractional part of the Native population could then avail themselves of it; whereas all Acts having reference to the Territorial rights of the Natives should be general, impartial, and admit of extended operation.

Having thus stated my objections to the Bills referred to, I submit herewith some suggestions on which a Bill might be framed to meet the present requirements for issuing Crown Titles to Natives.

(Signed) DONALD MCLEAN.

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

COPY OF A MEMORANDUM BY THE NATIVE SECRETARY.

June 28th, 1858.

Minute by Ministers—
This is virtually a proposition to enable the Governor to waive the Crown's right of pre-emption in favor of Natives to any extent which he may deem fit. It appears obvious that all the material objections urged by the Native Secretary against the Ministerial measure apply with vastly increased force to his own proposal.

C. W. R.

It being desirable that provision should be made in certain cases, to effect a partition of land held in common by the Natives as Tribes, with the view of enabling the Government to issue Crown Titles to individual Natives, and that preliminary steps should be taken for this purpose,—

1st. It should be ascertained that the parties claiming such land are the real owners thereof, and that they are desirous of making such partition, the said owners should then prefer a request in writing to the Governor that a Crown Grant of such land be issued to each or any of the said owners, setting forth, also, in writing, in what manner they are agreed to partition such land; it should thereupon be lawful for the Governor if he deems it advisable to appoint Commissioners to investigate such claim and report thereon.

2nd. It should be the duty of these Commissioners to inquire into, ascertain, and set forth the situation, boundaries, and estimated extent of the said land, the names of the persons who are the owners thereof, or who may have any claim or interest therein, and the proposed partition of the same, together with any other particulars which may be calculated to assist the Governor in determining on the propriety of issuing a Crown Title.

3rd. If, upon the consideration of such report, it shall appear to the Governor that it is desirable that the said land, or any part thereof, should be dealt with in this manner, the Governor may direct that a survey and accurate description of the boundaries of the land be prepared, at the expense of the owners, by a surveyor to be appointed or approved of by him.

4th. When it is established to the satisfaction of the Governor that such Natives are entitled to such piece or parcel of land as joint owners thereof, and that it shall appear desirable that such land shall be granted to such Native owners respectively in severalty, then it shall be lawful for the Governor, upon such lands being ceded by such Native owners to Her Majesty for that purpose, to cause a subdivision thereof to be made in accordance with such proposal as aforesaid, and to make a Crown Grant thereof in the usual form to each such owner, and his heirs, and assigns in fee-simple; provided, however, that if it shall appear to the Governor to be desirable in any particular case to restrict the alienability of the land comprised in any such Grant, it shall be lawful for him by the provisions of such Grant, to restrict in such manner, and to such extent as he shall see fit, the alienation thereof, the Grant should not issue until the Government is reimbursed for the expense attending such inquiry and partition as aforesaid.

Every such Grant should be considered a good, valid, and effectual conveyance, &c., &c.

Half-castes of the Aboriginal Native race may be deemed to be persons of the Native race for the purposes of the Act.

It should also apply to any individual Native claiming to be the sole owner of any piece or portion of land.

In connection with the subdivision or partition of Native land it would be also desirable to empower the Governor, if solicited by all the parties concerned, to cause disputed boundaries between tribes to be fixed and defined as a means of obviating or terminating such disputes.

(Signed) DONALD MCLEAN.

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.

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.

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 fatuous as to attempt to impose restrictions; no doubt such an attempt would be viewed with suspicion.
C. W. R.

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

from the Government, to the great injury of the Colony. Any legislative Act which, in the present state of the country, should have the effect of encouraging individual purchase from the Natives, would be injurious in proportion to the extent of its operation; virtually amounting to a surrender of the Crown's right of pre-emption, it would raise difficulties in the way of the acquisition of land by the Government for the purposes of colonization. The existence of two systems would further tend to confuse and unsettle the Native mind.

The transfer of land from the aboriginal owner to the European settler, involves wider considerations than the mere change of individual ownership, and is felt to do so by the Natives themselves. They regard the Crown's pre-emptive right as their security against their becoming dispossessed of their land in a way which, as a people, they would regard as insidious and underhand, however fair and *bonâ-fide* each separate transaction might be as between the parties individually concerned. The extinguishment of the Native title over a block of land is regarded not merely as a mercantile transaction but as an important national act, a surrender of territory by the Maori people to the British nation, a concession to the Pakeha. Every tribe in New Zealand is more or less interested in every transaction of the kind. The tribes making such surrender incur a degree of responsibility for their act in the eyes of all the other tribes with whose cognisance at least it is done. By allowing private individuals to treat with Natives for the purchase of land, the public and national character of the transaction is lost, and should land be extensively alienated from them in this manner, much confusion and dissatisfaction would be likely to arise, the Government also might be charged with a breach of faith to the Natives, who have always been told that the right of pre-emption is one which the Queen maintains inviolate, for their benefit as well as that of the Europeans. In support of these views I would point to the recent attempts at Waikato and other places to organise an opposition to the sale of land.

Minute by Ministers — Mr. Smith arrives at the same conclusion as Ministry—that the powers of issuing Grants ought to be conceded—but is for dispensing with checks on the exercise of that power, which it is believed the Colony will never consent to forego.

C. W. R.

I am of opinion that great caution should be exercised in issuing Grants to Natives, but that an independent discretionary power should be vested in the Governor of the Colony to make Grants, in the manner described in clause 9, in such cases as he may see fit upon cession to the Crown by the owners for the purpose. That such Grants should create either an alienable or an inalienable estate, as the Governor may see fit.

Clause 11.

On this point see Ministers' Memorandum of 29th September, 1858, paragraph 31, *et seq.*

C. W. R.

The proposed condition of the payment of 10s. per acre to the Government on alienation to Europeans of land held under a Crown Grant, is one which after mature consideration appears to me objectionable. It would be regarded by Natives as an arbitrary and unfair proceeding on the part of the Government after having at some expense made good their title and obtained a Grant from the Crown. As there is reason to believe that the proposed tax would not check individual purchase by Europeans, I do not see any just ground for its imposition, and think a better security against abuse will be provided by giving the Governor power to grant an alienable or inalienable estate, at his discretion.

Clause 12.

Minute by Ministers.— The fallacy is in assuming, that to be a right in the Native which is really a gratuitous concession by the Government. The Legislature very properly will not trust Governor or Ministers, or both together, with any such extravagant discretion as an unlimited power of granting away the Colonial Territory to Natives in fee simple. What the Natives think on such matters depends much upon what is put into their heads by Europeans—especially by persons in authority.

C. W. R.

The limitation herein contained with reference to the quantity of land which may be granted, and the time during which the Act should continue in operation, appear to me open to serious objection. The Bill appears to recognise the right of the Natives to receive Crown Titles to their lands when they can prove ownership, or when the tribes holding in common are willing to cede their lands to the Crown for the purpose of obtaining grants in severalty. If this right be admitted, I do not see upon what principle the proposed limitation is sought to be imposed. The right, if it exist, can be subject to no such limitations. It would be regarded as an act of partiality and injustice on the part of the Government to refuse to another tribe in 1862 what had been conceded to one in 1861.

Clause 13.

For Ministers' answer see their Memorandum of 29th September, 1858 paragraph 31, *et seq.*

C. W. R.

The guarantee which the Bill proposes to give for the expenditure of the 10s. per acre tax, upon or in the vicinity of the land in respect of which it shall have been received, would not satisfy the Native seller, nor would it be fair to him. Such expenditure would benefit not himself but the purchaser of his land. It would be in reality compelling him to contribute 10s. per acre to the improvement of property, his interest in which he had just parted with to another.

(Signed) THOS. HY. SMITH.

Enclosure 3 in No. 1.

REMARKS BY NATIVE SECRETARY.

October 13th, 1858.

I.—*Reply to Minute of Ministers on Paragraph* 1 *of Native Secretary's Memorandum on Native Territorial Rights Bill.*

The Draft Bill referred to had been printed, and was understood to be the measure which Ministers intended to bring forward. The opinion of the Native Secretary on the Native Districts Regulation Bill, and on the Native Circuit Courts Bill, was noted on similar Drafts. It is also believed that the substitution of the Bill brought into the House for that commented on by the Native Secretary, was, in consequence of exceptions taken to the latter by His Excellency, who was in possession of the views of the Native Office with respect to it.

The measure suggested by the Native Secretary is in no respect identical with, or even similar to, that introduced by Ministers. Several of its provisions are similar to those of the Draft Bill above referred to. It cannot, however, be fairly represented as identical with that Draft, or substantially the same, because it adopts some of the unobjectionable clauses.

Assuming the desirability in certain cases, of converting Native Title into one derived from the Crown, a mode of doing so is suggested. The want of some provision to this end was brought into greater prominence by the circumstance that Ministers were about to bring in an Electoral Bill, which, by making a tenure under the Crown a qualification, would have disfranchised the mass of the Natives.

The Governor being the Representative of Her Majesty, and an Officer instructed by, and responsible to, the Imperial Government, it may be assumed that a sufficient guarantee exists for the exercise of the power which this measure would recognise, with due regard to the interests of the Colonists as well as those of the Natives.

II.—*Reply to Minute on Paragraph* 7 *of Native Secretary's Memorandum on Native Territorial Rights Bill.*

The exception in clause 8 warrants the inference that it is contemplated to confer upon the Native Circuit Courts powers of jurisdiction in questions affecting the Native Title to land; the objections to which, it is conceived, are not irrelevantly stated, when commenting on this clause.

III.—*Reply to Ministers' Minute No.* 2 *on Paragraph* 7 *of Native Secretary's Memorandum on Native Territorial Rights Bill.*

The converse is equally true; if found to operate injuriously, it might be repealed. The measure having been devised "chiefly as an engine for the civilization of the Natives," if found inoperative to this end, no difficulty would stand in the way of its repeal. It is not equally certain that its extension could be obtained.

IV.—*Reply to Ministers' Minute on Native Secretary's Memorandum No.* 2, *on Native Territorial Rights Bill.*

It has yet to be shewn how the objections urged by the Native Secretary against the Ministerial measure apply to his own proposal.

Those objections are, briefly:—

That the Bill contemplates an interference with the Native tenure of land.

That, if administered with a view to facilitate the acquisition of land by Settlers (a contingency not beyond the limits of possibility) it would interfere most prejudicially with the present system of acquiring Native lands by the Crown for colonizing purposes, without furnishing any adequate substitute, entailing endless confusion, destroying the confidence of the Natives in the Government, and imperilling the peace of the country.

V.—*Reply to Ministers' Minute on Assistant Native Secretary's Memorandum on Native Territorial Rights Bill, Clause* XII.

Is it not rather a fallacy to assume, that to be Colonial territory, which is really Native territory; over which, it may be maintained, the Assembly has no right of control whatever, previous to its acquisition by the Crown for the purposes of colonization?

