

FURTHER PAPERS

RELATIVE TO

NATIVE POLICY, CONFISCATION, ETC.

[IN CONTINUATION OF E. No. 2A.]

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY BY COMMAND OF HIS EXCELLENCY.

AUCKLAND:
1864.

FURTHER PAPERS ON NATIVE POLICY, CONFISCATION, ETC.

MEMORANDUM by the GOVERNOR.

1. The Governor thinks it necessary to reply at some length to the Ministerial memorandum of the 30th of September, stating that the Secretary of State was likely to be misled by a map which the Governor had transmitted in his Despatch, No. 130, of the 3rd of September.

2. The Governor would first point out that his Responsible Advisers have, from an oversight, forgotten that three Orders in council—not two, as they state—were substituted for the one submitted to him upon the 17th of May, all of which, to show his desire to meet their wishes, he signed on the 28th of May; and one of which (the map relating to which they have not forwarded for the Secretary of State with the others) embraced a large tract of country.

Having made these remarks, the Governor now proceeds to state his own views upon the subject of these Orders in council, and the Regulations which accompanied them.

3. On the 17th of May, Ministers laid before the Governor an Order in council which recited “That whereas the Governor in council has been satisfied that the native tribes, or sections of tribes, or considerable number thereof, in the district hereinafter described, have since the 1st day of January, 1863, been engaged in rebellion against Her Majesty’s authority: Now, therefore, His Excellency the Governor, by and with the advice of his Executive Council, doth hereby order, appoint, and declare that the said district shall be a district under the provisions of the ‘New Zealand Settlements Act, 1863.’”

The result of declaring any district within the provisions of the above named Act, was, that the Governor in Council might, from time to time,

MEMORANDUM by MINISTERS.

Ministers respectfully transmit to His Excellency the accompanying notes on His Excellency’s Memorandum of the 24th October last, and on the maps in connection therewith forwarded to them on the 28th of October, being in reply to Ministers’ Memorandum of the 30th of September last.

FRED. WHITAKER.

November 18th, 1864.

1. *Secretary of State was likely to be misled.....*

On a further examination of the facts upon which it was stated that the Secretary was likely to be misled, it may be added *must* be misled. On the 30th of September His Excellency transmitted the copy of a map of Waikato with a despatch stating that the map showed the district of country which Ministers wished to be embraced in an Order in Council, which would bring it within the operation of the New Zealand Settlements Act; but the information that the map had been replaced (as was the fact) by another which was entirely different was withheld. If it was considered necessary to send an obsolete map at all it should have been explained that it was sent—as without explanation the inevitable result would be—to confuse and mislead.

2. *The Governor would point out.....*

It would not have been surprising if there had been a mistake committed, for His Excellency has directed the Clerk of the Executive Council to retain documents which should have been returned to the Executive office to which they belong. But the fact is, that when the Governor wrote his despatch of the 3rd of September and enclosed a map of Waikato, the only question of confiscation then under discussion related to Waikato, in reference to which there were two Orders in Council only, the third related to Tauranga exclusively. It is literally true there were three Orders in Council substituted for the draft order of the 17th of May, but it is equally true that practically there were but two in reference to which any question remained, Tauranga having been disposed of.

3. *On the 17th of May Ministers laid before the Governor an Order in Council.....*

Ministers did not lay before the Governor an Order in Council on the 17th of May, but as appears on the face of the document itself, a *draft* order for His Excellency’s approval. The difference is material. An Order in Council, prepared for signature, represents a subject on which Ministers have made up their minds and given advice, but the *draft* order was laid before His Excellency for his approval in order to elicit his opinion; the form of a draft invites consideration and revision. In a Memorandum of the 25th of May His Excellency stated in reference to this draft that upon the whole the Governor would prefer a district “being in the first instance defined which would only embrace a considerable

set apart within any such district, eligible sites for settlements for colonization, and define and vary the boundaries of such settlements, and that no persons should receive compensation for their land, taken by the Government in such districts, who should, since the 1st day of January, 1863, have made war or carried arms against Her Majesty or Her Majesty's Forces, or who should have adhered to, aided, assisted, or comforted any such person as aforesaid, or who should have counselled, advised, induced, enticed, persuaded, or conspired with any other person to make war against Her Majesty, or carry arms against Her Majesty's Forces; or who, in furtherance or in execution of the designs of any such persons as aforesaid, should have been, either as principal or accessory, concerned in any outrage against persons or property; or who, on being required by the Governor by proclamation to that effect in the Government Gazette, to deliver up the arms in their possession, should refuse or neglect to comply with such demand after a certain day to be specified in such proclamation.

4, 5.

The district which Ministers advised the Governor to proclaim within the provisions of the New Zealand Settlements Act, consisted of several millions of acres, and contained a large number of Native tribes: the vast majority of the members of several of such tribes had never, as the Governor believed, taken any part in the rebellion, but, on the contrary, had performed many acts of friendliness to us.

6, 7.

The New Zealand Settlements Act had thrown this protection round the Natives. It said that the Governor in Council was to be satisfied that any Native tribe or section of a tribe, or any considerable number thereof, had been engaged in rebellion. The Order in Council submitted to the Governor appeared to him to be in direct violation of the law. By mixing up innocent tribes with a great number of guilty tribes, it placed the innocent in a minority, and thus brought them within the provisions of the Act, whilst it robbed them of the safeguard which the Act had thrown round them in directing that a single tribe, or section of a tribe, should alone be brought under its provisions in the same Order in Council.

part of the Waikato and Ngatimaniopoto tribes who have been engaged in the rebellion." Ministers deferred to His Excellency's preference, abandoned the draft, and inserted in the Orders in Council submitted to His Excellency on the 28th of May, the exact boundaries which he had approved of. Whatever may have been His Excellency's object in writing his dissertation of several pages on a document which had never been proceeded with beyond a draft, and had been altogether abandoned on his suggestion at that stage several months before, it is quite clear that the effect must be to produce erroneous impressions.

4. *The district which Ministers advised.....*

Ministers did not advise the Governor to proclaim any district. Their proposal was laid before the Governor in draft, because they were not prepared to advise without further consideration of the subject, and so little had Ministers made up their minds as to boundaries that on the map which accompanied the draft the proposed boundaries were suggested by a line in pencil.

5. *The vast majority of the members.....*

The map laid before the Governor, with the draft of the 17th of May, comprised the Waikato, Thames, and Tauranga districts. The Governor's statement that it was his belief that a vast majority of the members of several of the tribes of these districts had taken no part in the rebellion is of course not controverted, but in this belief His Excellency differed from those who were best acquainted with the facts, and if it were a practical question, worth the trouble, there would be no difficulty in clearly proving that His Excellency's belief was erroneous, and that in the district of Waikato nine-tenths, in that portion of the district of Tauranga described in the draft order three-fourths, and in the district of the Thames a considerable number, at the least far more than sufficient to satisfy the terms of the Act in its strictest interpretation, have been engaged in the rebellion.

6. *The New Zealand Settlements Act said that the Governor in Council was to be satisfied.....*

If the Governor had any doubt on his mind, it was of course competent to him to ask for proof. This would have been a reasonable and legitimate course; but he did not do so. He stated that there was another course which he proposed; and Ministers abandoned their own plan in deference to His Excellency, and consented to adopt the mode which he suggested to bring into operation the New Zealand Settlements Act.

7. *It said that the Governor in Council was to be satisfied The Order in Council appeared to him in direct violation It robbed them of the safeguard.....*

The Governor's representations as to the purport and object of the New Zealand Settlements Act are not correct. His Excellency considers the Act to be violated "by mixing up innocent tribes with a great number of guilty tribes," by including both within a district under the Act. It is quite true that the district described in the Draft Order in Council comprised land of both innocent and guilty—in fact, it included four

European villages, and a large quantity of land owned by Europeans. But declaring such a district did nothing more than describe the outside limits within which any land taken for settlement must be situate. A separate, specific and distinct Order in Council would have been necessary to take even an acre of land under the Act. The object was to define the extreme limits within which land might be taken, and from the manner in which the land of some of the worst and most murderous tribes was mixed up with both European and friendly Native lands it was impossible to include the lands of the former without also including those of the latter in a district under the Act.

His Excellency is clearly wrong in his view that none but guilty tribes were intended to be included within a district declared under the provisions of the Act. On the contrary, the Act clearly contemplated not only that land being the property or in the possession of innocent people might be included in the preliminary order declaring a district, but even that such land might be taken, whether the property of Europeans or Natives, if required by the public interests, and all the necessary machinery, through Judicial Courts, was provided, for awarding compensation to innocent persons where land might be required and taken.

But His Excellency well knows that Ministers did not purpose to take compulsorily any land from innocent persons, even granting compensation under the Act; Ministers in their Memorandum of the 25th of June, informed His Excellency that they "do not consider that it will be necessary to interfere with the properties of the loyal Natives except in some special cases where they hold lands in common with rebels, in which cases Ministers propose to make an equitable division according to the rights of the respective parties, and to confirm the titles of the loyal Natives to their shares by Crown Grants. Already some of the loyal Natives have expressed a wish to make such an arrangement, and others have agreed to receive money in satisfaction of their claims to land which they own conjointly with rebels. Ministers do not contemplate any difficulty in making arrangements with the loyal Natives satisfactory to them as well as to the Government."

8. *But the Order in Council appeared to be repugnant The law required that the Governor should be satisfied.*

It was of course competent to the Governor to profess himself not satisfied of what was patent to everybody else, and to have required some proof; but this he did not do. There would have been no difficulty in making the preliminary enquiry and producing the necessary proof of that which was already established beyond dispute. If the question had been placed on that issue alone the subject of confiscation would have been readily disposed of. At all events, His Excellency would have dealt fairly with his Ministers if he had given them an opportunity of removing his objections.

The assertion made by His Excellency that "the number of inhabitants contained within this district was absolutely unknown, and could not within any reasonable time be ascertained," is surprising. The approximate number of inhabitants is well known, and if it were not, there would not have been the slightest difficulty in ascertaining it, the district being in the immediate vicinity of Auckland. But what had the number of inhabitants to do with the matter—the question was whether a number sufficient to satisfy the terms of the Act had been engaged in rebellion.

8.

But the Order in Council which Ministers advised the Governor to sign appeared to be repugnant to the New Zealand Settlements Act in a still more important particular. The law required that the Governor in Council should be satisfied that a considerable number of a tribe, or section of a tribe, had been engaged in rebellion. This clearly presupposed some preliminary inquiry into the facts of the case. Such an inquiry was possible in the case of a tribe or of a section of a tribe; but such an inquiry was absolutely impossible in the case of such an extensive district of country, and of such a number of tribes, as Ministers embraced in the Order in Council they submitted to the Governor on the 17th of May. The number of inhabitants contained within this district was absolutely unknown, and could not within any reasonable time be ascertained; whilst the proportion of them which had been engaged in the rebellion it was quite impossible to ascertain. No such inquiry as was contemplated by the Act had therefore taken place, yet Ministers advised the Governor to sign an Order in Council declaring that which implied that such an inquiry had been instituted, and that the Governor was satisfied as to the nature of the result, and that he

thereupon had brought all the Native inhabitants within the district under the provisions of a law which might entail the forfeiture of their entire landed property within that district, upon all persons who had committed offences even of so trivial a character that it would have been probably difficult, in a race related to one another as the Natives are, for many persons within that district to escape falling under some one of the provisions named in the Act.

9, 10.

For these reasons, the Governor deemed the Order in Council presented to him as being so contrary to law and repugnant to the New Zealand Settlements Act and the legislation of the General Assembly that he declined to act on the advice of his Ministers, and did not sign the Order in Council which had been submitted to him. Had he done so, he might with as much reason and justice have been asked the next day to include the whole remaining portion of the Northern Island in a similar Order in Council. He also believed that the issue of such an Order in Council as was laid before him on the 17th of May might have alarmed alike the friendly and wavering Natives, and have involved the country in a general war.

At the same time that Ministers laid before the Governor this Order in Council, they advised him to approve of certain Regulations for the location of Natives who had been in arms against the Queen's troops, on land to be allotted to them by Government.

These Regulations were not approved of because the Governor had declined to sign the Order in Council to which they had relation, and the Regulations, for the time, fell to the ground.

11, 12.

On the 28th day of May, at a Council at which only two Ministers were present (the Premier and the Minister for Colonial Defence), Ministers laid before the Governor three Orders in Council, in lieu of the one he did not sign, defining and declaring three districts under the New Zealand Settlements Act. One of these districts embraced a very large extent of country, including much territory which had neither been taken possession of or occupied by our troops. The Governor was, however, satisfied of his own knowledge that a considerable number of the Natives within those districts had been engaged in rebellion against Her Majesty's authority, or had carried arms against Her Majesty's forces since the 1st day of January, 1863; he, therefore, determined to show how great his anxiety was to meet the views of his Responsible Advisers, signed these Orders in Council.

9. *For these reasons the Governor.....he declined.*

The Governor's reasons have no foundation to rest on. The Order in Council was not "contrary to law, and was not repugnant to the New Zealand Settlements Act, and the legislation of the General Assembly." It would have been perfectly intelligible that the Waikato, Thames, and Tauranga Natives should have been included in an Order in Council declaring a rebel district; but it would be very difficult to find any one else besides His Excellency who would adduce that as a reason for including "the whole remaining portion of the Northern Island in a similar Order in Council." The district comprised in the Order of the 17th of May could very properly have been declared a rebel district, because a very large proportion of the population was engaged in the rebellion, but no such reason could possibly apply to the Ngapuhi and other tribes of the Northern Island, who have kept altogether aloof from any participation in it. His Excellency says in effect, that if a district in which rebels reside is declared to be a rebel district, it is just and reasonable to declare a district in which no rebels reside to be a rebel district. Ministers cannot agree with His Excellency in such a proposition.

10. *He also believed that the issue of such an order.....might have alarmed alike the friendly and wavering Natives, and involved the country in a general war.*

There were two courses open for His Excellency to pursue,—the one firm, vigorous, and consistent—the other weak, timid, and vacillating. The former the Natives appreciate and respect; the latter produces contempt and opposition. Most unhappily for all, His Excellency has determined to pursue the latter, and every day makes more apparent the disastrous results of so fatal a mistake.

11. *On the 28th day of May, at a Council at which only two Ministers were present, the Premier and the Minister for Colonial Defence, Ministers laid before the Governor three Orders in Council.....*

His Excellency altogether omits to mention the important fact that the three Orders in Council of the 28th of May were the result of an arrangement between the Minister for Colonial Defence and himself, and that the boundaries of the districts comprised in those Orders were suggested by His Excellency, and when the plans were made His Excellency approved of them, and proposed at once to sign the Orders in Council to which they were annexed, but did not do so only because it required the Governor *in Council* to give legal effect to them. One of the Ministers to whom His Excellency refers—the Premier, Mr Whitaker—was then requested by the Minister for Colonial Defence to attend a Council as a mere matter of form to carry out what had been arranged by himself and the Governor. Mr. Whitaker objected, on the ground that he did not believe the Governor would issue the Orders; that His Excellency would even yet find some excuse, and that he, Mr Whitaker, would not go to the Council to enter on any discussion on the subject, which would not, he felt assured, lead to any practical result. The Minister for Colonial Defence

gave his assurance that the Governor was ready to act, and that the Council, he was sure, would not last five minutes, as the Governor would at once issue the Orders. Mr Whitaker stated that his opinion was unchanged, but that, in deference to the wishes of his colleague, he would go to the Council in order to form a quorum, but that he was not to be expected to interfere with the matter. The Council met, and Mr. Whitaker's expectations were realised.

