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THE following Despatch from Her Majesty's Principal Secretary of State for the Colonies is published for general information.

Wm. Fox.

Downing Street,  
26th April, 1864.

SIR,—Her Majesty's Government have had under their consideration three Acts passed by the Legislature of New Zealand in order to give effect to the views of your advisers with reference to the native war, viz :

No. 8. An Act to enable the Governor to establish Settlements for Colonisation in the Northern Island of New Zealand.

No. 11. An Act for raising a Loan of Three Millions sterling for the Public Service of the Colony of New Zealand.

No. 12. An Act to appropriate certain sums to be raised under the New Zealand Loan Act, 1863 (the last-mentioned Act) and to provide for the repayment of certain portions thereof.

The most important of these Acts is that which stands first on the list.

It declares in effect that if, in the opinion of the Colonial Government, any considerable number of the members of any native community have been or shall hereafter be in rebellion, the Colonial Government may declare any district within which such community may hold property, to be a District for the purpose of this Act, and may at any time thereafter confiscate within that district such lands as they may from time to time consider requisite for purposes of settlement, whether

those lands be the property of loyal or disloyal natives or of colonists.

Compensation is to be given, according to the judgment of a Court, to persons (or I presume to tribes or communities) who are to be dispossessed without having been engaged in rebellion.

These Courts are not only empowered to refuse, but are positively disabled from giving compensation to any person who shall have aided, assisted, or comforted any rebel, or who (whether engaged in rebellion or not) shall have refused to give up his arms on being required to do so by proclamation.

The law is a permanent law, applicable not only to the present conjuncture, but to any case in which the Colonial Government shall hereafter "be satisfied" that any considerable number of any Native Community in any part of the Island shall have been in rebellion since the first of January, 1863.

I learn from the memorandum which accompanies this Act that the power of the Assembly to pass it has been questioned in New Zealand, and I have thought it right to submit it, together with one which has also been passed by the Colonial Legislature for the suppression of the Rebellion, to the Law Officers of the Crown, for their opinion. That opinion I cannot receive in time to communicate with you by this mail; but I need not leave you in ignorance of the views which I entertain upon the policy embodied in this important law, or of the opinion of Her Majesty's Government in respect to the measures which ought to be taken as soon as decisive success in arms shall enable you to take them for the pacification and settlement of the Northern Island. It appears that of

the land thus about to be acquired, part is to be granted in lots, varying from 50 to 400 acres, to the members of the Colonial Force recently raised, numbering, I understand, about 4,000 persons, and part is to be occupied by settlers, who are to be introduced from Europe at the expense of the Colony, and are to hold their lands on a species of Military Tenure. It is supposed that the whole number of settlers, including the above-mentioned Colonial Force, will amount to 20,000.

A scheme of this kind was submitted to the Duke of Newcastle, in your despatch No. 109, of the 29th of August last. Your Ministry then proposed the introduction of 5,000 men, who were to hold fifty-acre farms upon Military Tenure, on land to be taken from the insurgent natives. Your Despatch implied that you approved the principle of this scheme, and you stated that you had sanctioned it to the extent of raising 2,000 men for active service.

The Duke of Newcastle adopted your views, but not without a very serious caution as to the danger and delicacy of applying them. He indicated the difficulty of preventing injustice, and the hazard of exciting the apprehension of the Natives; he pointed out to the Local Government the responsibility which they would incur of providing against these evident risks; and he added that if the determination of your Government should have the effect of extending and intensifying the spirit of disaffection, and of thus enlarging the sphere or prolonging the period of Military operations, these consequences would be viewed by Her Majesty's Government with the gravest concern and reprehension. I need scarcely observe that the Act now forwarded, taken in combination with the scheme proposed by your Government, exhibits a rapid expansion of the principles in which the Duke of Newcastle acquiesced with so much reserve.

The number of settlers, and consequently the immediate amount of confiscation, is quadrupled; the compulsory power of acquiring land within a proclaimed District is, by the terms of the Act, applied alike to the loyal and the disloyal; the right of compensation is jealously limited, and is denied even to the most loyal native if he refuses to surrender his accustomed right of carrying arms, and these powers are not to be exercised exceptionally and to meet the present emergency, or by regularly constituted Courts of Justice, but are to be permanently embodied in the Law of New Zealand; and to form a standing qualification of the Treaty of Waitangi.

This being the nature of the law, I proceed to consider some very grave objections which may be urged against it.

It renders permanently insecure the tenure of native property throughout the islands, and is thus calculated to alarm our friends. It makes no difference between the leaders

and contrivers of rebellion and their unwilling agents or allies, and is thus calculated to drive to despair those who are but half our enemies. The proceedings by which unlimited confiscation of property is to take place may be secret, without argument and without appeal. And the provision for compensation is as rigidly confined as the provision for punishment is flexible and unlimited.