If the principle be recognised that it is desirable to give the Maori the means of converting his aboriginal title into one derived from the Crown, it is conceived that any measure for carrying this principle into effect should be framed on a liberal and comprehensive scale, and should possess a permanent character, whether as a right, or as a privilege if conceded at all, it should be open to all to avail of it, and should not be subject to restrictions which by any possibility might leave the Government open to the charge of partiality or fickleness, and thus impair the confidence of the Natives.

It is believed that in the total absence of restrictions such as are imposed by the Native Territorial Rights Bill, cases would rarely arise in which the Governor would feel called upon to exercise the power of issuing Grants to Natives. The principle, however, of imposing such restrictions, it is contended, is inconsistent with strict justice, and therefore wrong.

(Signed) DONALD MCLEAN.

No. 2.

COPY OF A MEMORANDUM BY HIS EXCELLENCY THE GOVERNOR.

Government House,
2nd July, 1859.

The Governor transmits for the consideration of his Advisers the draft of a proposed Bill which has been submitted to him by Mr. Sewell, and which that gentleman is anxious the Government should adopt.

The Governor will be obliged if his Advisers will give him their opinion on the subject generally.

(Signed) T. GORE BROWNE.

Enclosure in No. 2.

Heads of a Bill for promoting the Colonization of Lands in New Zealand, whereof the Native Title is at present unextinguished.

Preamble to recite that it is expedient to provide for the Colonization of Lands in New Zealand whereof the Native Title is at present unextinguished, with the assent of the aboriginal inhabitants thereof.

1. Enact that all the powers hereby vested in the Governor shall be exercised by and with the advice and consent of the Native Council hereinafter constituted, and not otherwise; except where otherwise specially enacted.

2. Her Majesty may appoint not more than nor less than persons to be a Native Council for the purposes of this Act, with the usual powers of removal and new appointment, with power to delegate such authorities to the Governor personally.

3. The Governor may frame rules for the conduct of business of the Native Council; may appoint necessary officers, with proper provision for payment of salaries and expenses.

4. Upon the address of both Houses of the Legislature, the Governor shall, on behalf of Her Majesty, remove any member of the Native Council, without the advice or consent of such Council.

5. The Governor may, with the advice of his Executive Council, raise from time to time not exceeding £250,000 on the security of the General Revenue of the Colony, to be applied to purposes to be defined in the Act.

6. The objects of such Loan to be as follows, viz., for the purpose of obtaining the assent of the aboriginal inhabitants to the cession of their Title, either by way of direct payment, or in public works beneficial to them, or by way of loan to individuals, or annual payments to Chiefs or others, or in the establishment or maintenance of institutions for their benefit, or in any other ways which to the Governor, with the advice of the Native Council, may appear calculated to advance the objects of the Act; with power to make advances from the Loan Fund for the expenses of management.

7. Proper accounts to be kept for distinguishing the expenditure made on account of the respective Provinces—with a view to apportion the charge on such Provinces respectively, according to the outlay incurred on their respective accounts.

8. The accounts to be laid before the General Assembly.

9. All such expenses as may be of a general character to be apportioned amongst the Provinces rateably, according to the outlay in each year on each Province.

10. Whatever may be thus laid out from the Loan on account of each Province to be a charge on such Province and its Revenue, and to be accounted for by the Province to the General Revenue of the Colony, subject to the provision hereinafter contained for reimbursing such outlay from the proceeds of Land fund.

11. The Governor may, by Proclamation, define and declare any Lands in New Zealand whereof the Native Title is at present unextinguished, to be a District subject to the provisions of the Act.

12. Each District to be termed a "Native Land District.

13. The limit and extent of such Districts to be determined with reference to their suitability for systematic Colonization.

14. Whensoever the assent of the aboriginal inhabitants of any such District shall have been ascertained, in manner to be provided by the Act, the Governor may by Proclamation in the Government Gazette declare such Districts to be subject to the provisions of the Act, after a date to be specified in such Proclamation.

15. Before any District shall be declared to be subject to the provisions of the Act, the Governor, by the Resident Magistrate and Assessors of the District, or by some person or persons specially appointed in that behalf, shall ascertain the assent of the aboriginal inhabitants having rightful claims in such manner as he shall deem expedient.

16. The Governor after such assent obtained, to cause a Township to be laid out within the District, and to make regulations, and to cause surveys to be made, and roads to be laid out, and made; to establish ferries; to make reserves for public purposes, and to do all other things requisite for preparing the lands for settlement.

17. In every District a Native Circuit Court, to be established under the "Native Circuit Courts' Act, 1858," and a Resident Magistrate, and at least two Assessors, to be appointed for the Disrict.

18. In laying out the lands of the District, allotments to be made to the aboriginal inhabitants having rightful claims, according to Rules to be made by the Governor in that behalf; (such allotments in all cases to include all pahs and cultivations, unless specially surrendered by the occupants); and all such other lands as may be eligible to be held by them, whether for agricultural or pastoral purposes, or for commonage: and in making such allotments, regard to be had to the rank and station of the respective allottees, and as nearly as may be to their wishes, to be ascertained in such manner as the Governor may think expedient.

19. Provided that the quantity of land to be allotted to any individual, not being a Chief, shall not exceed acres, and the quantity to be allotted to a Chief shall not exceed acres, exclusive of commonage.

20. Crown Grants to be made to the respective allottees in fee simple, free from charge.

21. Lands may be assigned by the Governor for, and as endowments for, the support of Hospitals, Schools, Churches, Chapels, and other religious and eleemosynary Institutions, for the benefit of the aboriginal inhabitants of the District.

22. Provided that the quantity to be allotted for such last-mentioned purposes, shall not exceed of the whole quantity included in the District.

23. Subject to, and after setting apart lands for the several purposes aforesaid, the residue of the lands of the District to be open for colonization under such regulations as aforesaid.

24. The proceeds arising from the sale, disposal, and occupation of lands, under the provisions of the Act, to be paid to some person or persons appointed by the Governor in that behalf, and to be applied,—

1st. In defraying the charges of obtaining the cession of Native Title; of surveys and other expenses incurred in laying out the land, and preparing the same for settlement; and generally of surveys and management.

2nd. After deducting such charges, the residue to be divided into three equal shares,—

a. One thereof to be subject to the provisions of the Land Revenues Act, and to be the security for the Government Loan, and for the uses of the Province.

b. Another share thereof to be paid over to the Resident Magistrate and Assessors, to constitute a fund for making roads, bridges, and other public works.

c. Another share to be paid to the Resident Magistrate and Assessors to constitute a fund for promoting the social advancement of the aboriginal inhabitants, and to assist them, either by way of absolute gift, or loan, in improving their buildings and cultivations, acquiring stock, &c.; such fund to be administered according to Rules to be laid down by the Governor, and approved of by the Resident Magistrate and Assessors.

25. The Act to be reserved for Her Majesty's pleasure—to come into operation on a day to be fixed by Proclamation, and to continue for seven years from that day.

No. 3.

COPY OF A MEMORANDUM BY MR. RICHMOND.

Auckland, 19th August, 1859. Native Land Purchases

In accordance with the Governor's request, conveyed in a memorandum dated 2nd July, His Excellency's responsible ministers submit the following observations on the heads of a Bill prepared by Mr. Sewell, and transmitted with the memorandum referred to.

The distinctive feature of Mr. Sewell's proposal is the constitution of a board of commissioners appointed by the Crown, having the Governor at its head, to which are to be transferred the important functions,

First,—Of conducting land purchasing operations;

Secondly,—Of regulating the sale and disposal of land acquired from the natives;

Thirdly,—Of supervising the survey and preparation for settlement of such lands.

Under existing arrangements, the first of these functions is exercised by the Governor, who acts upon the advice of his responsible ministers as to what blocks shall be purchased and what prices shall be paid: subject, however, to His Excellency's right of veto, if political reasons render it, in his opinion, inexpedient to make a particular purchase. Practically, the chief Land Purchase Commissioner (over whose appointment and removal the Governor retains a personal control, and who is the sole medium of communication on the subject of land purchase between the Government and the natives) exercises a very large influence over the conduct of land purchasing operations.

The second function at present belongs to the General Assembly; and the third and last, to the Provincial Governments.

His Excellency's responsible ministers are decidedly of opinion that the union of these powers in a permanent board would not fail to excite strong public dissatisfaction, and that the proposal cannot be made to the legislature with a chance of success. It appears improbable that such a system could work in harmony with the representative institutions of the Colony. Nor, looking at the scheme abstractedly, without reference to popular opinion or to the congruity of the scheme with the existing institutions of the Colony, does it seem calculated to secure greater stability or efficiency of administration than the present system.

Ministers are aware that the existing system is by no means unexceptionable, in theory, or in its practical operation. The changes required, however, are not, in the opinion of ministers, in the direction of Mr. Sewell's proposal.

By clause 13 of the heads of Mr. Sewell's Bill, it is provided that the Governor shall lay out districts for purchase with reference solely to their suitability for systematic colonisation—excluding consideration of the state of tribal title and of the disposition of the natives to release their rights. Ministers are in general opposed to the plan of buying piecemeal whatever small and inconveniently shaped blocks the caprice of the natives or the state of their titles may from time to time induce them to offer. At the same time, they are of opinion that it would be in the highest degree impolitic for the Government to bind itself rigidly by the rule laid down by clause 13.

It is often impossible to acquire a footing in a native district, or to disentangle the complications of native land disputes, otherwise than by operations which the clause in question would altogether prohibit. Besides which, the plan is absolutely inapplicable to all that portion of the northern island which lies north of Waikato Heads, where, from the way in which native lands and Crown lands are already intermixed, it is quite impracticable to proceed by such extensive operations as Mr. Sewell contemplates.

No one can doubt the desirability of operating only upon large blocks; but it is often quite impracticable to do so; and the difficulties are of a nature which no lapse of time would remove, without the intervention of the Land Purchase department.

Though the Government may, in certain cases, find it expedient to purchase small blocks, it does not follow that these should be thrown open for immediate settlement. The advantages of systematic colonisation are undeniable. But those advantages may secured by retaining the blocks acquired until be the extent of territory at the disposal of the Crown in a given district is sufficient for the formation of a regular settlement.

To many of the minor features of the Bill, ministers see no objection. Under "The Bay of Islands Settlement Bill, 1858," a settlement is to be formed somewhat on the plan which Mr. Sewell's scheme appears to contemplate where Maori proprietors, holding Crown grants, will be intermixed with the European immigrants. Ministers consider that this system may be advantageously extended, and that the prospect of obtaining the advantages which such a plan secures would be found a strong inducement to the natives to release their territorial rights.

(Signed) C. W. RICHMOND.

No. 4.

COPY OF A LETTER FROM HIS LORDSHIP THE BISHOP OF NEW ZEALAND, WM. MARTIN, ESQ., D.C.L., AND THE HON. MR. SWAINSON, TO HIS EXCELLENCY GOVERNOR GORE BROWNE, C. B.

12th May, 1860.

SIR,—

In answer to your Excellency's letter of 25th April, 1860, requesting our opinion on the measures to be inaugurated at the approaching meeting of Native Chiefs, and on Maori matters generally, we have the honour to forward to you our separate opinions, together with an abstract of the points in which we all concur.