12. *One of the districts embraced a very large extent of country.....*

This sentence is true, but it leads to a false inference. The impression created is, that this large district was to be brought under the Settlements Act in order to meet the views of Ministers. The reverse of this is the fact. The Order embraced Hangatiki, a "territory which had neither been taken possession of or occupied by our troops;" and on the proposed boundaries being shewn to Mr Whitaker he objected, and only gave way on the assurance of the Minister for Colonial Defence that it was His Excellency's express wish that Hangatiki should not be left out. Whatever may have been His Excellency's anxiety, as he states it was, to meet the views of his Responsible Advisers, the event clearly shews that that anxiety subsided before he had given any effect to it. It has been the misfortune of Ministers that His Excellency's acts have never come up to his professions in this respect. Experience has made Ministers feel that the only use made of their statements and propositions has been to find fault with and raise objections to them.

13. *Ministers then submitted to the Governor the same Regulations.*

Ministers did not submit any Regulations to the Governor on the 28th of May. The Regulations of the 17th of May had reference to the draft Order in Council of that date, and were sent to the Governor as a draft on that day to elicit his opinion, with these words written on the face of them, "Rough draft submitted for the Governor's consideration;" but His Excellency sent them back with a message that he would take no notice of them unless they were formally advised by Ministers. The above words were struck out accordingly, and the words "Advised by Ministers" substituted.

14. *Looking at the great extent of country.....*

Under the Settlements Act two Orders in Council are necessary, one declaring what shall be a rebel district, and the other taking the land for settlement. The first even did not comprise a great extent of country—not one-fifth of the land held by rebels in the country; and the land comprised in the Order in Council taking the land did not comprise sufficient land for the military settlers; and as that Act provides that no land shall be disposed of in any other way till sufficient has been set apart to fulfil all contracts with the military settlers, there was no land included in the latter Order upon which Regulations could operate, so that, as regards that Order, the Regulations, instead of being, as His Excellency says, of the utmost importance, necessarily were of no importance at all,—in fact, could not be made to apply.

15. *These Regulations appeared to the Governor to make no mention.....*

It is not possible to see what the Regulations had to do with making mention of the extent to which the forfeiture of the land was to be carried out. The Orders to be made by the Governor in Council under the 4th section of the Settlements Act were the proper documents to regulate that;

13.

Ministers then submitted to the Governor the same Regulations which they had advised him to approve of on the 17th of May.

14.

Looking to the great extent of country which the Governor by the Orders in Council he had signed had brought under the provisions of the New Zealand Settlements Act, these Regulations became a matter of the utmost importance. They purported to be Regulations for the location of Natives who had been in arms, on land to be allotted to them by the Government.

Regulation No. 4 was as follows:—Every man will have allotted to him a certain quantity of land, which will vary in size, according to circumstances, from five to one thousand acres.

15.

These Regulations appeared to the Governor to make no mention of the extent to which the forfeiture of the land of those who had been in rebellion was to be carried.

16.

He wished to be informed whether the intention of the Regulations was that a Native who came in under these terms forfeited all his land, whether in the proclaimed districts or in other parts of the Island, receiving the portion of land to be assigned to him as the only land he was to be allowed to retain. He believed that this was the intention of his responsible advisers.

17.

He felt that a distinct offer ought to be made to the Natives in plain terms, regarding which there could be no misunderstanding; and that it could not be expected that any large body of Natives would accept of the offer proposed to be made unless they knew the consequences that were to follow from their acceptance of it.

18, 19, 20.

The Governor however found that the views of his Responsible Advisers on these points did not accord with his own. He understood them to say that they simply at present advised the Governor to approve the Regulations they then laid before him, which had only relation to a small district, and that they would afterwards from time to time tender to him advice regarding other districts; that when the time came they would tell him what advice that would be; but that they declined now to say whether they would hereafter give or not give more land to the Natives who might take it under the Regulations they then advised the Governor to approve, and that they would not then say whether or not they intended to consider the residue of the land of the Natives of the proclaimed districts to be forfeited, whether in the districts themselves or in other parts of the Island. The Governor also understood his Responsible Advisers to decline to state what was the general policy they proposed to pursue regarding the confiscation of Native Lands, and the extent to which they intended to carry such confiscation.

and it was entirely in the Governor's power to limit the extent to any quantity he might think fit. The Regulations were proposed to be issued under the 18th section of the Act, which authorises Regulations to be made prescribing the mode in which land taken under the 4th section may be disposed of. The Governor thought it quite reasonable to press his Ministers in May to declare at once to what extent they intended to carry the forfeiture of land; but after he had taken the matter into his own hands, irrespective of his Responsible advisers, in September he thought, even with the great additional light that four months had thrown on the subject, that he should not be asked to state even the minimum quantity which he would require to be given up by the Natives.

16. *He wished to be informed whether the intention of the Regulations was.....*

It is remarkable how His Excellency manages to mystify the plainest matters. The regulations, it is repeated, had nothing whatever to do with the extent of forfeiture, or forfeiture indeed in any shape. Their object was the disposal of land, and not the acquisition of it. The Order in Council fixed the extent of the forfeiture, and the regulations were not intended to, and did not in any way, affect the question. His Excellency's belief as to the intention of his Responsible Advisers is altogether erroneous.

17. *He felt that a distinct offer ought to be made.*

Ministers have frequently proposed and urged on the Governor the propriety of making a distinct offer to the Natives, but His Excellency has always found some reason or excuse for not doing so. His Excellency's idea of a distinct offer is rather a curious one. Now that he has assumed uncontrolled power, he has had the opportunity of shewing what he means. His Excellency offers to take such an extent of territory *as may in each instance be fixed by the Governor and Lieutenant General*, and the Maoris are supposed to know what His Excellency deems it essential that they should know, the consequences that are to follow from the acceptance of such an offer.

18. *The Governor, however, found that the views of his Responsible Advisers on these points did not accord with his own.*

It is impossible to understand by what process His Excellency arrived at this conclusion. The best answer to His Excellency's assertion is what His Excellency himself says on the subject. The following extracts from the Memorandum under consideration shew this. "They declined now to say whether they would hereafter give or not give more land to the Natives who might take it under the regulations." "He also understood his Responsible Advisers to decline to state what was the general policy they proposed to pursue regarding the confiscation of Native land."

19. *They simply, at present, advised the Governor to approve the regulations.*

Ministers did not give such advice, and they did not lay the Regulations before His Excellency on the 28th of May; he had had them in his possession since the 17th of May, when they were sent to him in reference to another Order in Council—he himself produced them from amongst the papers on his table, and Ministers objected to importing a discussion on the Regulations into the matter of the Orders in Council of the 28th of May—the district to be taken under these orders not including any land on which the regulations could operate.

20. *But that they declined now to say.....*

The Governor having signed the Orders in Council, which had been prepared entirely to meet his views, then produced the regulations, which

had nothing to do with them; commenced a discussion not pertinent to the business before the Council, and asked questions, whatever the object, only calculated, as it appeared to Ministers, to create embarrassment, and which could not produce any practical result. Ministers did decline, then, to answer the questions, on these grounds, and especially on the further ground that the subject had not been considered by them, and that the two Ministers present were not prepared to commit the Government without such consideration; but, they added, that they would advise when the occasion arose. That occasion it was, of course, competent for the Governor to create whenever he thought fit; and in the following month of June, His Excellency did formally ask the question—What was the “general policy they (Ministers) propose to pursue regarding confiscation of native land, and the extent to which they intend to carry such confiscation?” To this Ministers replied in a memorandum of the 25th of June, fully explaining their views.

21, 22.

These are the points on which the Governor wished to be informed. He thought it due to Her Majesty's Government that he should give them the fullest and clearest information on those subjects, in order that they might know the duty on which they sanctioned the employment of the Queen's forces. He also felt that he ought not to be expected to take the responsibility of ordering from time to time the employment of those forces until he knew the end which was being aimed at, and the extent to which it was proposed to carry on operations; and he thinks that it would be generally felt that a distinct notification on this subject should be made to the native population, with the view of bringing as soon as possible the present unhappy contest to a close.

21. *These are the points on which the Governor wished to be informed.....*

Ministers have never refused to explain their views to His Excellency in the fullest manner whenever he has given them an opportunity of considering the subject upon which he wished them stated; but they did not think it reasonable, and still think it was unreasonable, that at an Executive Council, called for the purpose and under the circumstances of that of the 28th of May, two Ministers—present only as they understood as a matter of form to dispose of that which had been virtually settled—should be pressed, without time for consideration or consultation with their colleagues, to give explicit answers to such questions as the Governor then proposed to them.

22. *He thinks it would be generally felt that a distinct notification on the subject should be made.....*

Why has not such a distinct notification been made? Ministers have repeatedly urged it, but His Excellency has been the obstacle. He has, however, now issued what must be presumed he means to call a distinct notification as to the quantity of territory he requires from the rebels, and that is to be “such territory as may in each instance be fixed by the Governor and Lieutenant General.” How such a notification can be considered to convey a distinct idea of extent it is impossible to conceive; and it is not explained how the extent is to be determined, if it should happen that His Excellency and the Lieutenant-General do not agree in opinion.

23.

Ministers positively declining to give the information for which the Governor asked, he stated that he would not approve of the Regulations which they had advised him to approve; and he directed the Clerk of the Council to retain in his possession the Orders in Council which the Governor had signed, and not to allow them to be issued until the Governor informed him he had obtained the information for which he had asked, and until he had approved the Regulations.

23. *Ministers positively declining to give the information.....*

Ministers did not positively decline to give the information, but Ministers declined to give opinions upon imaginary cases, irrelevant to the matter before them without due consideration and consultation with their colleagues; and they appeal to the correspondence between themselves and His Excellency in proof of their never having refused to state their opinions explicitly whenever the Governor has reasonably required them to do so.

24.

It appears, as will be seen from the Enclosures to this Memorandum, that some misunderstanding took place on the subject of the Regulations which the Governor says were submitted to him. Ministers say that the Regulations were not submitted to the Governor on the 28th of May, although he had been advised to approve them on the 17th May.

24. *It appears, as will be seen from the enclosures to this Memorandum, that some misunderstanding took place.....*

Ministers did advise the Governor to approve of the Regulations as applicable to the draft Order in Council of the 17th of May, but certainly did not advise the Governor to approve of the Regulations as applicable to the Order of the 28th May. This is not a question of opinion, but of

25, 26.

The Governor's opinion is different. He understood that he was advised to approve them on the 28th of May; and it will be seen that the Clerk of the Council's impression corresponds with that of the Governor. This point may, however, be waived. The Regulations were as necessary for the Orders in Council of the 28th of May as for the Order in Council of the 17th of May. It cannot be denied that they were submitted to the Governor on the latter day, for they bear this note, "advised by Ministers, F. Whitaker, 17th May."

27, 28, 29,

And the Governor conceives that Ministers when they recommended him to bring such vast tracts of country under the operation of such a law as the New Zealand Settlements Act, and advised him to issue Regulations which, viewed in their relation to that law, must have had such momentous effects upon the interests of the Native race, ought to have made up their minds as to the general policy they proposed to pursue regarding the confiscation of Native Lands, and the extent to which they intended to carry such confiscation; and that when the Governor had been on two occasions deliberately advised to sign such important papers, and when on the last of these he asked to be informed of the general policy of which they formed so important a part, he was entitled to expect to receive a more definite answer than was made, or even than that given to him so long

fact, upon which the Ministers present at the Council on the 28th of May, feel that any mistake on their part is impossible.

25. *The Clerk of the Council's impression corresponds with that of the Governor.....*

The Clerk of the Council appears to have written his memorandum on the 27th of June, and His Excellency forwarded a copy to Ministers on the 24th of October only. What does his testimony amount to? That because the Prime Minister *handed or passed* the papers to him *after* they were signed by the Governor, therefore he was led to suppose that the Prime Minister submitted them for approval. And as to the Regulations, the Clerk a dozen times tells two different stories,—first, the Minister for Colonial Defence was seen with the Regulations, but the Prime Minister as a matter of fact *assisted* in submitting them to the Governor, by leaning forward and putting out his hand,—and next, the Clerk was led to suppose that the Prime Minister had not assisted only, but himself submitted the Regulations, because a discussion which ensued was sustained he (the Clerk) may say altogether by the Prime Minister. The Clerk then leaves the matter in obscurity as to whether, in his opinion, the Prime Minister alone performed the act of submission, or whether he only assisted in doing so. The fact being, however, that the Prime Minister did neither; for the Governor, after some search, found the Regulations amongst other papers on the table, and handed them to Mr. Russell; but on the 28th of May, they were not submitted to the Governor by anybody.

26. *The Regulations were as necessary.....*

The Regulations were not as necessary for the orders of the 28th of May as for the order of the 17th of May. The land comprised in the order of the 17th of May, and that portion of it which might have been taken under a subsequent order was considerable in extent, and the Regulations might have been brought into operation; but the land actually to be taken under the orders of the 28th of May, was not sufficient to satisfy the contracts with the Military Settlers, who are by law first entitled, and therefore the Regulations could not apply to an acre of it. It was never denied that the Regulations were advised on the 17th of May in reference to the draft Order in Council of that date, nor can it be denied that when the Regulations were submitted to His Excellency in draft on the 17th of May, with these words written on the face of them, "Rough draft submitted to His Excellency's consideration," with a view to obtain His Excellency's opinion, he refused to take any notice of them unless Ministers formally advised their adoption.

27. *When they recommended him to bring such vast tracts.....*

If the Governor means to refer in this passage to the draft order of the 17th of May, the answer is that he was not advised to issue that order. The document on the face of it bears these words—"Draft Order in Council submitted for His Excellency's approval," and on the plan which accompanied it the proposed district was marked in pencil. The object in submitting it to His Excellency was to elicit his opinion—that opinion was given in his memorandum of the 25th of May, and his views, as stated in that memorandum, were adopted by Ministers by their memorandum of the 30th of May, and the draft order, with the map marked in pencil, abandoned. If the Governor in the above quotation refers to the Orders in Council of the 28th of May, they certainly did not comprise vast tracts, and the order

subsequently to these events as the 24th of June, viz. :—"That it was a matter of great importance, and one upon which, after careful consideration, Ministers were fully prepared to state their present views."

actually to take land did not comprise enough to fulfil the contracts with the Military Settlers.

28. *Ought to have made up their minds as to the general policy.....*

The general policy proposed to be pursued was that proposed by the Governor, adopted by his Ministers, and continued and given effect to by the General Assembly. The extent to which it ought to be carried would never be definitely fixed until the result of the military operations had been ascertained. On the 25th of June, Ministers stated in reply to a question on the point from His Excellency, what their views then were; and it was competent for the Governor at any time to have submitted such a question to the consideration of his Ministers, and he would have received an equally explicit answer. Ministers would never have presumed for such wide and extraordinary limits as the Governor has done—namely, the unfettered discretion of himself and the General—as something definite and explicit to the comprehension of the Maoris.

