

ment since November last, lest any misunderstanding should take place upon this subject, that what he is pressing for is not that these prisoners should be all brought to trial, but that some decision should be come to regarding their future disposition.

He has felt, and still feels, that when men have lost relations, lands, homes, and liberty, that they ought not to be kept prisoners on board a hulk, in uncertainty regarding their future fate, for any longer period than the necessity of the case may absolutely require; and some of the circumstances connected with the capture of these prisoners render the Governor most anxious that they should, as soon as possible, know what is to be done with them.

The Governor also thinks that the uncertainty regarding the intentions of the Government in reference to these prisoners is producing a bad effect upon the Native population generally, many of whom it appears believe that all of them will ultimately be put to death.

In the Governor's opinion it would be sufficient to bring some of them to trial, whilst there are others who it is unnecessary to proceed against, but who might be released on such conditions as the Government thought it necessary to impose.

He would also, if the matter was left to his discretion, in all practicable cases, *try the prisoners before the ordinary Courts of the country, and not before Courts composed of Military Officers.

G. GREY.

* See this subject further pursued in Mem. of 19, 20, and 24 Oct., 1864, printed *post*.

Government House, Auckland, 12th April, 1864.

No. 6.

MEMORANDUM in reply to HIS EXCELLENCY'S Minute of the 12th instant.

With reference to the Governor's Memorandum of the 12th instant, Ministers feel with His Excellency that the prisoners on board the hulk "Marion" ought not to be kept in uncertainty regarding their future fate for any longer period than the necessity of the case may absolutely require. The prisoners have fully understood from the commencement that their lives were not in any danger, and they have no apprehension on that point. It is only, therefore, as regards the length and nature of their confinement that any uncertainty in their minds exists. As to the Native population generally, the uncertainty regarding the intentions of the Government may in some instances be producing a bad effect, although of this Ministers are not aware; but on the other hand Ministers are assured that on some tribes, not actually engaged in the rebellion, but sympathising with it, the effect has been very good.

It must be borne in mind that heretofore the object of keeping the prisoners in the confinement to which they have been subject, has been not for the purpose of inflicting punishment, but to ensure their safe custody in the only place available for that purpose. Ministers have considered safe custody of the first importance, as they felt assured that if the prisoners should escape or be rescued by their friends the result would be to give new life and vigour to the rebellion, and to undo a great deal of what has already been effected towards its suppression. Ministers still think it would be an unwise and dangerous experiment to permit any of them to have such liberty as would enable them, by a breach of parole only, to join their tribes and friends still engaged in active hostilities against the Queen's troops. Conditions as to residence or otherwise are easily made, but as easily broken, and there would be no means in the hands of the Government of enforcing their observance nor of preventing their breach. Ministers are, therefore, of opinion that all, and not some only, of the prisoners should be brought to trial, and that none should at present be released.

With regard to their ultimate disposal, it would be premature to attempt to settle that question until the Court shall have disposed of their cases, but Ministers have no difficulty in stating, for the information of His Excellency, their present views.

The offences of which the prisoners have been guilty are not greater than those of the men, who are from day to day permitted to lay down their arms and submit upon the terms that they shall not be made prisoners or punished in person, and it would be hard to subject the prisoners, who have only been less fortunate, to an unnecessarily disproportionate punishment. Ministers are therefore of opinion that when all danger to be apprehended from their being at large shall have ceased, the prisoners on board the hulk may be placed on the same footing as those who accept the terms of submission offered by the Government; and the fact becoming known amongst their friends that such will be the course taken with the prisoners, when peace is established, will afford an additional inducement for submission. In the meantime (the trials being over) any indulgence consistent with safe custody might be allowed.

The trial of so many prisoners by the ordinary courts of the country for high treason would, however desirable on many grounds, be almost impracticable, and, at all events, open to great objection on account of the delay and technicalities which attend such trials. The most convenient mode of trial will be under the Suppression of Rebellion Act, and a good Court may be constituted partly of officers of Her Majesty's regular forces, as required by the Act, and partly of gentlemen holding militia commissions who have not been actively engaged in the war, and who hold high social positions in the Colony.

19th April, 1864.

F. WHITAKER.

No. 7.

MEMORANDUM of HIS EXCELLENCY respecting the Disposal of the Native Prisoners.

The Governor has received and considered the advice of his Responsible Advisers with regard to the disposal of the native prisoners on board the hulk "Marion."

The punishment the Government already inflicted on these prisoners, and now advise the Governor hereafter to inflict on them, amounts to this:—