We have the honour to remain,

Your Excellency's obedient and faithful servants,

G. A. NEW ZEALAND,
WM. MARTIN,
WM. SWAINSON.

To His Excellency,
Thomas Gore Browne, Esq., C. B.,
&c., &c., &c.

Enclosure 1 in No. 4.

MEMORANDUM BY THE BISHOP OF NEW ZEALAND.

The subject which your Excellency has proposed for our consideration seems to include the following points:—

I. The subordination of the Native Race to the authority of the Crown.

II. The relations between the Native race, and the Representative System of the English Colony.

III. The internal Government of the Native race, under the authority of the Crown.

IV. The Native Land Title, as regards the actual occupation of Land by the Natives themselves.

V. The Native Land Title, as regards the alienation and transfer of land from the Native owner to the English Colonist.

I. The subordination of the Native race to the authority of the Crown.

It is evidently necessary to the welfare of both races that there should be one recognised head over all. The introduction of the Queen's sovereignty into the country is very generally admitted by the Natives to have been a great benefit to them. The incessant wars among the tribes were an intolerable evil, especially when the Gospel had taught them to begin to value the blessings of peace. If it had been possible, from the first beginning of the Colony, to carry into practical effect the sovereignty of the Crown, by the suppression of all war, and the uniform administration of justice in all parts of the country, the whole Native race might now have been cordially attached to the Government. The broken surface and great extent of the country, and the insufficiency of force at the disposal of the Governor for the time being, made it impossible to carry out any such uniform system. The natural result has been that in many districts the sovereignty of the Crown has never been practically exhibited: and the Natives, being thus left to themselves, and still suffering from their own internal disorders, have been employed incessantly for some years in their own Runangas (Councils) in devising schemes of better government for themselves. Among these the most prominent, is the "King Movement," begun I believe with good intentions, and tending to a beneficial result, but made an object of suspicion by the unwise choice of a name.

To combine all these movements in one general system under the sovereignty of the Crown, is a measure as necessary, in its own degree, among the New Zealand tribes, as it was formerly, on a larger scale, among the clans of Scotland, and throughout Europe in the feudal times. The principle on which this combination must be made seems to be clear: that there must be a reciprocal action between the Crown and the New Zealand tribes; the Crown guaranteeing to the tribes certain rights, privileges, and benefits, and the tribes on their part recognizing the sovereignty of the Crown. The introduction of a third element between the two contracting parties is against the nature of the agreement; as if, for example, the English Parliament had claimed authority over the subjects of the Crown in Scotland and Ireland, before the Legislative union of those countries with England. Such an union, however desirable in itself, seems to be impracticable in the present state of the Native people. It follows, therefore, that the sovereignty of the Crown over the Native race ought to be exercised through officers specially authorized for that purpose, and responsible directly to the Crown; and upon a system well understood and accepted by the Native people.

II. The relations between the Native race, and the Representative System of the English Colony.

General Assembly.

It may be hoped that many years will not pass away, before the New-Zealanders, having acquired a knowledge of the English Language, will be able to take their part in the Representative System of the Colony. Their own deliberative assemblies, and the freedom of discussion generally exercised by them, have already prepared the way for their participation in the full privileges of British subjects. But the safer course for the present seems to be, that the General Assembly of the Colony should not be considered in any way to represent the Native race; and consequently should not exercise legislative powers, in matters affecting their interests, without their concurrence. In a Colony, in which the Representative Institutions are based practically upon "universal suffrage," the assumption that the Representatives of the English Colonists have a right to govern the Native race must be untenable. It is said, that the Law officers of the Crown have given it as their opinion, that the Natives have no elective franchise upon their present tenure of land. But even if the Native race were duly represented in the General Assembly, the danger would still remain, that the acts of that body might be ruled by a majority of members from the Southern Island, where no Native questions have any existence; and where the evils of any imprudent legislation in Native matters would never be felt. And this danger is likely to increase daily, because the extinction of the Native Title throughout the Southern Island must lead to a more free and rapid immigration into that part of the Colony; and to a proportionate increase of legislative influence in the hands of persons practically unacquainted with Native questions. It ought to be borne in mind, that the Native race is still a large majority of the population of the Northern Island.

Provincial Councils.

The objections to the exercise of legislative power over the Native race by the Provincial Councils, are of even greater weight. In the first place the Constitution Act debars them from the exercise of any such authority. It is therefore difficult to see what advantage there can be in recognizing a shadow of power, without the reality, by allowing a Province, like that of Auckland for instance, to include districts occupied by the great bulk of the Native population, without a single English resident, except here and there a Missionary or a Trader. This is the case in the districts of Tauranga, the Bay of Plenty, East Cape, Rotorua, Taupo, and Waikato; and the single exception is Poverty Bay, where land to a small extent has been bought by English settlers. It must be evident that the Auckland Provincial Council has neither the knowledge, the machinery, nor the funds, to carry out any effective Government over this vast territory and numerous Native population.

But the present Provincial System is not in this respect merely an innocent fiction. It is a practical evil; and a public danger. The belief is growing that this territory belongs to the Province of Auckland: that it is the outlet for its immigrants, and the means of its aggrandizement. Whereas the fact is, that if the present Native population were to adopt English habits and ideas, the available country which they at present occupy would not be more than sufficient for the maintenance of their flocks and herds, upon the proportionate scale of the same number of English Colonists. The people on the banks of Taupo Lake have already begun to buy sheep: and cattle belonging to Native owners are multiplying on the Waikato river. On the East Coast the population is so dense, that the cessation of wars, and consequent increase of industry, would lead to the occupation of all the available land. When we consider that the whole Southern Island, equal in extent to the Northern, is now so

fully occupied by 30,000 Colonists, that no new Immigrant can find a footing without displacing some prior occupant, it cannot be a matter of surprise that the Province of Auckland with 20,000 English, and 40,000 Native inhabitants, should begin to feel some pressure of population. The vast tracts of worthless land in New Zealand are seldom taken into account in calculations of this kind.

It cannot be denied that the lands still in the hands of the Natives are looked to as the supply for this increasing demand; and thus the authority vested in the Provincial Council over the Waste Lands of the Province, upon the extinction of the Native Title, tends continually to widen the breach between the two races, and to destroy that community of interests upon which the prosperity of the Colony has hitherto been based. The Waikato will soon be to Auckland, what the Waitara is to New Plymouth.

The simple remedy appears to be, to give the Native population in the midland District the benefit of the principle of the New Provinces Act; and to limit the Province of Auckland to the territory already acquired, or over which the Native Title is likely to be speedily extinguished.

III. The internal Government of the Native race under the authority of the Crown.

If the central district of the Northern Island, including Waikato, Taupo, Rotorua, Tauranga, Opotiki, Waiapu and Poverty Bay, were formed into one or more Native Provinces, a simple system of elective and representative Government, under the immediate sanction of the Governor might probably be brought into operation. The form of Government, as in the Swiss Cantons, need not be in all parts exactly the same, but might be adapted to the wishes and customs of particular tribes: provided that in all cases two fundamental points were adhered to,—that the Chief Magistrates and Councillors should be recommended by the tribe and confirmed by the Governor, and that all regulations made by them should require the Governor's assent. It would probably be found possible to bring together these Chief Magistrates in a general council, and any regulations made at such a meeting and assented to by the Governor, might be held to be binding upon all the tribes. This system ought to rest at first upon voluntary compact, and to be rather offered as a boon than enforced by authority, because while the Native people are thirsting for better government, they are not without fear of oppression. The tone of some of the English newspapers has given them sufficient reason to expect the usual fate of a race assumed to be inferior.

Expense of Native Department.

The expense of any such system of Native administration is the next question, but not one of great difficulty.

The surrender by the Native owners of all the best harbours has placed the commerce of the country almost entirely in the hands of the English colonists. Here again the Provincial system has an injurious operation. The Council of each Province looks upon the Customs Revenue of the Province as its own. It is not borne in mind that the Revenue which the Provincial Council administers at Auckland, includes in large but uncertain proportion the proceeds of the industry of 30,000 Natives employed in the cultivation of land, in collecting flax and kauri gum, in felling and hauling spars, and in the navigation of coasting vessels. For a long time Auckland had scarcely any trade but that which resulted from Native industry.

It may well be doubted whether the £7,000 reserved for the Native Civil List, and the same sum voted for Native Schools together, make up the proportion which the Natives contribute annually to the General Revenue.

Supplied by Landed Endowment.

But without relying on this doubtful source of income, there would be no difficulty in providing hereafter for the expense of Native administration by endowments in land. The rent which would be willingly paid by any English tenant for a farm or a cattle run would be far more than the largest sum ever offered by the Government as a salary to any Native Magistrate or Assessor. Endowments of this kind would have the advantage of increasing in value, while votes of the General Assembly, on the contrary, would be the occasion of continual debate, and would not be likely to be augmented.

IV. The Native Land Title, as regards the actual occupation of land by the Natives themselves.

The Native Land Title is simple enough in its origin; but, from obvious causes, extremely complicated in its actual state.

In its theory it is this:—A few leading chiefs, with a small body of children and retainers, arrive at different parts of the Island, and make a rough partition of the territory among themselves by natural boundaries of mountains and rivers. These families grow into tribes each possessing the patrimony derived from its ancestors. To preserve this inheritance unimpaired was a primary object of their care. To this end two restrictions were necessary.

1. Upon the right of alienation; and 2, upon the liberty of marriage. The case of the daughters of Zelopehad is strictly analagous to Maori usage.

"If they be married to any of the sons of the other tribes of the children of Israel, then shall their inheritance be taken from the inheritance of our fathers, and shall be put to the inheritance of the tribe whereunto they are received."

"Let them marry whom they think best, only to the tribe of the family of their father shall they marry."

Other reasons may be assigned for these restrictions, such as—

The right of the tribe to require service from all its members.

The necessity of keeping up their own numbers.

And of preventing strangers from acquiring landed property, to be used to the injury of the tribe.

There is reason to think that an independent right to alienate land, without the consent of the tribe, is unknown in New Zealand.

On the other hand, in the ample territory which each tribe at first possessed there was probably much freedom of choice in the particular spot which each member might wish to cultivate. This spot became his own by right of occupation, and in the absence of all forms of conveyance, descended to all his children and grandchildren, sons-in-law and daughters-in-law, till the right which was at first personal became complicated by a multitude of claims. In the neighbourhood of fortified places these plots of ground, from the necessity of the case, were as minute as cottage gardens near a populous town, and it may be taken for granted as a general rule, that in such cases every acre of land will contain ten or twenty plots, and for every plot there will be ten or twenty claimants, as I have repeatedly found. In such cases also, for the sake of mutual protection, the right of the tribe to control the alienation of land to foreigners would be most rigidly enforced. Complication of Claims.

Three points then seem to be clear on this subject :—

1. That there was originally a distinct owner for every habitable spot in the Northern Island.

2. That these claims have become complicated by the obvious causes of inheritance and marriage, without forms of conveyance or bequest.