29. *When the Governor had been on two occasions deliberately advised.*

It is really remarkable to view the process by which the Governor has arrived at the statement that the draft order of the 17th of May was deliberately advised. When the order is first mentioned in His Excellency's Memorandum, he states that it was submitted to him (though he omits to say, as was the fact, that it was submitted to him as a draft for consideration); next it was laid before him; then Ministers advised the Governor; and lastly, His Excellency finishes with the decisive statement that Ministers deliberately advised His Excellency to sign the document in question. All this beyond the fact that the Order in Council of the 17th of May was submitted as a draft for consideration is pure fiction.

30. *The Governor also thinks that looking to the duty he owes to the Imperial Government.....It was wrong to attempt to place him in a position in which he was to do as a mere Ministerial act that which was contrary to Law and Equity.*

30.
The Governor also thinks that looking to the duty he owes to the Imperial Government whose forces and means contribute so largely to carry on the war, and looking also to his duty to the Colony, that it was wrong to attempt to place him in a position in which he was to do as a mere Ministerial act that which was contrary to law and to equity, as he thinks the issue of the Order in Council of the 17th of May would have been; and that it was wrong to ask him to do this, or even that which he was advised to do on the 28th of May, without his having a knowledge of what was the general policy aimed at; and that it could not be expected that whilst he was in ignorance of this, he would from time to time give orders involving so largely the interests of the European Colonists and the Native race, for the employment of British forces, and the expenditure of large sums of British money. The Governor felt it at the time to be his duty to resist being put into such a position, and he is quite satisfied that he came to a right conclusion on the subject.

October 24th, 1864.

G. GREY.

His Excellency is much in the habit of justifying his acts by an appeal to motives and obligations of a paramount order, implying a high respect for them on his part, and a corresponding want of respect on the part of his Ministers. "The duty he owes to the Imperial Government," "the employment of British forces," "the expenditure of British money," and similar phrases too often take the place of argument or fact in His Excellency's discussion of matters which are quite within the regions of common sense, and the principles which regulate the ordinary administration of Government. It is obvious enough what it means; but it is submitted to His Excellency that even an effective phrase may be so often repeated as to lose force, and to be looked upon at last as a common form.

His Excellency's idea that an attempt was made to place him in the position he describes is purely imaginary. Ministers never did place His Excellency in such a position, or proposed or wished to do so. The Order in Council of the 17th of May was submitted in draft for His Excellency's consideration, and was abandoned when he preferred another mode of dealing with the subject. The orders of the 28th of May were framed in precise accordance with His Excellency's own views and wishes after consultation with him; and if there was some hesitation by two Ministers to answer categorically upon the instant, without consultation with their colleagues, important and difficult questions unexpectedly put to them, it is

admitted that they had good reason, especially when they too well knew the use which would be made of an ill-considered opinion or a statement inadvertently made.

In conclusion, His Excellency has in his Memorandum under notice so intermixed his references to the Orders in Council, draft Orders in Council, and Regulations, as to involve the subject in almost inextricable confusion to the minds of readers except those personally conversant with it. It seems, therefore, desirable shortly to state the facts of the case.

The defeat of the Maoris at Orakau, followed by the evacuation of Mangatautari in April last, seemed to Ministers the right moment for putting in force that confiscation of territory, and its settlement by Europeans, which the Governor in 1863 had declared to be the only remedy for the existing troubles. Waikato had been conquered, and the time had arrived to announce the consequences of rebellion not by words but by action, which might carry conviction to the Native mind, and secure for the Colony that material guarantee which was to provide for its future safety.

On the 17th of May Ministers submitted for His Excellency's approval the draft of a proclamation intended to define the limits of a district to comprise part of the territories of the principal rebel tribes, out of which district the lands actually to be confiscated and settled were afterwards to be selected by the Governor in Council. His Excellency in reference to this district expressed his opinion as follows:—"Upon the whole the Governor would prefer a district being in the first instance defined, which would only embrace a considerable part of the territory of the Waikato and Ngatimaniapoto tribes who have been engaged in the rebellion." Thus omitting the contiguous territory of the rebel Thames and Tauranga tribes which Ministers had proposed to include in the same Order in Council, Ministers abandoned their own proposal and adopted that of His Excellency. Orders in Council were accordingly prepared to carry out His Excellency's views, and he actually signed them on the 28th of May though he afterwards refused to issue them.

The first district proposed by Ministers on the 17th of May, and afterwards abandoned, comprised an extent of territory that rendered it proper to make provision for the settlement of Natives who might return to their allegiance and desire to reside within it. Regulations were drafted accordingly and laid before His Excellency with the draft order to which they had reference. When the proposal was abandoned the Regulations of course fell to the ground, for they could have no application to the smaller district which it was on the 28th of May proposed to take, as that did not comprise any land on which they could operate. Nevertheless it was a discussion on these Regulations, arising inadvertently after His Excellency had signed the Orders in Council, that led to his refusal to issue them. The refusal was altogether illogical, the Orders having no reference to the Regulations on which His Excellency based his refusal.

The obscurity of His Excellency's Memorandum under notice, and the difficulty which, without explanation, most persons will have in understanding it, arises from the manner in which he has confused his references to the several Orders in Council and the Regulations. It is possible that His Excellency has not understood the subject himself, and that the confusion of ideas which pervades his Memorandum is the candid reflex of his mind. It will be seen, however, on careful

examination, when viewed by the light of the explanations given, that the conclusions arrived at by His Excellency as to the proposals of his Ministers being "contrary to Law and Equity," contrary to his "duty to the Imperial Government and not in accordance with the responsibilities imposed by the presence and aid of the British forces and the expenditure of large sums of British money," are entirely without foundation, and that nothing was proposed by Ministers but what was in strict conformity with the policy inaugurated by the Governor in 1863, adopted by the General Assembly, sanctioned by the Imperial Government, and which if carried out with firmness and vigour at the time when Ministers advised it, would, they firmly believe, have secured by this time a just, satisfactory, and permanent peace—an event which, they regret to think, has been indefinitely postponed by the vacillation and indecision of His Excellency.

FREDERICK WHITAKER,

Enclosures to the Governor's Memorandum.

Draft Order in Council, submitted for His Excellency's approval.

May 17th, 1864. FREDERICK WHITAKER.

ORDER IN COUNCIL.

Governor.

At the Government House at Auckland, the day of May, 1864,

Present:—His Excellency the Governor in Council.

Whereas the Governor in Council has been satisfied that the Native tribes, or sections of tribes, or considerable numbers thereof, in the district hereinafter described, have, since the first day of January one thousand eight hundred and sixty-three, been engaged in rebellion against Her Majesty's authority: Now, therefore, His Excellency the Governor, by and with the advice and consent of his Executive Council, doth hereby order, appoint, and declare, that the said district shall be a district under the provisions of "The New Zealand Settlements Act, 1863," and that the boundaries of the said district shall be as follows, as delineated by the plans hereto annexed:—A line commencing at the Tamaki Portage, and thence, following the Tamaki River and the Waiheke Sound, and crossing the Frith of the Thames, to Cape Colville; thence along the East Coast to the Tauranga Harbour; thence through that harbour to Urumingi; thence to Arowhena; thence to Hangatiki; thence to the mouth of the Awaroa River on the Kawhia Harbour; thence to the mouth of the Kawhia Harbour; thence along the West Coast to the Manukau Harbour; and thence to the Tamaki Portage.

And doth declare, that this Order shall take effect from and after the day of , 1864.

Clerk of Executive Council.

REGULATIONS for the Location of Natives who have been in Arms against the Queen's Troops, on Land to be allotted to them by the Government:—

1. Every man must sign a declaration that he will submit to the Queen's law, and must assist Her officers, whether European or Maori, to carry it out.

2. Every man will be required to give up his arms if he has any, or to satisfy an officer appointed by the Government that he has none.

3. No man will be permitted to obtain arms, or keep them in his possession, unless he first obtain a license to do so from an officer appointed by the Governor.

4. Every man will have allotted to him a certain quantity of land, which will vary in size according to circumstances,—from 5 to 1000 acres.

5. A Crown grant will be given for the land so allotted.

6. Assistance, by employment at wages or otherwise, will be given to each man till he can grow his own crops.

Advised by Ministers.

FREDK. WHITAKER.

17th May, 1864.

ORDER IN COUNCIL.

G. GREY, Governor.

At the Government House, at Auckland, the
day of May, 1864.

Present:—His Excellency the Governor in
Council.

Whereas the Governor in Council has been satisfied that the Native tribes or sections of tribes or considerable numbers thereof in the district hereinafter described, have, since the first day of January, one thousand eight hundred and sixty-three, been engaged in rebellion against Her Majesty's authority. Now, therefore, His Excellency the Governor by and with the advice and consent of his Executive Council, doth hereby order appoint and declare that the said district shall be a district under the provisions of the "New Zealand Settlements Act, 1863," and that the boundaries of the said district shall be as follows: On the East the Tauranga Harbor, on the North the Intaitake Stream from Tauranga Harbor to its source at Ngatuketuke, on the West the summit of the mountain range from Ngatuketuke to Whanga, and on the South a direct line from Whanga to the South-western extremity of Urumingi Creek of Tauranga Harbor as delineated by the plan hereto annexed, marked C.

And doth declare that this Order shall take effect from and after the day of 186 .
Clerk of Executive Council.

ORDER IN COUNCIL.

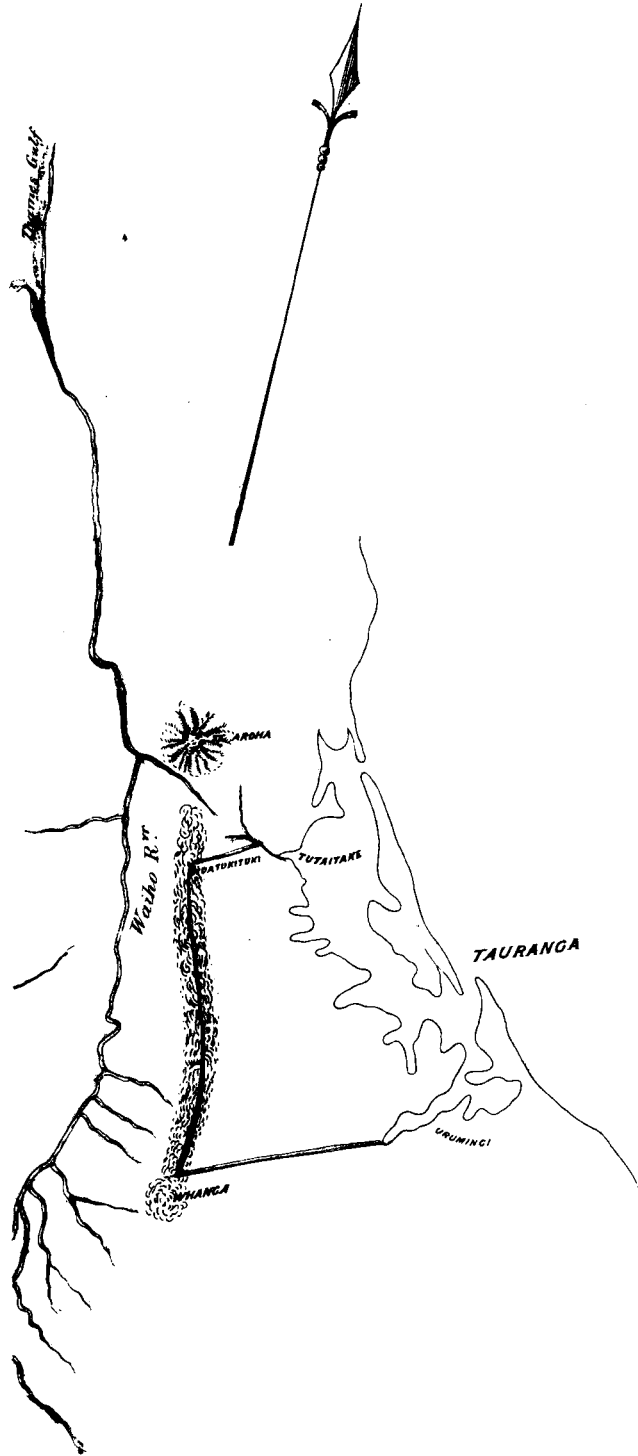
G. GREY, Governor.

At the Government House, at Auckland, the
day of May, 1864.

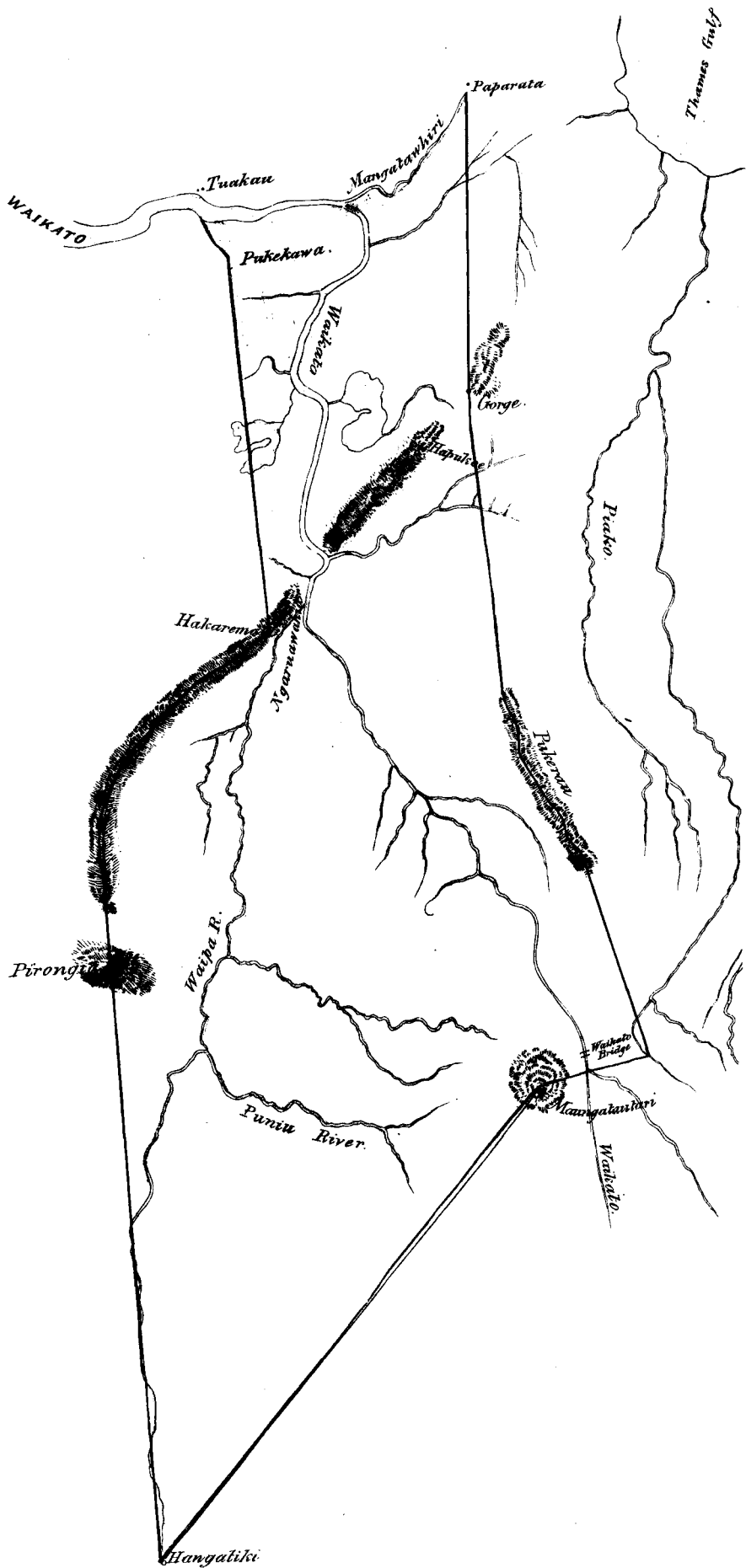
Present:—His Excellency the Governor in
Council.

