

Enclosure to No. 27.

MEMORANDUM FOR HIS EXCELLENCY.

Auckland, 30th June, 1863.

In the Duke of Newcastle's Despatch (No. 30), 22nd March, 1863, there occurs the following passage:—
 "It appears that your Ministry are desirous of making a road in the neighbourhood of New Plymouth, through lands belonging to the Natives, but without the consent of the Native owners; and the Attorney-General has advised them (as I understood) that the local Legislature is powerless to authorize such a proceeding, but that the land may be appropriated for the purposed purpose by the authority of the Crown."

His Grace then proceeds to point out that this is a question which should be treated as one rather of policy than of strict law. That policy, as well as justice, requires that, in the present state of the country, the course of the Government should be regulated with a view to the expectations of the Natives, based on the Treaty of Waitangi, and their fears of its non-observance,—that the settlers of Taranaki and other places should rather put up with the inconveniences caused by want of roads than risk or bring on a war to obtain them, unless the colonists will pay the whole cost of such a war. His Grace concludes by observing that he would view with more than regret the adoption of the course which appears to be indicated in the enclosures to the Despatch he is replying to.

It is scarcely necessary for Ministers to assure His Excellency of their cordial concurrence in the general views and sentiments expressed by the Secretary of State as to the desirability of obtaining only by pacific measures, wherever possible, the concessions by the Natives even of rights the most necessary for the occupation by the settlers of their own lands. But, as the Despatch shows that His Grace attributes to them entirely opposite views, they have respectfully to request His Excellency to be good enough to convey that assurance to His Grace, and also to correct a misapprehension under which His Grace appears to labour, as to the circumstances which caused the opinion of the Attorney-General commented on in the Despatch to be asked for.

The Governor, and Ministers equally, were desirous of ascertaining the precise legal position of the Government towards the Natives with respect to the general power of taking roads through their lands, and the Attorney-General's opinion was called for, with the express intention of referring it to the Imperial Government for confirmation, revision, or reversal.

It should further be pointed out to the Secretary of State that the particular road, with reference to which there appeared a possibility that it might be necessary to consider the legal position in question, was the road from the main block of land forming the settlement of New Plymouth through the intervening Native land to the Tataraimaka block,—that this is the only road by which the settlers on the block can communicate with the Town of New Plymouth, or other parts of the settlement, to furnish themselves with goods, or carry to market the produce of their farms,—that it is the road which has always been used by both settlers and Natives for one or other of these purposes since the block was purchased in 1847, and, indeed, that it forms part of the only road between New Plymouth, Whanganui, and Wellington. Further, that this is the road upon which the murders at Oakura, on the 6th of May last were perpetrated, and which are justified by the perpetrators, and by the most influential party of the King Natives in Waikato, on the pretext that the Southern Natives (the Taranaki and the Ngatiruanui) had forbidden any European to travel on this road under pain of death, and that consequently the soldiers forming the escort on the 6th of May, having disregarded this prohibition, were properly put to death.

Ministers think that, if these few facts are taken into consideration by the Secretary of State, His Grace will acknowledge that they were not actuated (in concurring with His Excellency in the propriety of having the legal powers of the Government in this case precisely ascertained) by any disregard of the rights of the Natives to the possession of these lands, or of any assumed or fictitious right these Natives may claim to prevent roads being taken through their lands without their consent. Nor do Ministers think they can be justly charged with a want of appreciation of the duty, as well as good policy of endeavouring to obtain the cession by the Natives of this real or pretended right by peaceable means. On the contrary, it will, no doubt, appear that the acknowledgment of rights exercised so arbitrarily, and enforced with such barbarity, would often—as in the Tataraimaka case—be equivalent to the abandonment of lands long ago bought and settled by Europeans, and to the recognition of a Maori sovereignty over these latter, of the most tyrannous, galling, and ruinous a character.

ALFRED DOMETT.

No. 28.

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

Government House, Auckland,
July 7th, 1863.

No. 76.

MY LORD DUKE,—

Your Grace will peruse with pleasure the copies of addresses from the Ngapuhi tribe inhabiting the Northern part of the Island, which I have now the honor to transmit.

These addresses are most numerous signed, and your Grace will find that they denounce in strong terms the murders which were committed by the Natives at Taranaki, and the conduct of the Waikato tribes. Addresses of a similar purport are coming in from other parts of the country. I hope therefore that a large and influential body of Natives will act cordially with the Government in that struggle with the Waikato tribes which, I fear, can be no longer avoided.

I have, &c.,

G. GREY.

His Grace the Duke of Newcastle, K.G.