3. That these rights of ownership, whether in one or many joint proprietors, were not alienable without the consent of the tribe.

It will readily be admitted that this state of the Native Land Title is neither beneficial to the Native owner nor favourable to the acquisition of land for the English colonist. It is not favourable to the Native owners for the following reasons :— Inconveniences of this Tenure.

Because the undisturbed possession of one acre is of more value than the nominal ownership of an hundred acres. To the Native owners.

Because the complication of claims is the fruitful source of discord among themselves.

Because the claim to widely-scattered estates distracts their attention from their religious duties, separates them from their pastors, and prevents improvement in their domestic and social habits.

Because the number of joint proprietors prevents the disposition of property by will or assignment, and makes it probable that, by the decrease of the Native race, large tracts of land may be nominally in the possession of a very few owners, and therefore an object of envy and ill will to the English settlers, in a continually increasing degree.

And it is unfavourable to the acquisition of land for the English colonists, because of the necessity which it involves of obtaining the consent of a large number of owners. Inconveniences to the Colonists.

The results of these inconveniences are :— Results of these inconveniences.

A growing irritation between the two races.

A greater tenacity of land in the Native owners.

A re-kindling of Native wars upon old land questions.

And a schism among the English colonists, between those who support the Native rights and those who advocate, as they think, the interests of the Colony.

The remedy appears to be simple, viz. :—An unqualified recognition of the Native Land Title to the fullest extent, and with every legal security that would be given to any landed proprietor of our own race. The claims of private purchasers from the Natives before the colonization of the country, however large the extent or inadequate the consideration, have been treated with the greatest delicacy, and the lands so bought, after careful investigation of the Title, have been secured to the claimants by Crown Grants. In what respect is the Native owner inferior to the English purchaser? Why is the land which a tribe has sold to be secured by a Crown Grant, and not the land which it retains? Why is the English purchaser to have all the security which the law of England can give, and the Native owner, in the case of any such question as that which has arisen at Taranaki, to be left to the unchallenged decision of the Land Purchase Department. This one cause has been enough to spread a rankling feeling of insecurity over many parts of the country, and the respect for the Government has been lowered by the reduction of its agents to the level of mere purchasers of land.

Crown Grants are the remedy for this evil. Every Native in New Zealand already knows or may soon be taught what they mean. Once give them secure possession of their land, and the present fidgetty and suspicious sense of insecurity will disappear. Secure possession will lead naturally to a willingness to sell. A Registry of owners will remove the present fears of stealthy sales by a few out of the many joint proprietors. Roads would be desired all over the country, if the Native Tribes were sure that they would not be used as a means for taking away their land. Land leagues would fall to pieces, if every man had an interest in retaining his own liberty to let or sell; instead of an interest, as now, in preventing others from selling behind his back.

The enquiries to be made on this subject at the ensuing Native Council seem to be these:—

1. How many Tribes are willing to have their boundaries surveyed and defined; and to submit to arbitration any questions still in dispute between Tribe and Tribe.

2. Out of the general property of the Tribe what portion of land they wish to be secured to them as inalienable property?

3. Whether they wish to hold that portion of land in common or to have it divided among individual owners, without power of sale?

4. In what manner this restriction may be rescinded, and the Land of the Tribe or of individuals hereafter opened for sale.

5. What further portion of the property of the Tribe may be left open for sale, now or at any future time?

6. Whether this alienable property shall be held in common by the Tribe, and sold only by common consent; and if so, who should be the persons authorised to give that consent?

7. Or whether it shall be divided among the Members of the Tribe, and if so, in what proportions, and in what places each owner should have his allotment.

8. Whether each owner of the parcels of land so divided, shall be at liberty to let or sell at his own discretion, or whether in either or both cases, he shall be required first to obtain the consent of the Tribe.

9. What portion of the land of the Tribe shall be held in Trust for public purposes, with the usual powers of sale and exchange—

For Endowment of Native Ministers and Schoolmasters,
For Endowment of Hospitals and Poor,
For Endowment of Native Magistrates and Expenses of Government,
And for sites of all kinds of Public Buildings.

The results of all these enquiries, when carried out under the authority of the Governor and the Native Council, ought to be made to appear on the face of an outline map of the Country, shewing—

1. What lands belong to each Tribe.
2. What lands are inalienable.
3. What lands can not be bought or leased without the consent of the Tribe.
4. What lands can be leased but not sold.
5. What lands can be sold or leased at the discretion of the individual owners.

The expense of surveys ought not to stand in the way of a great public benefit. The Native owners would, no doubt, supply the manual labour of cutting the lines; and the Colony would be amply remunerated for the expense of the staff of surveyors, by the possession of an outline map of the whole of the Northern Island.

V. The Native Land Title as regards the transfer of land from the Native owner to the English Colonist.

This point has always been encumbered with unnecessary difficulties. Most if not all the hindrances to the acquisition of land from the Native owners have been of our own making. Private settlers, before the colonization of the country, found no difficulty in acquiring vast tracts of land by purchase from the Native owners, and the sales were willingly supported by the evidence of the vendors in the Commissioners' Courts. The difficulty was not felt in acquiring land, but in restricting the purchases within reasonable limits. Governor Fitzroy was informed by his own advisers in Native affairs that the Natives would rebel if they were not allowed to sell their lands as they pleased.

The New Zealanders, like ourselves, are much guided by personal considerations. They will sell land to an acquaintance, when they would withhold it from the Government. It has been already shown that the necessity of maintaining the strength and influence of the Tribe always restrained the alienation of land. It is no contradiction to this, that land has been so freely sold to foreigners, because the great majority of land purchasers were persons resident on the spot, and useful in various ways to the tribe. It often happened that the introduction of a neutral occupier of land strengthened the adjacent Tribes by removing a cause of dispute. Sometimes, as in the case of Auckland, a weaker Tribe found itself secured from a warlike neighbour by the presence of a foreign protector. On the contrary, the promiscuous introduction of an unknown body of strangers was always an object of suspicion. Most of the difficulties of the New Zealand Company's settlements arose from the fallacy, (of which the signs may still be seen in their early maps of New Zealand) that they had acquired secure possession of the vast Districts called North Durham and South Durham, with power to dispossess the Native inhabitants, and to replace them by their own settlers. The Southern Tribes, always hospitable to individual settlers, objected to the introduction of an unknown body, or as they called it "The Tokomaha Wairaweke." If each settler had gone to his own section, with his payment in his hand, and an interpreter to introduce him, quiet possession would in most cases have been obtained.

Difficulties of a similar kind have arisen since the partial introduction into the country of a Representative system in which the natives have no voice; and but few advocates. They hear of thousands of immigrants brought into the country by the promise of free grants of land; and every vituperative epithet is heaped upon them in the public journals, and even threats used openly in the Provincial Councils; because they are accused of not selling their land fast enough to supply the new comers. It is but natural that they should cling to their rights with more tenacity the more they are called in question. Land leagues are the reasonable protest of an unrepresented majority against an aggressive minority.

In what sense it is an offence on the part of the Native people, either individually or collectively to oppose the further sale of land, it is difficult to see. The question is left by the treaty of Waitangi entirely to their discretion. They may think that they have already sold enough: or they may be waiting till the land has acquired a higher value; or they may dread the unscrupulous use which English settlers make of their neighbour's land by trespass of cattle; or they may be taking steps to acquire sheep and cattle for themselves, and require a much larger surface than is needed at present for their crops of corn and potatoes. Or they may dread moral evils; such as the establishment of grog-shops in all parts of the country, for the augmentation of the Provincial Revenue, but to their own incalculable injury. There may be many good reasons to induce the native owners to suspend for a time all further sales of land; and it is enough to say, that they have full discretion in the matter.

Direct purchase from the Native owners, under strict regulations, is likely to have a beneficial effect in disarming many of these suspicions, and so procuring more land for the Colonist. Force will be of no avail against a people ready at any moment to die in defence of the inheritance of their Tribe.

But to receive individuals into a share of their common property, was as much a national feeling, as to resist to the death the encroachments of a hostile neighbour.

This part of the subject must be separately considered for the Province of Auckland.

Throughout the Provinces of Wellington and Hawke's Bay the Native Reserves and unsold Land are mixed up with the Lands of the English settlers. There it seems to be expedient that the Native owners should be advised to divide their property and to take out Crown Grants with powers of sale and leasing, limited only in cases where the Tribe may require that its consent should be first obtained.

But in the Province of Auckland, containing as it does the bulk of the native population, and where considerable powers of self-government ought to be given to them, it seems to be necessary that the right of sale should be given at first only to tribes or persons residing on the margin of the settled districts. Each successive portion of land acquired by the English purchaser might then be added from time to time to the province of Auckland, defined as above proposed. Within the central district containing one or more native provinces, and superintended by native magistrates, the power of sale might be restricted but liberty given to tribes, or to individual owners, with consent of the tribe, to grant leases to English tenants with such conditions of submission to the laws in force in the native province as may be approved of by the Governor and native council. This would probably secure the following advantages:—

1. That large tracts of land would be opened to English industry under lease, as farms or cattle runs.

2. That the rentals of these lands would supply a fund for the expenses of government, for maintenance of ministers and schoolmasters, for the advancement of the social habits of the natives, and would act as a powerful check upon disturbances of the peace.

3. That the absorption of the land by large capitalists and absentee proprietors would be rendered impossible, and the whole revenue of the land spent in this country.

4. That the selection of persons and the nature of their employments, would be at the discretion of the owners of the land, to be defined in the terms of the lease.

5. That this union of the two races in relations of mutual interest would extend the knowledge of our language and laws, and thus hasten the coming of the time when all separate systems and all exceptional laws may be abolished as unnecessary.

(Signed) G. A. New Zealand.

Auckland, 8th May, 1860.

Enclosure 2 in No. 4.

MEMORANDUM BY WM. MARTIN, ESQ., D.C.L.

The practical problem, which is to be solved in respect of the Native race, comprises two operations, namely :—

1. To obtain from the Natives, by fair and peaceful means, a transfer of their superfluous lands.

2. To establish the Natives upon the residue in orderly communities, obedient to Law.

Hitherto the endeavours which have been made to solve this problem have been remarkably successful. The Natives have voluntarily transferred to the Crown nearly all the Southern Island and very large tracts in the Northern. They have gradually abandoned old usages, adopted our dress and our modes of cultivating the ground. A very large portion of the corn and other produce raised in this Island has been grown by them. By co-operative labour sustained for great lengths of time, they have raised large sums of money, which have been expended in the building of mills, and the purchase of small vessels for trading, for the building of churches, &c.

Nor has the moral growth of the race been less apparent. They have readily given land for Schools. In the central district of this Island, Boarding Schools for the children, offshoots of the Schools aided by the Government, have been established by the Natives themselves, and are now conducted and supported by them. One hundred and seventy children are at this time boarded in such Schools.

In every part of the country efforts have been made to establish some mode of settling their disputes by law, and to frame and enforce regulations for repressing drunkenness and immorality, and for securing good order amongst themselves. The success of this great undertaking, as to both its branches, has been such as no man in the Colony anticipated twenty years back.