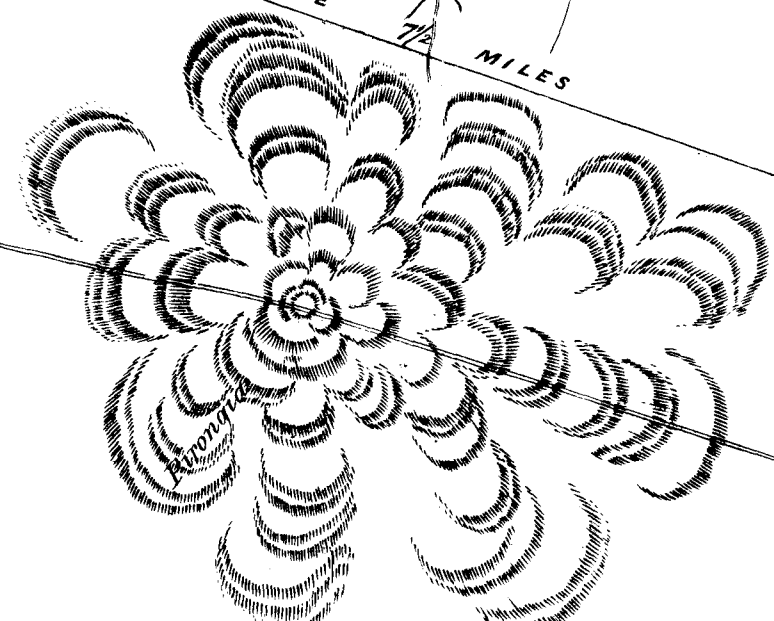
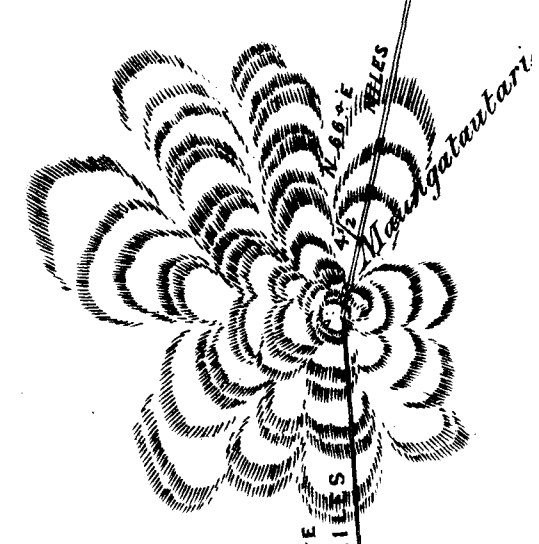
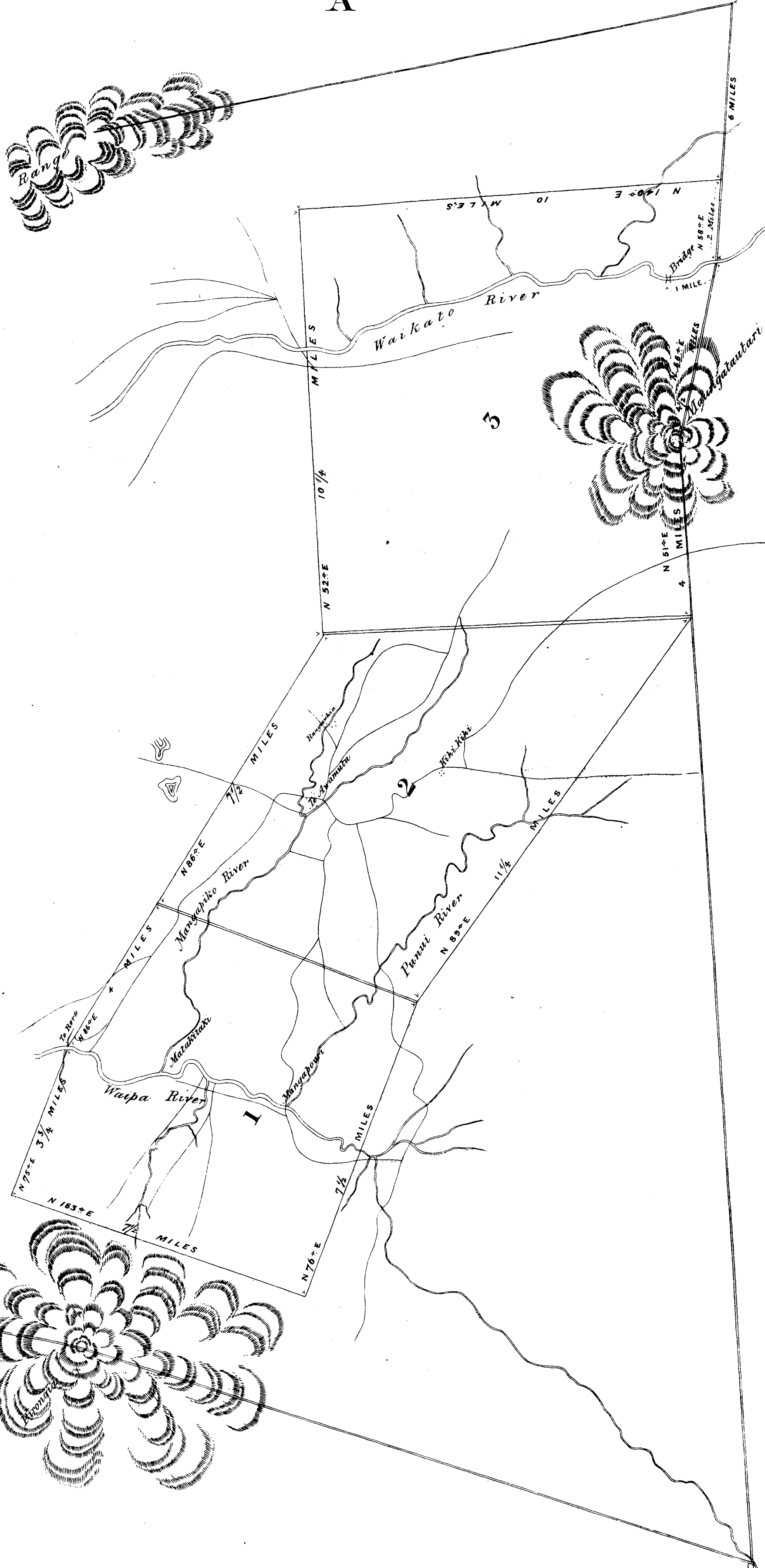
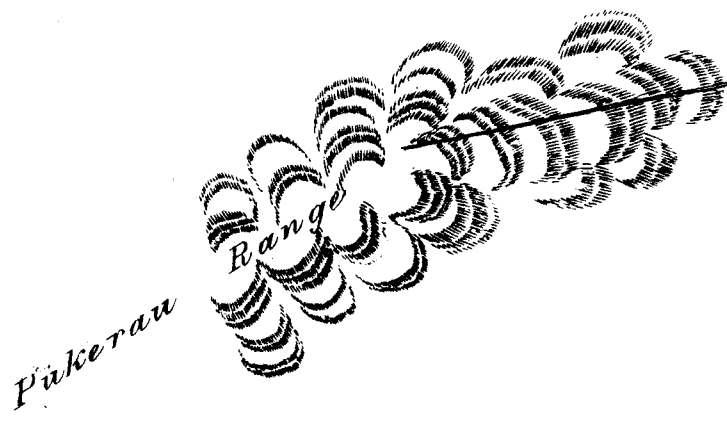
Whereas the Governor in Council has been satisfied that the Native tribes or sections of tribes or considerable numbers thereof in the district hereinafter described have, since the first day of January, one thousand eight hundred and sixty-three, been engaged in rebellion against Her Majesty's authority: Now, therefore, His Excellency the Governor, by and with the advice and consent of his Executive Council, doth hereby order appoint and declare that the said district shall be a district under the provisions of the "New Zealand Settlements Act, 1863," and that the boundaries of the said district shall be as follows:—On the North, the Maungatawhiri River from Paparata to the Waikato, and the Waikato River to Tuakau; on the West, a direct line from Tuakau to the summit of Pukekaroa, and thence a direct line to the summit of Hakaramata, thence following the summit of the Whawhapunga range to the summit of Pirongia and thence a direct line to Hangatiki; on the South, a direct line from Hangatiki to the summit of Maungatautari, and thence a direct line to the Waikato River at a point one mile south of the bridge at Maungatautari, and thence a direct line on a bearing of East North-east for six miles; and on the East, a direct line from the last mentioned point to the summit of the Pukerau range, and thence a direct line to

C



D

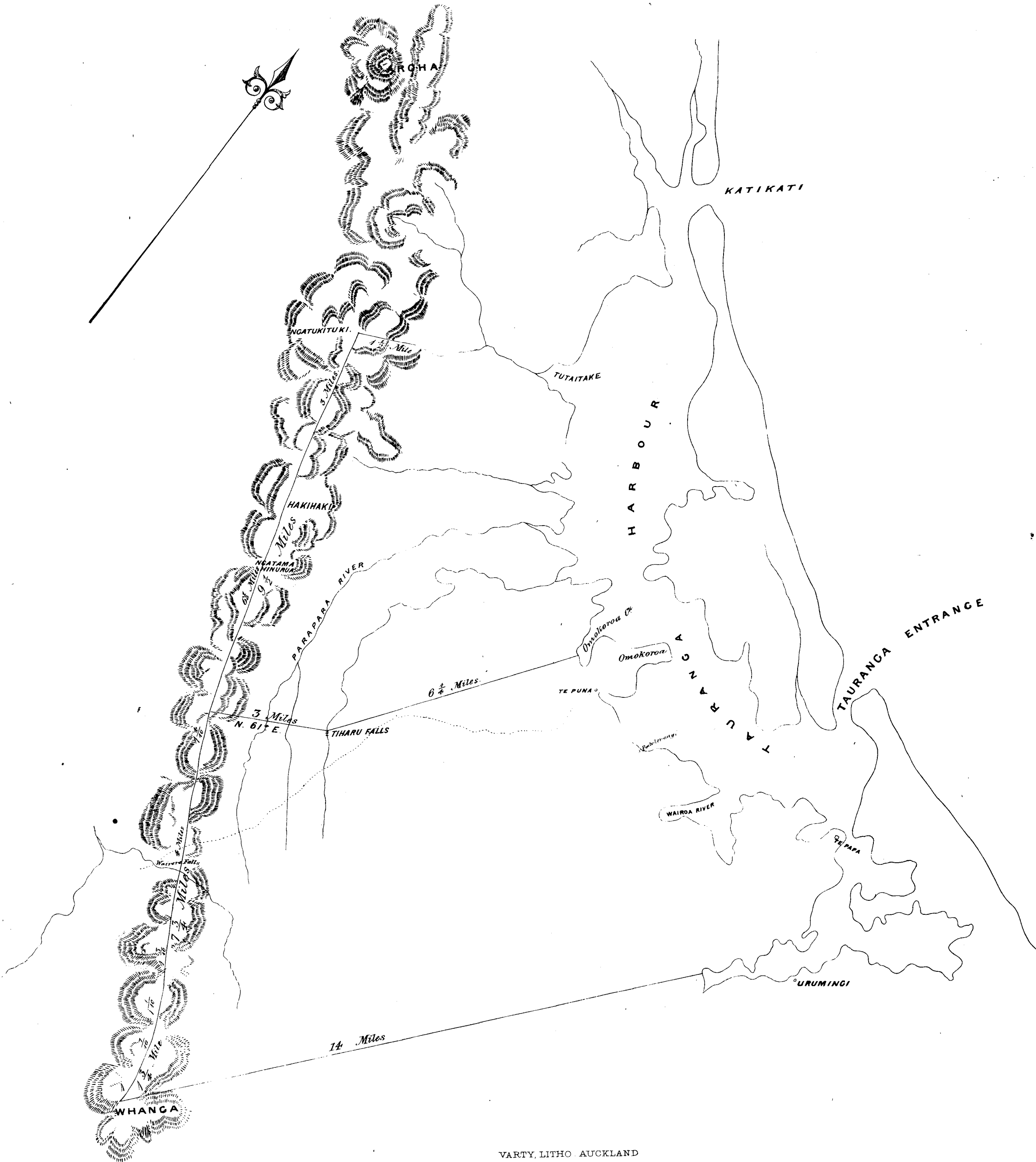




Scale ... 2 Miles to an Inch

Hangatiki

B



the North-eastern side of the Hapuakoe pass or gorge, and thence a direct line to Paparata first above mentioned, as delineated by the plan hereto annexed marked D.

And doth declare that this Order shall take effect from and after the day of
186 .

Clerk of Executive Council.

ORDER IN COUNCIL.

G. GREY, Governor.

At the Government House, at Auckland, the
day of , 1864.

Present:—His Excellency the Governor in
Council.

In pursuance and in exercise of the power vested in the Governor in Council by the "New Zealand Settlements Act, 1863," His Excellency the Governor, with the advice and consent of the Executive Council of New Zealand, doth hereby set apart as an eligible site for settlement for Colonization the land whereof the boundaries are defined in the Schedules hereunto annexed, and are delineated by the plans hereunto annexed, and doth declare that such land is required for the purposes of the said Act, and is subject to the provisions thereof.

1ST SCHEDULE REFERRED TO.

Tauranga Sub-District.

Bounded on the East by Tauranga Harbor; on the South by a direct line from the South-Western extremity of Tauranga Creek to Whanga; on the West by the summit of the mountain range from Whanga towards Hakihaki, $9\frac{1}{2}$ miles; and on the North by a direct line extending from the Western extremity on the Omokoroa Creek to the Tiharu Falls, and thence by a line bearing N. 61° E. 3 miles, as the same is shewn on the plan hereunto attached and marked B.

2ND SCHEDULE REFERRED TO.

The Northern boundary commences at Te Rore, on the Eastern bank of the Wairoa river, and extends thence on a bearing of N. 86° E. $11\frac{1}{2}$ miles, and on a bearing of N. 52° E. $10\frac{1}{4}$ miles; thence the Eastern boundary extends on a bearing of N. 140° E. 10 miles; thence the South Eastern boundary extends on a bearing of N. 58° E. 2 miles to the Waikato river, one mile above, that is to the South of, the bridge at Maungatautari; thence on a bearing of N. 66° E. to the summit of Maungatautari; and thence on a bearing of N. 51° E. 4 miles; thence the Southern boundary extends on a bearing of N. 89° E. $11\frac{1}{4}$ miles, and on a bearing of N. 76° E. $7\frac{1}{2}$ miles; thence the Western boundary extends on a bearing of N. 163° E. $7\frac{1}{2}$ miles, and thence the North Western boundary extends on a bearing of N. 75° E. $3\frac{3}{4}$ miles to Te Rori first above mentioned, as the same is shewn on the plan hereunto attached and marked A.

MEMORANDUM by MINISTERS.

Ministers beg most respectfully to submit to His Excellency an explanation, pointing out the mistake which it now appears has been fallen into, in reference to the orders in council and regulations referred to in His Excellency's memorandum of yesterday's date, and the documents accompanying it.