Now throughout this whole period of time the policy of the Government has been founded on one principle, namely, that of recognizimg the Chiefs of the Native tribes and acting through them.

The Treaty of Waitangi, in the Maori text, expressly guarantees to the Chiefs their full rights of chiefship. The English form, the original draft of the Treaty, was less explicit on the point.

By the influence of the Chiefs the beforementioned large cessions of land were procured. If in any case ill-will arose amongst the clansmen respecting any sale of land, that ill-will was directed rather against the Chief than against the Governor.

At the same time the process of converting the irregular and arbitrary sway of the Chief into a more definite and legal authority, subordinate to the Governor, was steadily carried on.

I do not mean to say that the success abovementioned is due to the Government policy alone. Many other agencies have concurred. But I take it to be quite certain that the same result could not have been attained under a contrary policy.

I have referred to that success only as evidence of the soundness of that policy. For the duty of the Government is, of course, quite independent of the question of success. The National compact, by which we obtained an entrance into these Islands, binds us irrevocably as long as we retain the benefit of the contract.

At this present time, the special difficulties which are connected with the Native question are, first, a diminished willingness on the part of many of the Natives to part with their lands; and, secondly, a desire on the part of many amongst them to set up some sort of internal organization for themselves, more or less independent of us. This latter tendency is sometimes spoken of as the "Maori King Movement," because one section of the Waikato tribe adopted that title for their old Chief Tewherowhero, or (as he is now more commonly called) Potatau. He himself has uniformly refused any title but that of *Matua* (Father). Some violent men in the Waikato district may have desired to carry this Maori organization to the length of actual independence of the Queen; but I believe such persons to have been and to be even now few in number, though the excitement of the present war may naturally increase their number; the strong good sense of the people at large shews them that such a state of things is neither practicable nor desirable.

Indeed no exaltation of one tribe or one Chief over others can last long anywhere. In Waikato itself, some of the leading supporters of the movement have already cooled down and begun to draw off from it. The mass of the people are neither willing nor able to contribute money for its support. The whole thing has no internal strength: nothing but opposition from without can hold it together.

As to the greater part of this Island, it is rendered wholly impracticable by the mutual antipathies of the tribes, growing out of the remembrance of deadly wars in past time. Thus, the very first stirring of this question in Waikato caused public and unanimous counter-demonstrations throughout the North of the Island.

The Eastern tribes stand aloof. Even the Southern tribes (Taranaki), ravaged in the last generation by Waikato, did not seek an alliance with Waikato until they found it necessary to procure some aid in the present war; and, after all, their overtures were rejected. For the same reason William King stood aloof.

It is in Waikato itself, as lying near to Auckland, that the existing difficulties of the Native question are most apparent. The movement there is commonly regarded by the settlers as a wholly unreasonable or half hostile proceeding on the part of the Maoris.

To get a right understanding of it, it must be viewed from their side also.

The Natives were at first exceedingly eager to possess European tools, weapons, clothing, &c., and, to procure them, they readily parted with land, of which they had plenty. In course of time they began to perceive that the position of a Chief was lowered as the territory of his tribe was narrowed; and both Chief and people found that the permanent alienation of their land yielded them little permanent benefit. As their constant saying is, "The land abides, the payment perishes."

Again, there have always been leading men, in Waikato and elsewhere, who have been willing to act under the Governor to keep peace in their districts. Such an arrangement was good for both. The chief's position was sustained, and our influence extended. But they have found the remuneration for their services so scanty that they have not been disposed to continue in an employment so unattractive and unprofitable. They have been even laughed at by their own people for their simplicity in being content to work on such terms.

Whatever else there may be in the Waikato movement, there is, as to these two causes of dissatisfaction, no lack of good sense. In fact, we are, I believe, all agreed with the Waikato men on these two points. Their proceedings are an unconscious attestation to the soundness of the views set forth in His Excellency's Despatches of last year relating to this subject.

To remedy these great defects in our Maori policy, His Excellency has, I understand, already pointed out to the Home Government the necessity of adopting the following rules, namely:—

1. That, on every sale of lands by any tribe to the Crown, a certain portion of the land should be granted back by the Crown to the natives for their own use, and another portion to trustees for the support of schools, magistrates, &c.

2. That a more liberal scale of payment should be adopted for the native magistrates.

If the salary be fixed at £40 or £50 a-year, one half at least should be paid by the Government, the rest being defrayed out of the fines levied during the year, or out of the endowment for that purpose. It is probable that the amount needed for the whole of the native magistrates throughout the island, and their assistants, would not exceed £3000 at the utmost. No charge could better deserve a place on the Civil List than this.

3. That the native runangas or councils of the tribes should, on certain conditions, be recognised by the Government, and should be allowed to propose regulations for their own internal government and good order, which, when assented to by the Governor, should be enforced by their own magistrates.

The practical advantages of this course would be very great. A lawful and regular government would be gradually established within the tribes, and the Government in all its transactions with the tribes would have a definite body of persons with whom to deal.

The Governor has also already set before the Home Government the reasons why the existence of a board specially charged with the carrying out of these and similar regulations is essentially necessary.

The functions of such board would continue until the superfluous lands of the natives were purchased, and the conditions of the purchase performed; and until the native communities were sufficiently organised for their own internal government and good order, and that upon soil secured to them by Crown grants.

That done, the functions of the board would cease. The Maories would then be under the protection of the courts of law, and on the same footing as their English fellow-subjects.

Since the date of His Excellency's Despatch on this subject, a most weighty reason has been added to those which His Excellency had urged. It is now held that occupation under the native title does not in any case entitle the occupant to a vote. Consequently, the General Assembly cannot claim dominion over a race which it does not represent; and the necessity becomes more urgent of constituting some special body to carry out the policy of the Crown in respect of that race, until it be placed completely on the same legal footing as our own race.

The tendency of the natives to set on foot some system of their own, for their own internal government is so far from being dangerous, as it is often regarded, that in truth it is the most favourable course they could have taken. Suppose it had been the other way. If the Maories had pressed for the literal fulfilment of the assurances so often made to them that they should be placed on exactly the same footing as the English, and had accordingly claimed a share and a voice in the eneral legislation of the Colony, the inconvenience would have been much greater.

Now, all risk of collision in political matters with the settlers is avoided, whilst we have it in our power by a wise policy to draw their whole organisation to ourselves. It is in our power, by adopting what is sound in their own scheme, so to improve and control it as to make it an efficient instrument for keeping peace and good order amongst them, and carrying the authority of the Queen effectively into every nook of this island.

As to these several matters, namely,—

1. The issue of Crown grants to native owners;
2. The administration of justice amongst the natives;
3. The necessity of a native board or council, responsible to the Crown;

I have already stated my opinion, at His Excellency's request, on former occasions. It is therefore unnecessary to enter further into them at this time.

(Signed) WILLIAM MARTIN.

Taurarua, 12th May, 1860.

Enclosure 3 in No. 4.

MEMORANDUM BY THE HON. MR. SWAINSON.

It has been repeatedly acknowledged that to the *Imperial*, and not to the *Colonial* Government, the care of the Natives properly belongs, and that the Imperial Government would not be justified in abdicating the responsibilities which rest on it with regard to the Native people. But when the principle of Ministerial Responsibility was adopted, no provision was made for their special government by the Crown, and on the ground not only of justice and humanity but of policy and economy, it is important that the necessary measures for that object should be taken without delay.

Before the Constitution was brought into operation the Governor of the Colony had an influential voice both in the Legislation of the Colony, and in the appropriation of the Public Funds, and he was entrusted not only with the responsibility, but with the power of securing the interests and of promoting the welfare of Her Majesty's Native subjects. But when the Constitution came into operation, the power of the Governor, both over the Legislature of the Colony, and over the Appropriation of its Revenues, was greatly diminished, and his influence for good, especially with reference to the government of the Native race, was materially impaired.

Though the Constitution is called "Representative" it has been decided that it does not confer the Elective Franchise on the Natives, they have consequently no voice in the Colonial Legislature, and at the present moment they are subject, under the so called Representative Constitution, to the government of a Ministry in whose election they have no voice, and (saving the Native Civil List) their contributions to the General Revenue are appropriated by a Legislature over which they have no control.

It is a remarkable feature in the Native character that while they are jealous of any interference from their equals, they are accustomed to yield a ready obedience to a really powerful chief, and having ceded their independence to the Queen of England they are not unnaturally impatient of being governed by their fellow subjects. They know little, and they care less, about a Responsible Ministry —here to-day and gone to-morrow—the members of which they hardly know by name, and for whom they can have no respect. But they are for the most part disposed to yield obedience to the Representative of the Crown, and for this reason it is expedient for the interests of both races that the prestige of the Governor should be carefully maintained; and looking at the tone of a portion of the public press, and to the amount of latent bitter feeling towards the Native race which has recently been brought to light, it is obvious that the duty of promoting their interests cannot safely be entrusted to the colonising race, and that if the Home Government would not abdicate their responsibilities, that measures should be taken to provide for the government of them by the Crown alone, to whom, and not to the English settlers, they were induced to cede their independence.

In any measures which may be adopted for their special government, the Natives would value permanence and stability; while they would be distrustful of "a change of system consequent on a change of Advisers." They have little conception of government in the abstract: but to be appre-

ciated by them, it must be distinctly personified; and to be beneficial, it must not only be personal, but powerful and paternal; and to secure and to maintain a real influence over the Natives, it is essential that constant instruction and friendly communication should be kept up with them.

With this view of the Native character, it seems to me to be desirable that a definite line of policy to be pursued towards the Natives should, in broad outline at least, be formally prescribed, with the deliberate sanction of the British Cabinet;—that it should be the duty of each successive Governor on arriving in the Colony, to make a formal Proclamation of this policy as a deliberate message from the Crown—that each successive Governor should understand that to carry that policy into execution is the principal duty of the Queen's Representative in New Zealand; and that in the performance of that duty he may confidently count upon the support of the Crown and Parliament.

As the government of the New Zealanders has been recognised as a responsibility especially belonging to the Imperial, and not to the Colonial Government, the Governor for the time being should be advised in the management of Native affairs,—not by the Ministry representing the Colonists, and responsible to the Colonists, and liable to be frequently changed: but by a Council of advisers—appointed by the Crown—responsible to the Crown—and holding their offices by a permanent tenure.

And there should be placed at the disposal of the Governor, independently of an annual vote of the Assembly, such a fixed portion of the General Revenue of the Colony as may be sufficient for the maintenance of an efficient Department for the management of Native affairs, for the payment of Native Magistrates and Assessors, and for the outlay which may be necessary for the gradual introduction of law and order amongst the Natives, and for their internal government in their relations with each other.