Mr. Whitaker did not submit the orders in Council of the 28th of May for the approval of the Executive Council, and did not submit to the Council or advise His Excellency to sign the Regulations to which His Excellency refers.

Mr. Russell had charge of the business to be brought before the Council, which consisted of

two orders in Council under the "New Zealand Settlements Act, 1863." Mr. Whitaker was led to believe that the terms of them had been arranged with the Governor—that the Council was only formal—that no decision would take place, as the orders were so formed as not to involve any question of controversy, and that Mr. Whitaker's presence was only required as a matter of form to make a quorum.

Mr. Russell submitted the orders to the Council, and the Governor signed them. His Excellency then produced the Regulations to which he refers, which had been sent to him on the 17th of May, and which Mr. Whitaker had not seen since that day, when he signed and transmitted them to the Governor. The Regulations had reference to another proposed order in Council, submitted to the Governor (not in Council) on that day, and not to the orders in Council submitted to the Council by Mr. Russell on the 28th of May. A reference to the date of the Regulations (May 17th) will show to what document they referred.

FREDK. WHITAKER.

Auckland, 25th June, 1864.

In a memorandum by Ministers of the 25th of June, addressed to His Excellency, which the Governor has handed to me, it is stated that a mistake had been made in my minute of what had passed at the Council held on the 28th of May.

Three orders in Council, or papers so headed, were signed by the Governor and handed or passed to me by the Prime Minister, and therefore I was led to suppose that he had submitted them for approval. The Minister for Colonial Defence who had the Regulations in his hand, upon the Governor moving his hand to receive them, looked at the Prime Minister, saying "These are the Regulations," and the Prime Minister, leaning and putting forward his hand, assisted in submitting these Regulations to the Governor; and, as the discussion which ensued on these Regulations was sustained, I may say altogether by the Prime Minister, I was led to suppose that he had submitted those Regulations for the approval of the Governor. But it was from the Minister for Colonial Defence that I took the Regulations after the Ministers had bowed and were hurriedly retiring.

FORSTER GORING,

Clerk of the Executive Council.

Government House, June 27th, 1864.

MEMORANDUM by the GOVERNOR on a Memorandum of the COLONIAL TREASURER.

The Colonial Treasurer in a Memorandum dated the 29th September, remarks upon the correspondence that has passed between the Governor and his Ministers upon the subject of the forfeiture of Native Lands.

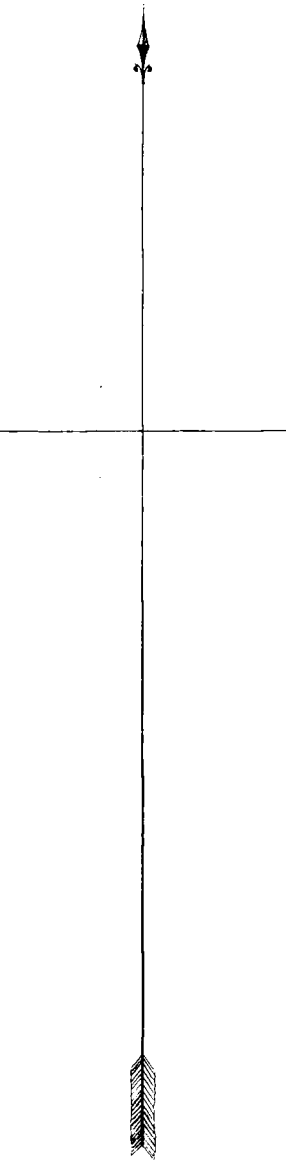
In reply the Governor would state as follows:—

His own views on this subject were fully made known to his late Ministers, of whom the present Colonial Treasurer was one, and were by them laid before the General Assembly as the views of the Governor.

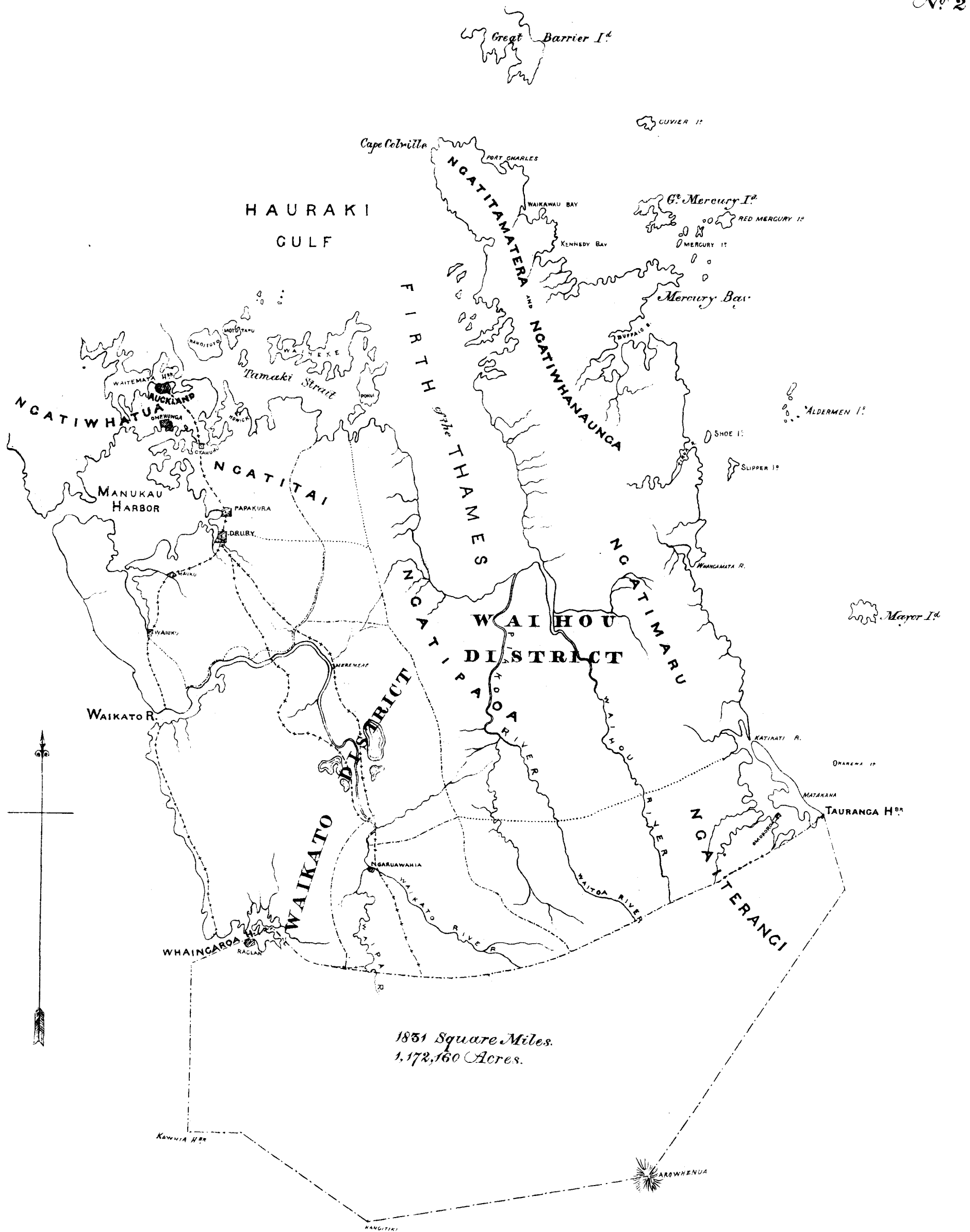
There can be no mistake as to what their views of the Governor's plans were, for these are stated in the Ministerial Memorandum of the 24th June, 1863, as being the plan which the Governor had explained to them in detail at a meeting of the Executive Council which had been held shortly before the 24th of June.

The Ministerial statement of the plan is this:—

"The plan briefly stated is, to make the Waikato river, from the sea on the West coast to its Southern bend in the middle of the island, a temporary line of defence, by placing armed steamers on the river, and by establishing posts on its Northern bank. Then from the bend of the river to establish a line of fortified posts, extending to the Hauraki gulf. The intervals to be defended by cavalry; the gulf and its shores to be looked after by another steamer. Next to throw forward military posts from the central bend of the river up to Paetai and Ngaruwahia, taking permanent possession of these



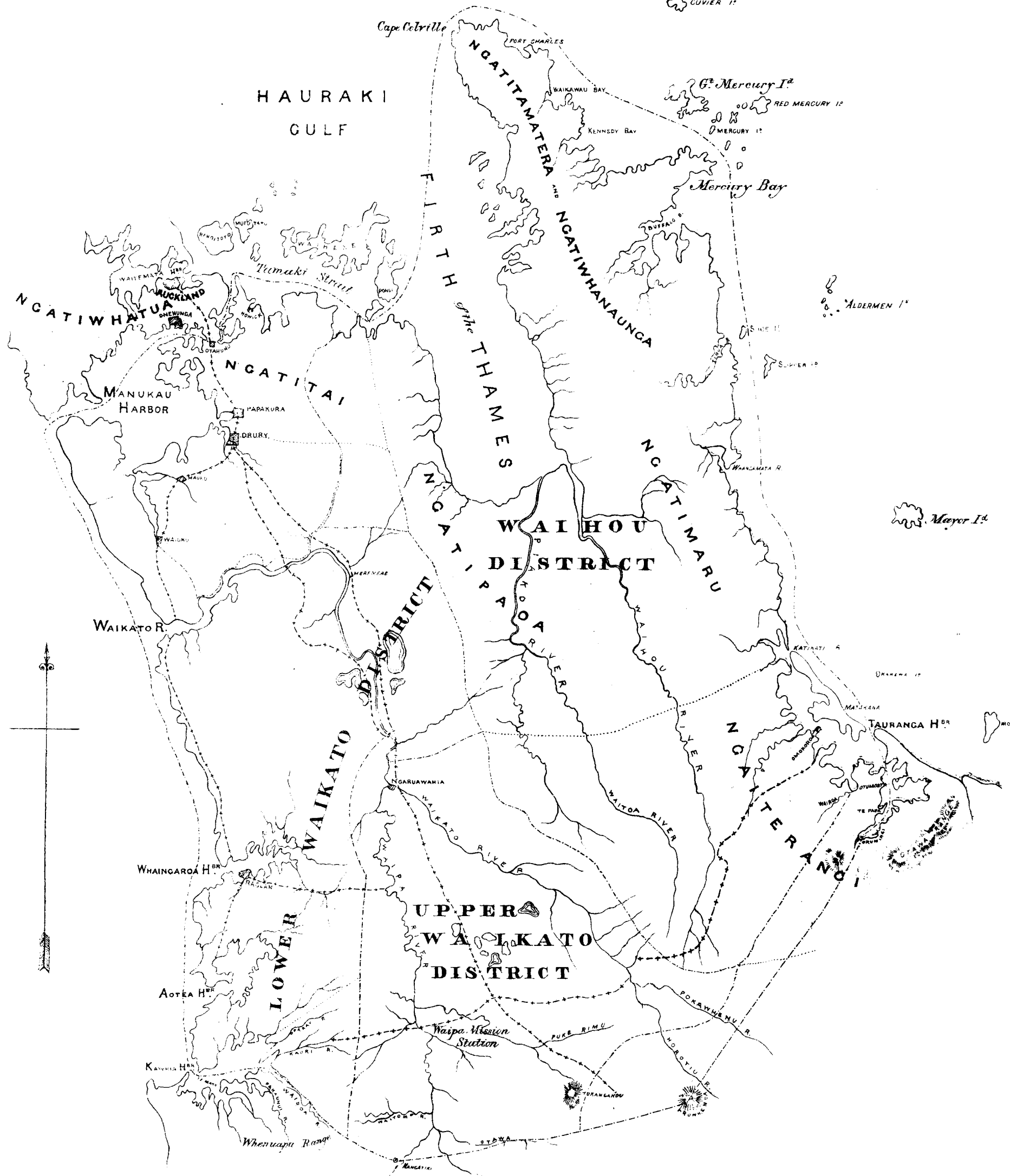
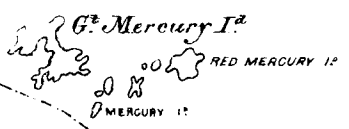
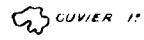
Scale 1 1/2 Miles to an Inch.



1851 Square Miles.
1,172,160 Acres.

SCALE 1 1/2 MILES TO 1 INCH.

G. PULMAN LITH. AUCKLAND.



Scale 1 1/2 Miles to 1 Inch.
G. Putman Litho Auckland.

places, the latter of which will be the point where one steamer will usually be stationed. At the same time to clear out all hostile natives at present residing between the Auckland isthmus and the line at the river and fortified posts first above-mentioned, which together cross the island. Lastly, to confiscate the lands of the hostile natives, part of which lands will be given away and settled on military tenure, to provide for the future security of the districts nearer Auckland, and the remainder sold to defray the expenses of the war."

The Governor encloses a tracing, No. 1, which shews the details of this plan, in reference to the features of the country.

There is, perhaps, some slight ambiguity in the language used in the Ministerial statement of the Governor's plan, which might have been avoided had he written it himself; but this does not appear to be material, and is removed by a consideration of the context.

Ministers expressed their cordial concurrence in these plans of the Governor, and expressed their willingness to take upon themselves the responsibility for their adoption, on the understanding that they would be carried out as a whole.

Ministers went on to advise the Governor that they considered that a general notice should at once be officially published, that the claims to land of any natives who may take up arms against the Queen's Government will be forfeited.

The Governor did not think it right to act on this advice in the form in which it was tendered; but on the 11th July, 1863, he warned the Chiefs of Waikato that those of them who might take up arms against Her Majesty would forfeit the right to the possession of their lands, guaranteed to them by the Treaty of Waitangi, which lands would be occupied by a population capable of protecting, for the future, the quiet and unoffending from the violence with which they are so constantly threatened.

The whole of these plans had relation to the protection of the wealthy and prosperous settlement of Auckland.

The Governor had applied for reinforcements to enable him to carry them out. The strength of these reinforcements was carefully adjusted to the extent of the plans, and the Governor conceived that the means at his disposal would have enabled him to execute them in such a time that he could have given that aid to the Southern Settlements to which they were entitled without undue delay, and that a fair proportion of military force, and of the means voted by the General Assembly for the settlement of the existing difficulties, would have remained for the adjustment of affairs in the Southern settlements, after these plans had been carried out in the North.

It will presently be seen that if it is remembered that Raglan was an existing European settlement, these plans of the Governor differed in no very material degree from those which the Colonial Treasurer states he explained in England.

The Colonial Treasurer, in his memorandum of the 29th of September, alludes to a conversation stated to have been held with the Governor in December last. The Governor has been unable to recall to his recollection this conversation in the form in which it is stated. It is difficult, after the lapse of so many months to recall the words of a conversation, and the precise import which such words may have had at the time, and what were the exact points to which they related. It will be seen presently how great this difficulty must be, when it appears that even in the same memorandum the Colonial Treasurer has apparently misapprehended the meaning of the words of a printed financial statement of his own to which he has made a reference. The Governor can only say that in his belief any conversation which he had with the Colonial Treasurer in December last to which he has alluded, related entirely to the Governor's own plans, and to the settlement of the Waikato country; and that he regrets any such misunderstanding should have taken place between himself and the Colonial Treasurer with regard to a conversation. If such importance was to be attached to this conversation, as to make it a matter of future reference, the Governor regrets that a written memorandum was not procured from him, which would have prevented any future misunderstanding from taking place.

The Colonial Treasurer also says, in his Memorandum, that the Governor, in his Minute of the 25th June, 1864, states, "The first time the Governor was made aware that no part of his plan would be acted on, and of the points at which it was proposed to locate the Waikato militia, was by the Minister for Colonial Defence, at Pukerimu, on the 15th of April last," and the Colonial Treasurer further adds as follows: "Amongst the documents sent to England by His Excellency (in December last) for the information of the Secretary of State, was the financial statement of the Colonial Treasurer, in the concluding part of which the proposed frontier line from Tauranga to Raglan was pointed out, together with the positions at which Ministers proposed to locate the different regiments of the Waikato militia." The Governor encloses the extract alluded to from the financial statement of the Colonial Treasurer, as pointed out by himself, an inspection of which, when placed opposite his Memorandum of the 29th of September, will, the Governor thinks, shew that there is nothing in the financial statement which could have led him to conclude that it pointed out positions at which the different regiments of the Waikato militia have been located.

The Colonial Treasurer states that at the Colonial Office in England he repeatedly traced on the map the frontier line from Raglan to Tauranga. The Governor transmits a tracing shewing the frontier line as traced by the Colonial Treasurer himself.

The Governor thinks that the Colonial Treasurer has perhaps not reflected that even a few miles difference between the points at which these Regiments were to be located might make a vast difference in the cost of maintaining a frontier, and that as a great part of this cost was at least for some time to be borne by Great Britain, and that as it was a question which involved the distribution of the entire force in the country, the precise localities at which these Regiments were to be located was a point on which the Governor should have received the earliest information, and regarding which he should have been consulted. He still thinks the distribution of these Regiments faulty, and believes that his original plans if carried out would have resulted in a large saving and in increased prosperity to the country.

He also transmits another tracing shewing the line as drawn from Kawhia to Tauranga, as laid before the Governor on the 17th of May, as the district of country which the Ministers wished the Governor to embrace in the first Order in Council, which was to bring the native territory within the

provisions of the New Zealand Settlements Act. The Colonial Treasurer's colleagues at once added on in this Order in Council 1,172,160 acres to the tract of country included within his boundary line.

The Governor feels that he has been justified in stating that he did not know until a recent date what was the general policy of Ministers with regard to confiscation of native lands, or the extent to which they intended to carry this principle. Even so late as the 24th of June last, Ministers stated in reference to this subject that it was a matter of great importance, and one upon which after careful consideration they were fully prepared to state their (then) present views, and so late as the 4th inst. Ministers were unable to supply the Governor with tracings which would shew even approximately the boundaries of the territory that they proposed to confiscate, and stated that they had not sufficient information even to determine the precise localities.

The Governor feels satisfied that a consideration of these points will shew he could not be said to be aware of views so vague as these are, and that it could hardly be said that there could be no difference of opinion between himself and his Responsible Advisers on points which seem to have been so wholly undetermined.

November 5th, 1864.

G. GREY.

EXTRACT from the Hon. Mr. Wood's Memorandum to the GOVERNOR, dated 29th September, 1864.

"Among the documents sent to England by His Excellency for the information of the Secretary of State, was the Financial Statement of the Colonial Treasurer, in the concluding part of which the proposed frontier line from Tauranga to Raglan is pointed out, together with the positions at which Ministers proposed to locate the different regiments of the Waikato militia."

EXTRACT from Financial Statement of the Hon. Mr. Wood, Colonial Treasurer, in Committee of Ways and Means, in the House of Representatives, 10th November, 1863.

"Exactly what those (public) works will be it is of course impossible to say; and the amount that will be required to be expended upon them it is equally impossible to say. But, sir, we desire as much as possible to make use of the natural resources of this country. The settlements of Raglan and Tauranga can be approached by the great highway of the ocean, and Raglan and Tauranga are on the flanks of the Ngatimaniapoto country. The rivers Thames, Waikato, and Waipa run up towards that very country, and we propose to locate settlers at proper positions upon those rivers; and we propose also, in order that there should be no delay in locating the settlers, at the very earliest opportunity, and maintaining communication with them, to render these rivers navigable for steamers of light draught."

MEMORANDUM by MINISTERS.

The Colonial Treasurer begs to acknowledge receipt of His Excellency's Memorandum of the 5th November, received at 11.15 a.m. on the 7th, the day on which the English mail closes, in reply to his of September 29th. It is of course impossible for the Colonial Treasurer to answer the statements contained in His Excellency's Memorandum during the few hours that elapse before the mail closes, but he proposes to do so in ample time for transmission by the December mail.

The Colonial Treasurer will be obliged by His Excellency transmitting a copy of this memorandum to the Secretary of State.

Auckland, 7th November, 1864.

READER WOOD.

MEMORANDUM by the GOVERNOR.

The Governor will delay transmission of his Memorandum of the 5th instant, in reply to the Colonial Treasurer's Memorandum of the 29th of September, until the next mail, as the Colonial Treasurer wishes to reply to it. He would prefer that the correspondence should go in a complete form.

November 7th, 1864.

G. GREY.

MEMORANDUM by MINISTERS.

The object of the Colonial Treasurer's Memorandum of September 29th was to shew that he had good reason for stating at the Colonial Office in England that there was no difference of opinion, at the time he left New Zealand, between the Governor and his Responsible Advisers in respect of the extent to which the principle of confiscation should be carried. In support of his argument he referred to a conversation on the subject held with His Excellency, and to the concluding part of the financial statement which was transmitted by His Excellency to England.

In reviewing this Memorandum, the Colonial Treasurer understands the Governor to ignore all recollection of the conversation referred to, and to arrive at the conclusion that it could hardly be said that there could be no difference of opinion between himself and his Responsible Advisers on points which seem to have been so wholly undetermined. The Colonial Treasurer, on the other hand, thinks it perfectly clear, that up to April last the Governor and his Ministers were in accord as to the extent to which confiscation should be carried, and that the subsequent difference has arisen from a change in the Governor's views.

The Governor quotes from the Ministerial Memorandum of June 24, 1863, a passage which he says will clearly shew what the views of Mr. Domett's Government were of the Governor's plans. The quotation, however, does not pretend to be a detail of the Governor's plans for the permanent pacification of the country, but simply a statement of the plan "he (the Governor) would recommend for the defence of the southern frontier of the settled districts of the province of Auckland, and the establishment of a basis for further military operations in the interior of the enemy's country." Neither Mr Domett's Government nor the present Government ever regarded that plan as anything but a

temporary measure of defence; the object the Governor had in view, as stated in that Memorandum, which was corrected by His Excellency himself, and in some part written by himself, was to bring the Waikato tribes to terms before conclusively settling the difficulties at Taranaki, and the Waikato tribes referred to are clearly those who expelled Mr Gorst from Awamutu, who drove away Europeans married to Maori women, who kidnapped their wives and half-caste children, who were the promoters of the murders at Oakura, and who adopted the cause of the murderers, and who had organised "a general conspiracy to expel or murder the European population throughout the Northern Island," or, in other words, the Ngatimaniapoto tribes under Rewi. These people were engaged all through the Waikato war; they are now in the South threatening Taranaki and Wanganui; they formed the very head and front of the rebellion, but they do not own an acre of land within the limits delineated on Plan No. 1, attached to the Governor's Memorandum. The other Waikato tribes implicated in the war chiefly resided to the south and east of the blocks marked by the Governor, and certainly nine-tenths of their territory would be untouched by the confiscation proposed by the Governor. In a proclamation issued July 11, 1863, by the Governor himself, addressed to the chiefs of Waikato, he states,—“Those who were at war against Her Majesty, or remain in arms threatening the lives of Her peaceable subjects, must take the consequences of their acts, and they must understand that they will forfeit their right to the possession of their lands guaranteed to them by the Treaty of Waitangi, which lands will be occupied by a population capable of protecting for the future the quiet and unoffending from the violence with which they are now so constantly threatened.

On the 31st July Ministers wrote a Memorandum, suggesting the introduction of 5,000 Military Settlers, “to be located on the land taken from the enemy,”—that enemy being Ngatimaniapoto and other inhabitants of Southern Waikato—“on military tenure,” in accordance with certain regulations which accompanied the Memorandum, securing to the settlers land varying in quantity from 400 acres to 50 acres each. This plan was approved by the Governor in his Despatch to the Secretary of State, of August 29th, 1863. In that Despatch His Excellency states that the proposed plan is “based upon that which he adopted in British Kaffraria”—that “the land upon which it is proposed to locate these Military Settlers it is intended ultimately to take from the territories of those tribes now in arms against the Government,” and these tribes mainly were the Ngatimaniapoto and other tribes residing South of Ngaruawahia, the Taranaki and Ngatiruanui tribes, and that he “had acquiesced, until the General Assembly can meet, in the proposed arrangement, to the extent of raising 2,000 men for active service.”

His Excellency goes on to state that he “can devise no other plan to provide for the permanent peace of the country, than by locating large bodies of European Settlers, strong enough to defend themselves in those natural positions in this Province which will give us the entire command of it.”

The Assembly met, and confirmed the plan, not only to the extent of 5,000 men but to 20,000. His Excellency immediately after the Session made personal application to General Cameron to allow Lt.-Col. Pitt to proceed to Melbourne, Adelaide, and Sydney, to raise the full compliment of 5,000 Military Settlers, and himself gave instructions to the Colonial Treasurer to proceed to England to organize a system of emigration to the Northern Island of the Colony, with a view to locating Settlers under the New Zealand Settlements Act, 1863. * *Copy of letter attached.* He assented to the Loan of £3,000,000, out of which provision was made to the extent of £300,000 for the purpose of obtaining these settlers and immigrants. Nothing could be clearer than the propositions of the Government or more complete than the arrangements made for carrying them out. In the concluding part of the financial statement to which the Colonial Treasurer referred in his Memorandum of September 29th, but which His Excellency has not quoted, is the following passage:—“The interest and sinking fund of this loan will be in the first instance, of course, charged upon the general revenue of the whole Colony, but when the lands in rebel districts are taken and sold, the loan itself will be a first charge upon the proceeds of the sale thereof. Exactly what amount of land will be available it is difficult to say; but if we take all the land that belongs to the rebel Natives in the Thames and Waikato, at Taranaki and at Wanganui, I think there will be nearly, after locating the settlers upon it, a balance of something closely approaching to 2,000,000 acres. And we consider that though it will be impossible to realize upon that all at once, yet before very long the proceeds of these sales will repay the whole of the expenditure that we now ask the House to grant.” In his speech in the House of Representatives, on the second reading of the Loan Bill, as reported in the *Southern Cross* newspaper, and substantially correct, the Colonial Treasurer said—“If we take the whole area of land in the rebel districts, it will be found that it amounts to eight and a half million acres, and we have obtained information from persons well acquainted with the districts and the quality of the land, that one half of it will be available for settlement; therefore we have for settlement—4,250,000 acres. If we deduct from that the quantity required for the location of European Settlers and Natives, there will be a balance of 3,000,000 for sale, reserves, and for the preservation of the territory of those loyal Natives who may not be desirous of disposing of their lands. I said there was a balance of 3,000,000 of acres, and supposing we set apart 500,000 acres for roads and reserves, and 1,000,000 for land that may be retained by loyal Natives, it will still leave 1,500,000 acres for sale. Of course it would not be desirable, if it were even possible to dispose of this land at once; but by bringing it into the market judiciously, it appears to us that 1,500,000 acres economically dealt with and properly sold will realize at the very least £2 per acre, and £3,000,000 will be obtained at the time these arrangements are completed.”

In Mr. Fox's Ministerial statement in the House of Representatives, at the time when he assumed the office of Colonial Secretary and leader of the House, there is the following passage: “The policy we would adopt would be mainly that developed in a Memorandum by the late Ministry on the military defences of the Colony, forwarded to the home Government in a Despatch of His Excellency, dated July 31st. It would consist in the establishment of villages held upon a certain description of military tenure, by men armed and prepared to defend themselves, in various parts of the Colony, in such positions as the Government may think it most advisable to locate them. There were already about 3,000 Military Volunteers who had been introduced under this system satisfactorily so far, well selected, and now on the frontier engaged in the defence of the country. It was the intention of the

* See Loan Papers, E. No. 2.

Government to introduce 2,000 or 3,000 more in the same way, bringing up the numbers to to 5,000 or 6,000; and it was also the intention of the Government to bring from the parent country 15,000 more, chiefly agricultural labourers, to be located in a similar manner in other parts of the rebellious districts. Thus there would be located in the Provinces of Auckland and Taranaki at least 20,000 souls and their families. * * * *

"That loan they proposed ultimately to pay off wholly or in part by the sale of portions of those lands that might be in the hands of the rebels."

In a proclamation dated April 30th, 1864, signed by the Governor, printed but not issued in consequence of an objection raised by the Governor to compelling the rebel natives to give up their arms, is the following passage much of which in the original draft is in His Excellency's own handwriting:—"General Cameron and Her Majesty's military, naval, and Colonial forces have conquered Waikato, and are now in possession of all the pahs and strong places. Meremere, Rangiriri, Ngaruawahia, Paterangi, Rangiawhia, Kihikihi, and Maungatautari have been taken, and are occupied by the Queen's troops. The chiefs and tribes of Waikato have already had opportunities afforded them of obtaining peace and protection, although they have been perverse and obstinate, and by their conduct have justly forfeited all their lands, yet out of consideration for themselves their wives and their children another opportunity will now be given them to return to Waikato as peaceable subjects of the Queen and under her laws and protection."