But with a view to harmonize the action of two different authorities in the government of the same country it is essential that the persons to be appointed as the Governor's advisers should be men not only of character and ability but of high social standing, neither having nor being supposed to have any partial or undue leaning in favour of the Natives, but by their impartiality, prudence, and good sense, and by their interests in the welfare of the Colony at large, likely to earn the respect and confidence of both races. Invested with the power and the means befitting his position, the Queen's Representative may exercise almost unbounded influence over the Natives, and assisted by a permanent body of Advisers of high character and social standing, it is no exaggeration to affirm that for purposes of peace and good order the Governor would form a power in the country fully equivalent to a Regiment of the Queen's Troops. But the Government of the Colony cannot be carried on regardless of the interests, the feelings, or the prejudices of either race without detriment to both, and it should be clearly understood from the outset that a separate government is established for the conduct of Native affairs, not with a one-sided object or in antagonism to the interests of the colonising race, but to save in truth the Natives from themselves, and to serve as a useful agent in promoting the peaceable and successful colonisation of the country.

The influence of both Chief and Priest, once all-powerful in New Zealand, is rapidly decaying; and neither the new Religion nor the new Government yet exercise the same degree of influence over the people; and in their present transition state the Maories are governed with more difficulty than when under the control of a powerful Heathen Chief: and until we have some better influence to bring to bear upon them, the power of the Chiefs should as far as possible be maintained. With reference to the dissatisfaction which is believed to exist amongst certain of the tribes, and to the desire which is being shewn by them for a more active and efficient power to control them in their relations with each other, I would suggest that the invitations to the principal Chiefs to the approaching meeting should be as inclusive as possible in order that advantage may be taken of the opportunity to ascertain what amount of dissatisfaction really exists amongst them; what is the ground of it; and to what extent it prevails amongst them. That the occasion may be turned to profitable account, the meeting should be constantly attended by a small body of persons commissioned to represent the Government, and who, from their high standing, and their acquaintance with the Native character and the Native language, may be likely to exercise a beneficial influence over its proceedings. They should be fully instructed in the views of the Government;—ready to meet objections;—to correct misapprehensions and misrepresentations;—to explain difficulties;—and to enforce what may be reasonable and just.

Before attempting to apply a remedy, the first great object should be to ascertain what is really the state of the Native mind upon the subject. Assuming the invitations to be general, and that they are generally accepted, it will probably be found that the assembled Chiefs may be divided into three classes:

1. Those who, at first sight, may appear to entertain views hardly consistent with the maintenance of British rule.
2. Those who may desire some better and more efficient system than they have at present for their own internal government.
3. Those who desire no change.

If met by reason and argument, applied in a patient and friendly spirit, and assured that they may establish any system for their own internal government, not inconsistent with the general interests of the rest of the community, I believe that those of the first class who may still desire to live independent of British rule, may be reduced to a very insignificant minority.

As to those of the second class who may desire our guidance and assistance, no attempt should be made either to establish, as to details, any *uniform plan* for all the different tribes; or to *impose* any particular system in any particular case; but rather to assist each particular tribe to organise a system which may be agreeable to themselves. Nothing, it is presumed, in the way of legislation

will be either done or attempted at the general meeting of the Chiefs; but it appears to be desirable that a rudimentary sketch of a simple system of Native local self-government should be prepared by persons competent to the task, to be laid before the meeting for their consideration. Much will be gained if they leave the meeting with the conviction that whenever they desire some better system than they now possess, the Government will be ready to aid them with advice in framing it; and with contributions towards the support of Native Magistrates to carry it into effect.

If judiciously dealt with, I believe that the present movement in the Native mind may be turned to good account; and that few of the Chiefs who have ever formally acknowledged it, will continue to be desirous of throwing off the sovereignty of the Crown.

The Native Land question remains to be considered: and on its satisfactory solution the ultimate fate of the Maori race no doubt materially depends.

The true principle of dealing with the Waste Lands of the Colony is, of course, to acquire and dispose of them in such a manner as may be most conducive to the permanent interests of both races, and to the successful colonisation of the country. But the practice which has commonly prevailed, but without any intentional injustice, has been to obtain land from the Natives for the smallest possible price, and to dispose of it in such a manner as might seem to be most advantageous for the colonising race. The natural consequences of this one-sided, short-sighted policy are now beginning to be felt. Seeing their own race about to be outnumbered by our countrymen—seeing the larger part of the territory, of which they were once the absolute masters, already in the hands of the stranger—seeing that they have added nothing to their permanent advantage by disposing of it, but being sensible, on the contrary, of their rapidly waning power,—some of the Chiefs in the central part of the Northern Island have formed a league amongst themselves to hold fast the land which still remains to them. And if it were consistent with the Native character to persevere steadily, for any considerable length of time, in any particular line of action, this combination against the sale of land would threaten to prove a formidable obstacle to the peaceable occupation of the country. And the very eagerness of the settlers to obtain possession of the land of the Natives has a direct tendency to defeat their object. But if, instead of being urged to sell their land, the Natives were positively prohibited from doing so, they would soon become as clamorous to dispose of it as they are now determined to retain it.

With a view to facilitate the acquisition of the surplus lands of the natives for purposes of colonisation, I have already suggested in a previous memorandum (Sept. 6, 1859), that the partition of land held by them in common should be encouraged;—that when the ownership shall have been ascertained after careful inquiry by a competent tribunal, and when it shall have been divided amongst them by mutual agreement amongst themselves, that it should be competent for the Governor and council nominated by the Crown (and either with or without an intermediate transfer from the natives to the Crown) to issue Crown grants to each member of the tribe of his own allotted portion, either in fee simple absolutely, with full power to dispose of it, or under such limitations and restrictions and with such powers of leasing, &c., as to the Governor and council may, in each case, seem meet.

A grant in fee simple to the individual members of a tribe of a specific portion of the common land would confer a title much more valuable in every respect than that which they possess, while holding the land in common under the Treaty of Waitangi. For, so long as it is held in common by the tribe, it cannot be sold even to the Crown without the consent of all the claimants: and even when all are willing to sell, it can be disposed of to the Crown alone; and there being but a single buyer and no competition, the price given is below the market value. But when the land is divided in severalty by grants from the Crown, each claimant receives both a better holding title and a better selling title. While he continues to hold he has the security of a grant from the Crown, and he may not only sell when he pleases and without reference to the other members of the tribe, but he may sell not only to the Crown but to any of Her Majesty's subjects, and obtain the full market value of his land.

By empowering the Governor thus to individualise the native title, two important objects would be attained. Much of the land held by individual natives under a Crown title, would speedily come into the market and become available for purposes of colonisation, and the Governor's power and influence over the natives would be materially increased. But the granting of individual Crown titles with full power of sale should, of course, only be made in localities suitable for immediate settlement, and where the natives are peacable and well-disposed, and should be firmly withheld from any district in which the natives are likely to be troublesome and unruly. And there is no doubt that, wisely exercised, this power may be turned to very valuable account as a moral agent in the government of the native race

In a country like New Zealand, already partially occupied by an aboriginal race, it is necessary that the Government should retain to itself the power of directing the course of colonisation, and of limiting it to localities suitable for the purpose; and it is for this reason there are objections, of a practical character, why, except under well-considered conditions and restrictions, the settlers should not be allowed to deal directly with the natives for the purchase of their land. But it is not easy to see on what principle we can claim to make a profit by the purchase and sale of native land. Let the native owners of the land themselves receive the full market value of it. Let the Government act simply as agents for the natives in the disposal of it, and after retaining the full cost of survey, &c., pay over the proceeds to the native owners: and there is every reason to believe that the surplus lands of the natives would become available for purposes of colonisation as quickly as may be reasonably required. And, if the natives could be induced to invest the purchase-money or any considerable portion of it, at interest for a fixed period in government securities, or to commute it for government annuities, the natives would receive a permanent advantage in exchange for their land, and the Government would have the

best guarantee for the continuance of their loyalty and good conduct. But if the flocks and herds of the English settlers go on increasing until there shall be no longer land enough to feed them, and if, at the same time, the natives are seen to hold large tracts of land of which they make no use, the bad feeling which has already shewn itself towards the native people will continue to spread,—there will be continual danger of collision,—and there is too much reason to fear that when the colonists shall have become an overwhelming majority that native rights will be disregarded, and that the natives themselves will become a persecuted people.

(Signed) WILLIAM SWAINSON.

Taurarua, May 7th, 1860.

Enclosure 4 in No. 4.

Recommendations.

1. That a definite line of policy, based upon the principles on which, with reference to the rights of the Natives, New Zealand was erected into a British Colony, and to the obligations contracted by the Crown of England in subjecting them to British rules, should be prescribed by the British Cabinet. And that every Governor, on his arrival in the Colony, should formally assure the Natives on behalf of Her Majesty that the policy so prescribed will be faithfully adhered to.

2. That for the present, and until the Natives shall have become entitled to the Elective Franchise under the provisions of the Constitution, the Governor, in the management of Native affairs, be advised, not by the Responsible Ministry, but by a Council appointed by the Crown—responsible to the Crown, and holding their offices at the pleasure of the Crown.

3. That for the management of Native affairs, the Governor should have at his disposal, independently of an annual vote of the Assembly, such a sum, chargeable upon the General Revenue, as may be sufficient for the maintenance of an efficient Native Department,—for the payment of Native Magistrates and Assessors,—and of such other expenses as may be necessary for promoting the gradual introduction of law and order amongst them, in their relations with each other.

4. That it is essential to the peaceable occupation of the country, that the personal power and influence of the Governor should, as far as possible, be maintained: and that to extend that influence over the whole Native race, it is essential that constant, intimate, and friendly intercourse should be kept up with them by means of the Native Department.

5. That with a view to render the surplus Waste Lands of the Natives available for purposes of colonisation, with due regard to their future interests, the Governor and Council be empowered, with the concurrence of the Natives themselves, formally to reserve and set apart as inalienable, except under the authority of the Imperial Parliament, such portion or portions of the land held by them in common, as they may desire to retain for the common use of the Tribe, not exceeding in extent what may be sufficient for the purpose, and with power to make Partition by themselves of the land so reserved, for their several use and occupation: with full power to set apart sites for Churches, Schools, and other Public Buildings: and with a power of Leasing for a limited period, by each Member, of his allotted portion, with the consent of the other owners of the Reserve, and with the consent of the Governor and Council.

6. That a portion or portions of land of moderate extent, outside the boundaries of such Reserve, be conveyed, under a Confirmatory Grant from the Crown, to Trustees, in Trust for Religious, Charitable, Educational, and Civil purposes, for the benefit of the Members of the Tribe, with the ordinary powers of Leasing, Sale, and Exchange.

7. That the future wants of the Natives having been thus duly secured, the Partition of so much of the residue of the Waste Land held by them in common as they may not be disposed to alienate to the Crown, should be encouraged. And that when it shall have been divided into as many separate allotments as there are joint owners; and in such manner as may be satisfactory to themselves, that it be competent for the Governor and Council to issue Crown Grants to each Member of the Tribe, of his own allotted portion; either in fee simple absolutely, with full power to dispose of it,—or simply as a Confirmatory holding title, subject to such limitations and restrictions, and either with or without powers of Leasing, &c., as to the Governor and Council may seem meet.

8. That Grants in fee simple absolutely, with full and unrestricted power of disposing of the land comprised in them, should be made in those localities only which may be suitable for immediate settlement, and where the Natives, as a body, are peaceable and well disposed.