The Governor, in his reply to the letter of the Aborigines Protection Society, under date April 7th, 1864, wrote as follows: "On the other hand, it was thought necessary by an example to shew that those who rose in arms against their fellow subjects of another race suffered such a punishment for doing so as might deter others from embarking in a similar career. It is therefore proposed to deprive such persons of a considerable portion of their landed properties, and to provide for the future safety of the Colony by occupying such lands with an European population." In a letter dated Ngaruawahia, December, 1863, prepared by the Governor's direction, the terms of which were fully sanctioned by him and the draft corrected by himself, but not sent for reasons given by His Excellency in his * Memorandum of December 18th, 1863, attached, is the following passage: "All the land of those who have been fighting at Waikato and Taranaki shall belong to the Queen, and it must be understood that in laying down their arms they relinquish all their lands, excepting only such pieces as I shall allow each man. I will keep 500,000 acres for them at Waikato and Taranaki and other places where they have been fighting, to live upon." From these quotations it will be seen that up to April last there was no difference of opinion between the Governor and his Ministers upon the subject of confiscation and colonisation; no passage, as far as the Colonial Treasurer is aware, is to be found in any of His Excellency's despatches and memoranda up to that date which can lead to a doubt upon the subject. Now, however, His Excellency forwards a tracing, No. 1, of part of the Lower Waikato country, which, with the quotation from Mr. Domett's Memorandum of the 24th June, he says will fully make known what were His Excellency's views upon the subject of the forfeiture of native lands. Annexed to this Memorandum will be found a calculation, made by Major Heaphy, chief surveyor of the General Government, of the areas of the different pieces of land on that tracing proposed to be taken from the natives. The total area is 164,668 acres, from which there is to be deducted 76,800 acres as unavailable "for settlement on account of the rugged character of the land," leaving a balance available for sale, settlement, &c., of 87,868 acres. If from this there be again deducted the very moderate proportion of 1-10th for roads and public reserves, it would be just possible to locate 1318 military settlers under the regulations of August 3rd, 1863. The political aspect of this plan is as curious as the quantitative. The land was to have been taken "from the territories of those tribes now in arms against the Government," "the chiefs of Waikato who had in so unprovoked a manner caused Europeans to be murdered, &c., were to have such a punishment inflicted on them as would deter other tribes from hereafter forming and attempting to carry out designs of a similar nature." It has been seen that the chiefs of Waikato who had been principally so engaged were the Ngatimaniopotos under Rewi, who occupy the country at the foot of the ranges which bound the great delta formed by the Waikato and Waipa, and the tribes Ngatihaua, Ngatimehutia, &c., residing mainly in the southern portions of Waikato, beyond Ngaruawahia. Yet not an acre of their country is proposed to be taken by this confiscation plan of His Excellency; by a curious infelicity of adaptation it stops at Ngaruawahia, and Ngaruawahia is the property, not of the more southern tribes, but chiefly of William Naylor and his people, the most firm and consistently loyal native in New Zealand, after Tamati Waka, if even he should be excepted. His Excellency reverses the instructions of Mr. Cardwell and the dictates of natural justice, and would punish much those who are not guilty and leave unpunished those who are guilty in the highest degree. Had the plan now proposed been always the plan of the Governor, why did he write on December 16th, 1863, to William Te Wheoro as he did, "They (the natives) should quickly determine what they intend to do in this matter, as the General will continue to move to the front without a stop in his progress." The General, on the 8th December, had reported that he was then at Ngaruawahia, and that the Queen's flag was flying there. If Ngaruawahia had been the extreme limit of the Governor's operations for the permanent pacification of the country, why order the General to continue moving on to the front? Why spill the blood that was spilt at Rangiawhia and Orakau? One answer only can be given to questions of this kind. Plan No. 1 could not have been the plan of the Governor before April last any more than it ever was or is the plan of Ministers.

In reference to the Plan No. 2, which the Governor says is the Colonial Treasurer's plan, the Colonial Treasurer would simply remark, as regards the tracing referred to, that he did not furnish it to the Governor, and it does not describe the boundaries as he described them to the Governor; for he distinctly stated that the line from Tauranga to Raglan, as he always understood it, passed along "the head of the navigation of the rivers Waipa, Waikato, and Thames." If that line be traced, it will be found that very little extension in area was even suggested by Ministers; that the little that was suggested, as explained to the Governor, was to obtain what was supposed to be a better line of road to Waipa from Kawhia than could be got from Raglan; that when it was discovered that the Kawhia road was not so good, that extension was abandoned; and that the extension to Hangatiki was agreed

* See page 3, E. No. 2.

to, as the Colonial Treasurer has been assured, at the instigation of His Excellency himself, and that no objection was made by Ministers because that extension would have carried the boundary of confiscated land still further into the Ngatimaniopoto country.

With regard to the sneer in which His Excellency is pleased to indulge, the Colonial Treasurer has reported the conversation, which was short, accurately, as it took place; and he must be permitted to add, that on referring to that conversation in an interview with His Excellency in September last, he understood His Excellency to say that he did recollect it. With regard to the parallel passages, the Colonial Treasurer would observe, that the passage from the Financial Statement relates solely to the Ngatimaniapoto and Upper Waikato country, and cannot by any possibility apply to any portion of Plan No. 1, in which not an acre of Ngatimaniopoto country is embraced; nor does the southern boundary of Plan No. 1 reach the river Thames by some miles; still less could, it seems to him, the meaning of the concluding part of his financial statement be misunderstood had His Excellency carried his quotation a little farther on, to the passage relating to the area of nearly 2,000,000 of acres which he estimated would be left for sale after the location of the settlers, a quantity exceeding by ten times the whole area embraced in the Governor's plan.

November 19th, 1864.

READER WOOD.

MEMORANDUM by the CHIEF SURVEYOR.

(Areas of Lands coloured pink on tracing.)

	ACRES.
Ngaruawahia,	36,900
Rangiriri,	26,900
Paparata to Waiuku—	ACRES.
Purakura Native Reserves,	2,520
Pukekohe	5,381
Patamahoe	700
Tuimata	640
Papakura	2,736
Tuakau	10,760
Watapake	133
Karaka	600
Akaaka	456
Puhitahe	142
Native Land East of Great South Road	76,800
	100,868
	Total. 164,668 Acres.

November 9th, 1864.

CHAS. HEAPHY, Chief Surveyor.

Of the block on the East of the Great South Road, not more than half of the 76,800 acres is available for settlement, on account of the rugged nature of the land.

C. H.

MEMORANDUM by the GOVERNOR.

The Governor begs to acknowledge the receipt of the Ministerial Memorandum of the 19th instant, containing explanations of the views of the Colonial Treasurer on the subject of the confiscation of native lands, and of other points connected therewith.

In other papers the Governor has remarked on, or will reply to the questions discussed in that Memorandum.

Only two points, therefore, appear to require special notice.

1st. In reference to the tracing No. 2, which the Governor transmitted in his Memorandum of the 5th November, as shewing the frontier line as traced by the Colonial Treasurer himself. The Governor would state that the Colonial Treasurer drew this frontier line on a plan with his own hand, as being that which he meant, and the tracing is one taken from that plan.

2ndly. In reference to the allegation made, that the Governor has been pleased to indulge in a sneer: he begs to say that he has carefully reperused the expressions to which this statement applies, and that he cannot find anything in them which merits such a designation; but that he feels it would be extremely unbecoming in him to have indulged in a sneer in an official paper. He had no intention of doing so; if he has inadvertently done so, he begs to offer the most ample, unreserved, and complete apology for it.

November 19th, 1864.

G. GREY.

MEMORANDUM by MINISTERS.

In reference to His Excellency's Memorandum of the 19th instant, in which he states that the Colonial Treasurer drew the frontier line marked on plan No. 2, with his own hand, as being that which he meant, and the tracing is one taken from that plan, the Colonial Treasurer thinks if His Excellency had desired an accurate tracing of the frontier line from Raglan to Tauranga, as understood by the Colonial Treasurer, the proper course would have been to have applied to him for a plan. This, however, was not done. The line to which His Excellency refers was marked by the Colonial Treasurer on a plan, in His Excellency's office, which the Colonial Treasurer never saw before; and on which His Excellency and the Colonial Treasurer tried the effect of several lines—but it was not marked as the frontier line which he had always understood as the one to be adopted. The Colonial Treasurer, however, in pointing out to His Excellency the line he referred to as his own, stated distinctly—and more than once—that it passed at the "head of the navigation of the rivers Waipa, Waikato, and Thames." The line on Plan No. 2, passes far to the North of these positions.

November 21, 1864.

READER WOOD.

MEMORANDUM by the GOVERNOR.

The Governor has received the Ministerial Memorandum of the 5th instant, upon his Despatch No. 144 of the 18th of October last, which, in compliance with their wishes, he will transmit to the Secretary of State.

The Governor feels sure that his Responsible Advisers will pardon him for saying that he thinks that they are the parties who have not acted rightly in the question of the fulfilment of the instructions of the British Government regarding the cession of lands by the Natives, and that he has only done his duty in the matter.

The instructions alluded to were issued on the 26th of April last. One of the Ministers then in England made the following promises on behalf of his colleagues in relation to these instructions:—

“I take this opportunity of stating formally and officially that which I have previously had the honor of stating to Mr. Secretary Cardwell verbally, that there is nothing in the instructions of April 26th to Sir George Grey that does not represent the views of the Colonial Government in practically carrying into effect the policy of confiscation authorised by the Legislature in the New Zealand Settlements Act.”.....

“The Government never had any intention whatever of confiscating land in districts about which there could be any doubt as to the Native inhabitants being in a state of rebellion. On my own behalf therefore, and that of my colleagues, I can give to Mr. Cardwell a full assurance that the Local Government will cordially co-operate with Sir George Grey in carrying out that just and temperate policy towards the Native race embodied in the New Zealand Settlements Act, as limited in its operations by his instructions of April 26th.”

The members of the Colonial Ministry, at the time resident in New Zealand, then published in the Government Gazette, on the 30th of June last, the Secretary of State's instructions of the 26th of April—notifying in this manner to all the inhabitants of New Zealand what were the instructions to which the Governor was bound to give effect. After this, he feels it was his duty to do that which he has done.

With regard to the allegations made by his responsible advisers that the Governor has taken to himself all the powers in matters of importance, and that he leaves to them powers only in the most subordinate matters, the Governor's view is, that if the records are consulted, it will be found that the exact opposite of the view stated by Ministers is really the case.

Government House, Auckland, November 6th, 1864.

G. GREY.

MEMORANDUM by MINISTERS.

In His Excellency's Memorandum of 6th November he states that “he feels sure his Responsible Advisers will pardon him in saying that he thinks that they are the parties who have not acted rightly in the question of the fulfilment of the instructions of the British Government regarding the cession of land by the Natives;” and in order to prove the accuracy of this opinion, His Excellency quotes passages from a document written by one of the Ministers in England, making, as His Excellency states, certain promises on behalf of his colleagues in relation to these instructions.

His Excellency altogether overlooks the fact that the Minister in England (Mr. Wood), in the document referred to, never mentions the word “cession;” nor was he likely to make any promise on the subject, because his opinion is understood fully to coincide with that of his colleagues, that any attempt to carry the object into effect would in all probability be futile.

It is hardly worth while to draw the obvious distinction between making promises and stating opinions, but accuracy requires that what Mr. Wood said should be designated by the latter rather than the former definition. But what Mr. Wood did say had no reference whatever to cession as His Excellency assumes, but to confiscation, as fully appears by the extract quoted by His Excellency. It is remarkable that these extracts intended to prove one thing fail altogether in that object, and do prove that which His Excellency did not intend. Ministers may also add that it appears to them that His Excellency has altogether mistaken Mr. Cardwell's meaning in reference to cession, and it surely will not meet Mr. Cardwell's views that His Excellency should have prolonged the war in order to make a futile attempt to carry into effect an impracticable scheme.

Ministers have always been ready, and have repeatedly so expressed themselves, to accept Mr. Cardwell's views as to the extent to which confiscation should be carried; and they do not hesitate again to repeat, in the words of Mr. Wood, “that there is nothing in the instructions of April 26th to Sir George Grey that does not represent the views of the Colonial Government in practically carrying into effect the policy of confiscation authorised by the Legislature in the New Zealand Settlements Act;” and His Excellency's Responsible Advisers have always been ready (again to use the words of Mr. Wood), cordially to co-operate with Sir George Grey in carrying out that just and temperate policy towards the Native race embodied in the New Zealand Settlements Act as limited in its operation by the instructions of April 26th.” But Ministers have always been strongly averse to the substitution of cession for confiscation (though they once consented on certain conditions, in deference to His Excellency, to do so), as they believed and still believe that the former plan will not to any extent be adopted by the Natives, and will certainly produce contempt for the weakness and vacillation it displays.

November 16th, 1864.

FREDK. WHITAKER.

MEMORANDUM by MINISTERS.

Ministers have read with much surprise His Excellency's despatch to Her Majesty's Principal Secretary of State for the Colonies, dated 7th November, 1864, No. 162, forwarding their memorandum of the 1st November, 1864, complaining of His Excellency having withheld from Her Majesty's Government for a period of three months an important memorandum of theirs which was necessary to enable the Secretary of State to understand the subject to which it related, and in reference to which for want of that memorandum, he had evidently arrived at a conclusion unjust to Ministers.

Ministers find the following passages in His Excellency's despatch:—

"4. With regard to the general complaint made by my Responsible Advisers of the delay in the transmission of documents to your department, I beg to state that every effort has been made by the very limited establishment allowed me, to copy for transmission all documents which it appeared necessary to send home. But the office accommodation allowed me is too limited.

"5. There is now an army of nearly ten thousand (10,000) men here, a large squadron, and consequently a vast correspondence to conduct; besides the ordinary business of an important Government, within the limits of which a civil war prevails. I am allowed for office accommodation a small office for myself, a writing-room of 12 feet by 16 feet, and one other room of the same size as a general office. The assistance allowed me is miserably inadequate for the work to be performed, and has not been increased at the time that all the other departments have been largely augmented; whilst at the very time my Responsible Advisers complain I was not transmitting documents to England, they were refusing, as will be seen from the enclosed statement of the Despatch Clerk in my office (Memorandum by F. G. Moore, 1st July, 1864), to furnish me with copies of documents in their office which I required for transmission to you, on the plea that any documents that they wished to have sent home should be copied in duplicate, but that they could not order copies of any documents to be made which the Governor desired should be sent, but which they did not care about sending."

Ministers think it necessary to place these facts on record, which will shew that the excuse offered by His Excellency is absolutely without foundation.

1. They have never limited His Excellency to any amount of office room, nor interfered in any way with his arrangements at Government House. His Excellency can take as many rooms of that house for business as he thinks proper; and those used for that purpose have been so used without any direction or interference on the part of any Ministry.

2. His Excellency has never complained before, nor in any way intimated that he had not sufficient accommodation for his official establishment.

3. Ministers expressly deny having ever refused, or directed to be refused, any official assistance asked for by His Excellency in his official establishment, and have in all the instances when it has been requested immediately supplied extra clerical aid in His Excellency's official establishment. The memorandum by Mr. Moore on this point, forwarded by His Excellency to Mr. Cardwell, has not been seen by Ministers.

4. In reference to the non-transmission of the particular document referred to, Ministers are quite certain that no request was ever made to them to have it copied, and that they never refused any such request; nor was it ever intimated to them that it was being kept back: least of all that it was kept back for any such reason.

In conclusion, they beg to express their most respectful opinion that it is hopeless to attempt to work Responsible Government with His Excellency, if he continues the practice he has adopted on so many occasions, and which has already formed the subject of complaint, of suppressing or withholding from Her Majesty's Government important documents, of his Ministers, while he forwards by the first Mail after events, his own despatches and statements, without Ministers even seeing them till after the Mail has left.

November 19th, 1864.

WILLIAM FOX.

MEMORANDUM by MINISTERS.

The two Despatches of Her Majesty's Principal Secretary of State for the Colonies, dated the 26th of April and the 26th of May, 1864, and numbered 43 and 65, have received the careful consideration of His Excellency's Responsible Advisers.

There are several matters in these Despatches which will probably hereafter require notice, but at present His Excellency's Advisers desire to confine themselves to one point of vital and paramount importance.

The Despatch of the 26th of May contains the following passage:—"But it is my duty to say to you plainly that if, unfortunately, their (Ministers) opinion should be different from your own as to the Terms of Peace, Her Majesty's Government expect you to act upon your own judgment."

Ministers beg most respectfully to recall to mind briefly what has taken place during the last two years on the subject of Responsible Government, in the administration of Native Affairs. In the Session of the General Assembly held in 1862, both Houses strongly represented, in an Address to Her Majesty, the then state of the Colony; strongly remonstrated against being compelled to accept Native Responsibility in Native Affairs, and respectfully declined to undertake the task.

Responsibility from that time rested with His Excellency the Governor, who consented to act in the spirit of the resolutions of the two Houses, until further instructions from the Secretary of State should reach him.