9. That in localities too remote or otherwise, at present, unfit for settlement, a simple Confirmatory holding title only should, in the first instance, be granted to each individual owner of a portion of the Common Waste; but convertible, at any future time, into a Grant with free power of sale whenever, in the judgment of the Governor and Council, the circumstances of the case shall have become so far altered as to render it desirable that the nature of the title should be changed. But that at any time before such change shall be made, the holder of a Confirmatory title shall have power to dispose of the land to the Crown.

10. That before the land be either Reserved or Granted as before mentioned, the ownership be made the subject of careful investigation, by a competent Tribunal, to be constituted for that purpose by the Governor and Council.

11. That the Natives be expected to assist in the survey, by supplying, at least, the manual labour of cutting the lines.

12. That for the purpose of securing their permanency and stability, the foregoing measures be made the subject of an Act of the Imperial Parliament.

13. That as soon as may be practicable, English Law should be extended generally to the Native population; but in the mean time, that the power of the Chiefs should, as far as possible, be maintained.

14. That the growing desire of the Natives for a better and more efficient system to control them in their relations with each other, should be encouraged; and that the Government should prepare for their acceptance, but as open to amendments to be suggested by themselves, a simple system of local self-government, suited to their present condition and circumstances; and be prepared to make some contribution towards the payment of the Native Magistrates and others who may be required to carry the system into effect.

15. That the plan set forth in the accompanying Draft appears to be sufficient as the groundwork of an experiment for establishing amongst the Natives such a system of local self-government as may prepare them to acquiesce in the ordinary administration of English Law.

16. That advantage should be taken of the approaching meeting of the principal Chiefs, thoroughly to explain to them its several provisions, and to amend them in accordance with the Native mind, so as not only to secure their own intelligent assent, but their willing aid in commending the proposed system, or any better system that may be devised for the purpose, to the acceptance of the various members of their respective tribes.

17. That with this object, and on other grounds, the invitations to the meeting of Chiefs be as general as possible.

We have the honor to remain,
Your Excellency's obedient and faithful Servants,

(Signed) G. A. New Zealand,
Wm. Martin,
Wm. Swainson.

His Excellency the Governor of New Zealand.

Appendix referred to in Enclosure 2, in No. 1., p. 11.

LEGISLATION FOR MAORIES.

To the Editor of the "Southern Cross."

Sir,—

The friends of the Maori cannot but hail in the discussions of the present meeting of our Parliament, a remarkable contrast to those of the two former sessions.

Measures have now been proposed which evidence not only carefully thought, but a comprehensive view of all the conditions of the case, and a paternal interest in the good of the people for whom we are legislating.

That the Native Districts Regulation Bill should not have received universal approbation, was to be expected. New measures, especially when things are quiet, are always justly regarded with suspicion, particularly when, like the above, they are hampered with a difficulty which I was glad to see so well handled in the upper house—namely the restraint upon the action of the Governor by his Executive Council by requiring him to act with their advice and consent.

In endeavouring to form an opinion upon this difficult point, I confess that I have come to the conclusion that this last named principle is a good one; and for the following reasons:

1st. New Governors may do as much mischeif as new Ministers.

2ndly. All that is contemplated is a check, and that check I consider a wholesome one.

3rdly. The Parliament hold the purse-strings, and if they refuse to grant money, the Governor's functions are paralyzed.

4thly. An "imperium in imperio" is a serious evil.

5thly. As white men are rapidly spreading through the country, it may be found that, as their connexion with the Maori is often very intimate, the Governor, in nominally legislating for the latter only, is also legislating for the former.

The above principle therefore I consider beneficial, as effecting harmonious action between elements that might by their discord produce serious evils in every department of our State.

I have carefully studied the objections advanced in the Legislative Council against the Bill; and while I cannot but admire the sound sense, the good feeling, and the cautious regard for rights and public peace that the speakers manifested, I must confess that I am not shaken in my high admiration of the measures proposed by the Ministry. I will simply state the grounds on which I approve of the one now under consideration.

1st. The Bill is permissive, not of rigid application, giving to the Natives of districts that have advanced in their social state, a legal authority to protect property and restrain offenders, providing at the same time against maladministration by the constant supervision of a responsible English magistrate, and the power of modification or repeal reposed in the Governor.

2ndly. Its provisions are elementary, and yet part of a system that will advance with the improving condition of the people, until it issues in the full establishment of British Institutions.

3rdly. It is admirably suited to the present wants of some of the districts, and indeed the demands from those districts have, I believe, suggested the present measure to the ministry. It is therefore not merely theoretical or experimental, but essentially practical.

4thly. From the very circumstances of the case, we have been obliged to confine ourselves to the "do nothing policy." Sir George Grey, with all his talent and energy, could not, except in a few particulars, rise above the "sugar and flour" system; but that intelligent philanthropic statesman will never consent that such a system should be stereotyped, and I cannot but believe that if that excellent Governor were here now, he would be one of the first to urge us to launch our boat, and move forward with the swelling tide.

So far from fearing disturbance from the above measures, I consider them as the very best possible protection we have against it. For this I might refer as sufficient proof to the high favour in which the people of this district hold their magistrate, who has enabled them to take the first steps in organising their social state, and initiating measures not very dissimilar from those propounded in the above Bill. But I must beg leave to mention other advantages that we may expect from it.

1st. It will give a field of employment to the present workings of the Native mind.

2ndly. It will indoctrinate them into the grand principles of British law.

3rdly. It will show that we do take an interest in their welfare.

4thly. It will bring public opinion to bear strongly upon evils now rampant among them—namely, 'tauas,' murder for witchcraft, petty aggressions by the stronger party, 'taumau' of the women, 'tapu;' besides helping much our magistrates in cases of offenders who, flying from the towns, take refuge in the interior.

5thly. It will thus draw to our officers and attach to them the best and leading men amongst the people.

6thly. It will supply the Governor with a good channel by which he can often ascertain the wishes and views of the people.

In this district my brethren are, with myself, unanimous in their approval of those measures, as far as they have yet been put into operation; and we should have regarded their rejection by the Legislative Assembly as a great national evil.

I am, &c.,
(Signed) CHURCH MISSIONARY.

July 24, 1858.

No. 5.

ADDRESS OF HIS EXCELLENCY THE GOVERNOR TO THE MAORI CHIEFS ASSEMBLED AT WAITEMATA ON THE 10TH OF JULY, 1860.

My Friends,—Chiefs of New Zealand,

1. I have invited you to meet me on the present occasion that we may have an opportunity of discussing various matters connected with the welfare and advancement of the two Races dwelling in New Zealand.

2. I take advantage of it also to repeat to you and, through you, to the whole Maori people, the assurances of goodwill on the part of our Gracious Sovereign which have been given by each succeeding Governor from Governor Hobson to myself.

3. On assuming the Sovereignty of New Zealand Her Majesty extended to her Maori subjects her Royal protection, engaging to defend New Zealand and the Maori people from all aggressions by any foreign power, and imparting to them all the rights and privileges of British subjects; and she confirmed and guaranteed to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish to retain the same in their possession.

4. In return for these advantages the Chiefs who signed the Treaty of Waitangi ceded for themselves and their people to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which they collectively or individually possessed or might be supposed to exercise or possess.

5. Her Majesty has instructed the Governors who preceded me, and she will instruct those who come after me, to maintain the stipulations of this Treaty inviolate, and to watch over the interests and promote the advancement of her subjects without distinction of Race.

6. Having renewed these assurances in the name of our Gracious Sovereign I now ask you to confer with me frankly and without reserve. If you have grievances, make them known to me, and if they are real, I will try to redress them. Her Majesty's wish is that all her subjects should be happy, prosperous, and contented. If, therefore, you can make any suggestions for the better protection of property, the punishment of offenders, the settlement of disputes or the preservation of peace, I shall gladly hear them and will give them the most favourable consideration.

7. The minds of both Races have lately been agitated by false reports or exaggerated statements; and, in order to restore confidence, it is necessary that each should know and thoroughly understand what the other wishes and intends.

8. There is also a subject to which I desire to invite your special attention, and in reference to which I wish to receive the expression of your views. For some time past certain persons belonging to the tribes dwelling to the south of Auckland have been endeavouring to mature a project, which, if carried into effect, could only bring evil upon the heads of all concerned in it. The framers of it are said to desire that the Maori tribes in New Zealand should combine together and throw off their allegiance to the Sovereign whose protection they have enjoyed for more than twenty years, and that they should set up a Maori King and declare themselves to be an independent Nation. Such ideas could only be entertained by men completely ignorant of the evils they would bring upon the whole Native Race if carried into effect.

9. While the promoters of this scheme confined themselves to mere talking, I did not think it necessary to notice their proceedings, believing that, if allowed time to consider, they would abandon so futile and dangerous an undertaking. This expectation has not been fulfilled. At a recent meeting at Waikato some of the leading men proposed that Wiremu Kingi, who is in arms against the Queen's authority, should be supported by reinforcements from the tribes who acknowledge the Maori king, and armed parties from Waikato and Kawhia actually went to Taranaki for this purpose. These men also desire to assume an authority over other New Zealand tribes in their relations with the Government, and contemplate the forcible subjection of those tribes who refuse to recognise their authority.

10. Under these circumstances I wish to know your views and opinions distinctly, in order that I may give correct information to our Sovereign.

11. It is unnecessary for me to remind you that Her Majesty's engagements to Her Native subjects in New Zealand have been faithfully observed. No foreign enemy has visited your shores. Your lands have remained in your possession, or have been bought by the Government at your own desire. Your people have availed themselves of their privileges as British subjects, seeking and obtaining in the Courts of Law that protection and redress which they afford to all Her Majesty's subjects. But it is right you should know and understand that in return for these advantages you must prove yourselves to be loyal and faithful subjects, and that the establishment of a Maori King would be an act of disobedience and defiance to Her Majesty which cannot be tolerated. It is necessary for the preservation of peace in every country that the inhabitants should acknowledge one Head.

12. I may frankly tell you that New Zealand is the only Colony where the aborigines have been treated with unvarying kindness. It is the only Colony where they have been invited to unite with the Colonists and to become one people under one law. In other colonies the people of the land have remained separate and distinct, from which many evil consequences have ensued. Quarrels have arisen; blood has been shed; and finally the aboriginal people of the country have been driven away or destroyed. Wise and good men in England considered that such treatment of aborigines was unjust and contrary to the principles of Christianity. They brought the subject before the British Parliament, and the Queen's Ministers advised a change of policy towards the aborigines of all English Colonies. New Zealand is the first country colonised on this new and humane system. It will be the wisdom of the Maori people to avail themselves of this generous policy, and thus save their race from evils which have befallen others less favored. It is your adoption by Her Majesty as her subjects which makes it impossible that the Maori people should be unjustly dispossessed of their lands 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 goodwill. It is therefore the height of folly for the New Zealand tribes to allow themselves to be seduced into the commission of any act which, by violating their allegiance to the Queen, would render them liable to forfeit the rights and privileges which their position as British subjects confers upon them, and which must necessarily entail upon them evils ending only in their ruin as a race.