His Grace the Duke of Newcastle—in his Despatch of the 26th of February, 1863, No. 22, in communicating the decision of Her Majesty's Government on the Addresses of the Houses of Assembly, states—"That Her Majesty was pleased to receive them very graciously, but has not commanded me to recall the decision communicated to you in my Despatch of the 26th of May (1862), with respect to the administration of Native Affairs." And His Grace further states that the Home Government has resigned the management of Native Affairs,—that "the relinquishment does not require the assent of the Colonists to make it effectual," and that "it is completed by the act of the Home Government." His Grace then goes on to define the position of the Governor in these words:—"Your constitutional position with regard to your Advisers will (as desired by your late Ministry) be the same in regard to Native as to ordinary Colonial Affairs; that is to say, you will be generally bound to give effect to the policy which they recommend for your adoption, and for which, therefore, they will be responsible.

"I say generally, because there remain several contingencies, in which it will be your duty to act upon your own judgement in opposition to theirs.

"You would be bound to exercise the negative powers which you possess by preventing any step which invaded Imperial rights, or was at variance with the pledges, on the faith of which Her Majesty's

Government acquired the sovereignty of New Zealand, or in any other way marked by evident injustice towards Her Majesty's subjects of the Native Race.

"In the interests of the Colonists themselves, you might feel yourself bound, under conceivable circumstances, to appeal from your Government to the General Assembly, and from the General Assembly to the Constituencies, in case the policy recommended for your acceptance appeared to you clearly disastrous.

"You would be bound to judge for yourself as to the justice and propriety of employing, and the best mode of employing, Her Majesty's Forces. In this matter you might of course fortify yourself by taking the opinions of your Ministers, but the responsibility would rest with yourself, and the officer in command."

In the Session of the General Assembly of 1863, being the next following the receipt of the Secretary of State's Despatch of the 26th of February, the House of Representatives unanimously passed the following Resolutions:—

"That this House—having had under its consideration the Despatch of Her Majesty's Principal Secretary of State for the Colonies, dated the 26th February, 1863, conveying the fixed determination of Her Majesty's Imperial Government to revoke the arrangements of 1856, and for the future to require the Colonists to undertake the Responsibility of the management of Native Affairs—recognizes with the deepest gratitude the great interest which Her most Gracious Majesty has always taken in the welfare of all races of Her Colonial subjects, and the thoroughly efficient aid which Her Majesty's Government is now affording for the suppression of the Rebellion unhappily existing, and the Imperial establishment of law and order in the Colony.

"And, relying on the cordial co-operation of the Imperial Government for the future, cheerfully accepts the responsibility thus placed upon the Colonists, and at the same time records its firm determination to use its best endeavours to secure a sound and lasting peace; to do justice impartially to both races of Her Majesty's subjects, and to promote the civilisation and welfare of all classes of the inhabitants of these islands."

The Legislative Council passed a similar Resolution by a majority of 15 to 1.

A clear definitive arrangement as to the conduct of Native affairs was then come to between Her Majesty's Imperial Government and the General Assembly of New Zealand, which it is most respectfully submitted it was incumbent on both parties to adhere to.

His Excellency's Responsible Advisers cannot, however, but feel apprehensive that the passage they have quoted from Mr Cardwell's Despatch of the 26th of May may be made as capable of an interpretation subversive of this arrangement, and, if fully acted on, involve the resumption of the administration of Native affairs in matters of the most vital importance to the Colony. It is clear that that passage, read alone, bears such an interpretation; but it appears to His Excellency's Advisers that the sentences, following that quoted qualify it, and are intended to operate as instructions as to the manner in which His Excellency is intended to act upon his own judgment should he differ from his Responsible Advisers. This reading renders Mr Cardwell's Despatch harmonious with, and not, as it otherwise would be, antagonistic to, that of the Duke of Newcastle.

Under His Grace's arrangement with the Colony, His Excellency the Governor has recognised *negative powers*, and he is bound to judge for himself as to the justice and propriety of employing Her Majesty's Forces; but he is not entitled, without the advice of his Ministers, to deal with any question of Native Policy: and if the policy they recommend for his acceptance appears to him clearly disastrous, he may appeal to the General Assembly, and from the General Assembly to the Constituencies. The Governor's constitutional position with regard to his Advisers is the same in regard to Native as to ordinary Colonial Affairs.

His Excellency's Responsible Advisers are anxious not to be misunderstood. They do not claim the right to enforce their policy with Her Majesty's Imperial Troops. In this respect His Excellency has a *negative power*, which is not disputed; but His Excellency's Advisers do insist that the Governor has not the right to carry out a policy of his own, irrespective of his Responsible Advisers. The Despatch of the Duke of Newcastle, of the 26th of February, clearly abandons any such right, and the Despatches from Mr. Cardwell cannot be accepted as reviving it.

Her Majesty's Secretary of State may fully rely that His Excellency's Ministers are animated by a just sense of the exertions and sacrifices which have already been made by the Mother Country for the Colony, and that, on Colonial grounds, they are as anxious as the Governor can be to terminate the present hostilities. Practically, no difference of opinion as yet exists between His Excellency and his Advisers, and they trust it may not arise; but as a feeling has arisen in the Colony since the receipt of Mr Cardwell's Despatch of the 26th of April, that it is the intention of the Imperial Government to subvert the existing arrangement as to the administration of Native affairs in some matters, and these of the highest importance to the Colony, His Excellency's Advisers deem it to be an imperative duty to place on record without delay their protest against the introduction of a new form of government, under which Native affairs would be administered partly by His Excellency and partly by his Advisers—in fact, two Governments for the same affairs, "which not only would not always aid one another, but which would sometimes act at cross purposes with each other," rendering it "quite impossible that Her Majesty's Government could be advantageously carried on under such a system;" a system far worse than that which the Duke of Newcastle pronounced a failure, and which could not but operate mischievously, alike to both Imperial and Colonial Interests.

Ministers request that His Excellency will be pleased to transmit a copy of this memorandum to Her Majesty's Secretary of State.

Auckland, 2d August 1864.

FREDK. WHITAKER.

NOTE.—This is the Memorandum of 2d August, referred to in Ministerial Memorandum of 30th September, 1864, printed E.—No. 2., page 97, and should have appeared in that paper.

MEMORANDUM by MINISTERS.

The Colonial Secretary begs to acknowledge the receipt of His Excellency's Memorandum, of the 26th instant, relative to his communication with Wi Tako. In reference to His Excellency's explana-

tion of his intentions at the time he issued the Proclamation of the 15th July, 1863, and of the circumstances attending the non-issue of the Notice of the 13th December, and the Proclamation of 30th April, 1864, Ministers have so fully discussed the subject in their Memorandum of the 17th May, 1864, that it seems only necessary to refer His Excellency to that Memorandum for their view of the subject.

The Colonial Secretary begs to repeat his expression of regret, if relying on those documents, he stated to Wi Tako anything which was at variance with His Excellency's views and opinions at that date. We cannot, however, perceive that any bad consequence has resulted or can result from what he stated to Wi Tako. For the submission of the Tauranga Natives has since been accepted by His Excellency on precisely the terms which the Colonial Secretary enunciated to Wi Tako. Those Natives signed a declaration of allegiance, and gave up their arms to Colonel Greer, and were told by him that "the disposal of their lands would be for the Governor." His Excellency then visited them in person, confirmed the acceptance of their submission, and took so much of their land as he thought proper; they declaring with one voice "that the Governor was to hold their lands as his own; that when they made their submission they gave up themselves and their arms, and the question about the land was left for the Governor, and the decision of it was to be with him." These proceedings at Tauranga practically confirmed the statements made by the Colonial Secretary to Wi Tako, and what he told that chief would be done, was done on that occasion.

The Colonial Secretary ventures to extract from this a hope that whatever theoretical difference may exist between His Excellency's opinion and those of his Responsible Advisers on the questions of forfeiture, or confiscation, the practical difficulty will on all other occasions be as satisfactorily surmounted as it was at Tauranga.

Auckland, 29th August, 1864.

W. FOX.

NOTE.—This Memorandum was accidentally omitted in page 86, E. No. 2. It is a reply to the Governor's Memorandum of 26th August, 1864, on that page.

MEMORANDUM by the GOVERNOR.

The Governor will hereafter make such reply as may appear necessary to the Ministerial memorandum of the 24th instant, upon the subject of the location of the Emigrants likely to arrive here.

In the meantime he will only say that he thinks the location of the Emigrants at some of the most distant points named, is a proceeding to which, for several reasons, he should object, and which, if it takes place, must be carried out on the understanding that the Governor does not undertake that military protection shall be found for the settlers planted in those locations.

The Governor thinks that by locating nearer Auckland the Emigrants arrived, or about to arrive, their own welfare and safety, and that of the country generally, would be best provided for.

With the exception of the difficulty arising from the delay that has taken place, he sees no obstacle in the way of carrying out, at least in great part, his own views and those of the General Assembly on the subject of locating these Emigrants; and to make these harmonize in as far as possible with those now expressed by his Responsible Advisers, he recommends that preparations should be immediately made for locating these people, as suggested by Ministers, at Rangariri, near Ngaruawahia, and near Whata Whata; the precise extent of land to be taken at each of these places can be determined when an estimate of the quantity of good land in the vicinity of each of them has been made by the surveyors sent there—regard being had to the claims of the loyal natives, and to the portions of land to be allowed to those natives who have been engaged in the war, but who are to be allowed to return to the Waikato after peace has been made.

With regard to the Settlements of Cambridge and Hamilton, when the Governor has been informed—what is the extent of good land near those settlements,—what quantity is already required there, and what will be the residue available for the new settlements, he will express a further opinion upon this matter.

Government House, Auckland, 31st October, 1864.

G. GREY.

MEMORANDUM by MINISTERS.

His Excellency's memorandum of the 13th of October, "upon the subject of the Governor not having thought it necessary to communicate to Ministers any information relative to military movements," was inadvertently detained at the printer's with other papers, and it has thus been overlooked that it required an answer. Ministers beg to be permitted now to add a few words in reply.

Ministers did not complain that His Excellency did not communicate with General Cameron, but they stated, in their memorandum of the 30th of September, that "for some time past His Excellency had not thought it necessary even to communicate any information relative to military movements" to them. The fact therefore stated by His Excellency, that he had written his letter of instructions to General Cameron of the 19th of May, as well as the fact that the garrisons of Hawke's Bay and Wanganui had been strengthened, do not touch the question at issue.

It is true that, on the 19th of May, Ministers expressed their desire that such operations as were practicable should be carried on at Taranaki and Wanganui, and they became aware that the General did not think it expedient to carry on any military operations, especially those suggested in their memorandum of the 9th of April last.

His Excellency states, that on the 5th of October it became possible to form plans for military operations; but to this hour these plans have not been communicated to Ministers, and they are not aware what is the object of the present military movements in reference to Taranaki, and whether it has any connection or not with those or any other plans.

His Excellency, in order to repair his omissions in reference to military matters between May and September, transmits copies of all his letters to the General between the 4th and 30th of September, 1864. Ministers feel assured that His Excellency will at once admit, that the information then conveyed, for this period of twenty-six days, is more full than it ever was before, or has been since.

Ministers beg to be permitted to say, that they have felt, and still feel, that they have not, from

time to time, been placed in possession of that information, in reference to military matters, to which they conceive they were entitled; and they must add, that the mode in which His Excellency has carried on his communications on the part of the Colony with the military authorities has been most unsatisfactory, and, in their opinion, very detrimental to the public service.

23d November, 1864.

FREDK. WHITAKER.

MEMORANDUM by the GOVERNOR.

In reply to the Ministerial Memorandum of this day's date, on the subject of information being furnished to his Responsible Advisers relative to military movements, the Governor would state generally that he has in every instance imparted to them any information upon such subjects which he was in possession of himself, and that from an earnest desire to carry on the public service in a harmonious manner, he has striven in as far as possible to have all military movements conducted in accordance with their wishes. In the majority of instances, the Governor believes that the instructions he has issued to the Lieutenant-General have been written from Memoranda prepared by Ministers.

With regard to plans for military movements since the 5th of October last, and the objects of the present military movements in reference to Taranaki, the Governor believes that since the 5th of October the Ministers have not advised any plans in reference to such movements, and the Governor has consequently refrained from forming any; and on the 10th of November, after Ministers had declined to give the Governor advice for which he had asked, he wrote to them, stating:—"The Governor has thought it necessary to sanction at once these proposed reductions, because as a military measure the re-occupation of the Tataraimaka block has become necessary, and the force requisite for doing this can (due provision being made for the safety of the Province of Auckland) only be collected in the manner pointed out in Sir D. Cameron's letter of the 28th of October last."

Had any further military movements been contemplated at Taranaki, the Governor would—although Ministers were refusing to give him advice upon such points, and were thus avoiding all responsibility—have felt it his duty to have imparted to them any information of which he was in possession.

With regard to the statement made by Ministers, that the mode in which the Governor has carried on his communications on the part of the Colony with the military authorities has been most unsatisfactory, and very detrimental to the public service, the Governor can only state that he has carried on such communications in accordance with the Queen's regulations and the customs of the service; and he thinks that if Ministers entertained the objections to his proceedings which they now state, they should have brought them forward at an earlier date, and not now when they are virtually out of office. If the Governor could not or would not have altered his mode of conducting his communications with the military authorities, Ministers could then have tendered their resignations. But he must say, although he is sorry to differ with Ministers, that the experience of many years in this and other countries—in some of which extensive operations were carried on under various General Officers—has quite satisfied him that the mode in which as Civil Governor he has, in accordance with the regulations, conducted his communications with the military authorities is satisfactory, and very beneficial to the public service.

Ministers will, he trusts, pardon him for saying this; but this is a point on which a long and varied experience renders it just to the public service that he should firmly although courteously express his opinion.

Government House, Auckland, 23rd November, 1864.

G. GREY.

MEMORANDUM by MINISTERS.

Ministers beg to acknowledge His Excellency's Memorandum of this day's date, in reply to theirs of the same date, on the subject of the method of communication between His Excellency, his Ministers, and the military authorities. His Excellency is pleased to appeal to his long experience in other Colonies in this matter, and states that the method he has adopted in New Zealand is in exact conformity with his previous practice in such Colonies.

Ministers beg to intimate that this is the very thing they complain of. His Excellency has never before been Governor of a Colony in which Responsible Government existed, and he has carried out in New Zealand, where Responsible Government does exist, the practice which was no doubt correct enough when the Officers of his Government only fulfilled the functions of secretaries or clerks, and were not His Excellency's Responsible Advisers. It is, Ministers repeat, because His Excellency has pursued towards his Responsible Advisers the same course as he would have been justified in pursuing towards such non-responsible secretaries or clerks, that Ministers have complained of it. This is a distinction which His Excellency appears unfortunately never to have realised, but which he must recognise if it is to be hoped that he can ever work with a Responsible Ministry.

Auckland, 23rd November, 1864.

FRED. WHITAKER.

MEMORANDUM by the GOVERNOR.

The Governor, in acknowledgment of the second Memorandum from his Responsible Advisers of this day's date, upon the subject of the mode of communication adopted between the Governor and the military authorities in this country, begs to put on record that he has endeavoured in this respect to act in accordance with the principles of Responsible Government. He believes that it will be generally admitted that he has done so.

He is, indeed, even quite satisfied that a larger experience in public affairs of the kind which have recently been transacted in this Colony will lead his present advisers ultimately to admit that such is the case, and to withdraw their present opinions, and to regret that they have often expressed themselves in language of such unusual strength.

November 23rd, 1864.

G. GREY.