13. It is a matter of solicitude to Her Majesty, as well as to many of your friends in England and in this country, that you should be preserved as a people. No unfriendly feeling should be allowed to grow up between the two Races. Your children will live in the country when you are gone, and when the Europeans are numerous. For their sakes I call upon you as fathers and as Chiefs of your Tribes, to take care that nothing be done which may engender animosities the consequences of which may injure your posterity. I feel that the difference of language forms a great barrier between the Europeans and the Maories. Through not understanding each other there are frequent misapprehensions of what is said or intended: this is also one of the chief obstacles in the way of your participating in our English Councils, and in the consideration of laws for your guidance. To remedy this the various Missionary Bodies, assisted by the Government, have used every exertion to teach your children English, in order that they may speak the same language as the European inhabitants of the Colony.

14. I believe it is only needful that these matters should be well understood to ensure a continuance of peace and friendly feeling between the two Races of Her Majesty's subjects; and it is for this reason, and in a firm hope that mutual explanations will remove all doubt and distrust on both sides, that I have invited you to meet me now.

15. I shall not seek to prove, what you will all be ready to admit, that the treatment you have received from the Government, since its establishment in these Islands down to the present hour, has been invariably marked by kindness. I will not count the Hospitals founded for the benefit of your sick; the Schools provided for the education of your children; the encouragement and assistance given you to possess yourselves of vessels, to cultivate wheat, to build mills, and to adopt the civilized habits of your white brethren. I will not enumerate the proofs which have been given you that your interests and well-being have been cared for, lest you should think I am ungenerously recalling past favours. All will admit that not only have your ears listened to the words of kindness, but that your eyes have seen and your hands have handled its substantial manifestations.

16. I will not now detain you by alluding to other matters of great importance, but will communicate with you from time to time and call your attention to them before you separate. Let me, however, remind you that though the Queen is able without any assistance from you to protect the Maories from all foreign enemies, she cannot without their help protect the Maories from themselves. It is therefore the duty of all who would regret to see their Race relapse into barbarism, and who desire to live in peace and prosperity, to take heed that the counsels of the foolish do not prevail, and that the whole country be not thrown into anarchy and confusion by the folly of a few misguided men.

Finally,—I must congratulate you on the vast progress in civilization which your people have made under the protection of the Queen. Cannibalism has been exchanged for Christianity; Slavery has been abolished; War has become more rare; Prisoners taken in war are not slain; European habits are gradually replacing those of your ancestors of which all Christians are necessarily ashamed. The old have reason to be thankful that their sunset is brighter than their dawn, and the young may be grateful that their life did not begin until the darkness of the heathen night had been dispelled by that light which is the glory of all civilized Nations.

Earnestly praying that God may grant His blessing on your deliberations and guide you in the right path, I leave you to the free discussion of the subjects I have indicated, and of any others you may think likely to promote the welfare of your Race.

(Signed) THOMAS GORE BROWNE,
Governor.

Despatch from the Secretary of State.

COPY OF A DESPATCH FROM THE RIGHT HON. THE EARL OF CARNARVON TO GOVERNOR GORE BROWNE, C. B.

Downing Street,
18th May, 1859.

SIR,—

No. 79. 14th Sept., 1858.
No. 101. 13th Oct., 1858.
No. 102. 14th Oct., 1858.
No. 103. 15th Oct., 1858.
No. 117. 15th Dec., 1858.

I have received your Despatches named in the margin, which transmit for the consideration of Her Majesty the following Acts, passed by the Legislature of New Zealand:—

No. 41—"An Act to regulate the Local Affairs of Native Districts."

No. 42—"An Act to make better provision for the Administration of Justice in Native Districts."

No. 79—"An Act to enable the Governor to establish a Settlement for Colonisation in the Bay of Islands."

No. 80—"An Act to enable the Native Tribes in New Zealand to have their Territorial Rights ascertained, and to authorise the issue, in certain cases, of Crown Grants to the Natives."

I wish, in the first place, to acknowledge the care, ability, and sound judgment with which these Bills appear in most respects to have been adapted to the character and circumstances of the Native Tribes; and if I am unable in some respects to give effect to the policy of your advisers, I wish them to believe that this does not arise from any want of reliance on their desire to advance the well-being of the Natives, nor of their capacity to deal with the important and delicate questions on which that well being depends, but from my conviction do not yet justify the Imperial Government in abdicating the responsibilities which are at present rest on it with regard to that remarkable race.

The Act No. 41 appears to me on the whole wisely framed and to bear great promise of usefulness. The second clause however is open to an objection on the grounds which I have already indicated. It not only invests the Governor in Council with the virtual power of making laws affecting in many most important respects the rights and habits of the Natives, (a power which I readily concede, on the understanding that the Governor will exercise a personal discretion in consenting to them) but it omits to secure to the Crown its customary right of disallowance. If however that right is indispensible with regard to laws which are passed by the Representatives of the colonists for the furtherance and protection of their own interests, much more is it necessary in regard to regulations enacted by the Governor in Council for people whom they cannot in any sense be said to represent. I have felt much doubt whether I could properly advise Her Majesty to leave to its operation a law which was open to so important an objection. But believing that the Act is on the whole in the direction of a wise and useful legislation, and that the Legislature of

New Zealand will see the justice of the view which I have stated upon this single point of objection, I have been reluctant, by a disallowance *in toto* of the Act, to entail the public inconvenience which might occur, and the long delay which must necessarily elapse, before legislative provision could be again made to meet the objects in view.

I have therefore laid the Act before Her Majesty, who has been pleased to leave it to its operation. Unless, however, the Legislature should consent to amend it by enacting that all regulations made in pursuance of the second clause shall be subject to disallowance by Her Majesty, it may be necessary to consider under what conditions your assent could be properly given to them, and it may be necessary to require, previous to such consent, that any rules which could by possibility give occasion for dispute or discontent among the Natives should contain a proviso either suspending their operation till the consent of the Home Government is obtained, or (which would probably be more convenient) expressly empowering the Crown to disallow them.

To the Acts numbered 42 and 79, I see no objection. The former has therefore been left to its operation by Her Majesty, and the latter (which is reserved for the signification of Her Majesty's pleasure) will be confirmed by order in Council.

I much regret that I have not been able to advise the same course respecting the Act No. 80, which appears to me open to various important objections. In the first place the proposed issue of Certificates of Native Title under the express authority of the Colonial Government involves important questions which are not adverted to in your Despatch. It is no doubt most desirable that the disputes of the Natives respecting the right to land should no longer be settled by arms, and that the occupation of land in severalty by the Natives should be encouraged. But with regard to the plan which is submitted to me for this purpose, I am bound to ask myself whether in case the decisions of the Governor in Council on titles to land should be resisted by the Natives, the British Government are prepared to promise such a military force as may be sufficient to enforce them. If any such expectation could be held out, it would be clearly necessary that the decisions which imposed so much responsibility and expense on the Home Government should be taken by an officer solely responsible to that Government and not to the Colonists. If (as is the case) no such expectation could be held out, it is more than questionable whether the moral influence of the European Government would not suffer, by the issue of Certificates of title which the Natives would be at liberty to disregard with impunity.

It appears to me therefore in every respect better that the establishment of tribal and other titles, and the acquisition by individual natives of property in severalty should be facilitated, not by the issue of formal documents appearing to rest on the authority and involve the guarantee of the Government, but by the cautious enactment of rules respecting the occupation of land which are contemplated in the second section of the Act No. 41.

I perceive, however, that the proposed scheme has a further object, and that it is intended to furnish a means of ultimately enabling individual colonists to purchase the landed property granted in severalty to individual Natives. There can be no doubt that the passing of the present Act would be very speedily followed by a change, or rather revolution in the system of land purchase in the direction indicated by your advisers. But such a change, I conceive, to be in the highest degree unadvisable. The present system of land purchase appears, as far as I can judge, to be understood and acquiesced in by the Natives, and to be working well for the Colony, while the pecuniary difficulty suggested by your advisers is one which it is in the power of the local legislature to provide against.

On the other hand, the system of individual purchase is, to say the least, opposed to the spirit of the New Zealand Government Act (15 & 16 Vic. C. 72, S. 73), and it is open to important objections in point of policy; it offers no sufficient guarantee for the fairness of the negotiations which have preceded the transfer; it invests the Government with a discretion in respect of sanctioning purchases which can scarcely be exercised without incurring the suspicion of favouritism —it will encourage speculators to anticipate (and thus obstruct) the progress of settlement by appropriating choice and commanding spots of land within the Native territory, and induce an intermixture of European with Native lands calculated to cause confusion and inconvenience. I hold it therefore far more advisable that Government should purchase territories, than that individuals should purchase properties, so that the line which separates the purchased lands on which European law is to prevail, from the unpurchased on which the Native usages will continue to subsist, though always advancing, will be broad and unequivocal.

I also feel strongly the probability that the proposed tax of 10s. an acre on every sale may rouse the distrust of the Natives, and that the proposed mode of sale while it encourages individual land jobbing among one class of the Natives, may irritate others who see the lands which have belonged to their tribe passing from within their reach without themselves receiving their share of the profits.

If indeed the Imperial Government were prepared to depart from the arrangements already sanctioned, and to transfer the management of Native affairs from the Governor, acting under instructions from this country and through a staff of permanent officers to an officer responsible to the Colonists, and changing with the Government, it might be considered that the system of land purchase from the Natives was to be decided upon, by Colonial and not Imperial authority. But this view of the subject I am not able to accept; Her Majesty's Government wish to give the fullest effect to the system of Responsible Government, and to leave all questions of domestic and internal interest to be decided by the Colonial Government, but they cannot either for the sake of the Colonists or for that of the Natives or for Imperial interests, surrender the control over Native affairs, the administration of which, considering the difficulties and intricacies of the subject, crowned

with a very remarkable success, and is paving the way towards that complete civilization and consolidation of the Native race with the English Colonists which Her Majesty's Government, not less than the local Government, desire to see effected. And whilst Her Majesty's Government feel themselves constrained to justify to Parliament the large expense which every year is incurred for the maintenance of a Military force in New Zealand for the defence of the Colony, and for the better control and regulation of the Native race, they must retain in their hands the administration of those affairs which at any moment may involve the employment of those troops and the consequences of an expensive conflict. So long as the Colony for this purpose enjoys the advantage of Military and Naval protection, Her Majesty's Government cannot consent to yield a point which in their opinion is so intimately connected with the security of the Colony, the justice due to Native claims, and the issues of Peace or War itself.

Convinced, therefore, that the proposed Act is calculated to effect hazardous alterations in a system, the working of which does not at present appear open to any practical objection, I have been unable to recommend that this Act should be confirmed by Her Majesty, and it will accordingly remain inoperative.

I have, &c.,

(Signed) CARNARVON,
In the absence of Sir E. B. Lytton.

Governor Gore Browne, C.B.,
&c., &c., &c.