I concur with your advisers in thinking it impossible to apply to the Maoris the maxims of English law in all their application to the details of civilized life. It is necessary to take into account the anomalous position which they occupy on the one hand, as having acknowledged the Queen's sovereignty, and thus become liable to the obligations and entitled to the rights of British subjects, and on the other hand as having been allowed to retain their tribal organization and native usages, and as thus occupying in a great measure the position of independent communities. Viewed in the former capacity, they have, by levying war against the Queen, rendered themselves punishable by death and confiscation of property. These penalties, however, can only be inflicted according to the rules and under the protection of the Criminal Law. Viewed in the latter capacity, they would be at the mercy of their conquerors, to whom all public property would at once be transferred, private property remaining under the protection of international custom. Remembering the difficulty of determining what is private and what public property among the Maoris, it seems to follow that in the interest of all parties the rights of the Maori insurgents must be dealt with by methods not prescribed in any law book, but arising out of the exceptional circumstances of a most anomalous case.

It is therefore doubly necessary that those who administer in the name of the Queen a Government of irresistible power, should weigh dispassionately the claims which the insurgent Maoris have on our consideration. In the absence of those legal safeguards which furnish the ordinary protection of the vanquished, the Imperial and Colonial Governments are bound so to adjust their proceedings to the laws of natural equity, and to the expectations which the natives have been encouraged or allowed to form, as to impress the whole Maori race at this critical moment with the conviction that their European rulers are just, as well as severe, and are desirous of using the present opportunity not for their oppression, but for the permanent well-being of all the inhabitants of New Zealand.

I recognise the necessity of inflicting a salutary penalty upon the authors of a war which was commenced by a treacherous and sanguinary outrage, and attended by so many circumstances justly entailing upon the guilty portion of the natives measures of condign punishment. But I hold in the first place that in the apportionment of this punishment those who have actively promoted or violently

prosecuted this war should be carefully distinguished from those who by circumstances, connexion, or sense of honour, or other natural temptation, have been unwillingly drawn into it, and still more pointedly from those who have on the whole adhered to the British cause. Even in the case of the most culpable tribes the punishment should be such as to inflict present humiliation and inconvenience rather than a recurring sense of injury, and should leave them with a conviction that their punishment, if severe, has not exceeded the limits of justice, and also with the assurance that for the future they have nothing to fear, but everything to hope from the Colonial Government. With this view, the punishment, however exemplary, should be inflicted once for all, and those who may have suffered from it should be led to feel that they may engage in the pursuits of industry on the lands which remain to them, with the same security from disturbance which is enjoyed by their most favoured fellow-subject. And I should hold it as a great misfortune if the punishment were so allotted as to destroy those germs of order and prosperity which have been so singularly developed in some of the Waikato tribes.

I do not dispute the right of the Colonial Government to obtain from the punishment of the insurgent natives some aid in defraying the expenses of the war; or, in other words, of including in the contemplated cession or forfeiture lands to be disposed of by sale, as well as lands to be devoted to the purposes of military settlement. But these expenses have been mainly borne by this country, which has therefore a right to require that the cession or confiscation of territory shall not be carried further than may be consistent with the permanent pacification of the island and the honour of the English name. I must now invite your attention to some difficulties to which such a scheme would appear to be liable if carried into effect too suddenly, and on too great a scale.

I think it may be generally said that there is not much modern experience of a successful military settlement. In the present case, it can scarcely be hoped that the 20,000 persons whom it is proposed to place upon land will be entirely of the most desirable class; and notwithstanding the intention expressed by your Minister to provide for the introduction of married settlers with their families, it is to be expected that there will be a great preponderance of males amongst them—a circumstance which is always productive of many causes of strife in such a state of society. If the settlements should be scattered at a distance from any natural centre, and in the heart of a disaffected country, they might prove unequal to their own defence, and their protection would be extremely expensive, while it would hardly be possible for the Colony to abandon the territories which it had occupied. Lastly, as the immigrants would be without special experience or capital, bound

to a distasteful military tenure, and perhaps exposed to the hostility of the natives, it is to be feared that they would have to undergo much hardship, and would be soon attracted from their farms by the high wages of Australia or the still nearer gold-fields of Otago.

I am strengthened in these apprehensions by observing that the difficulty of enforcing Military Service upon Colonists has pressed itself on the notice of yourself and the New Zealand Representatives. In your Despatch of the 24th July, 1862, you express your fear that labourers and artizans could not be induced to remain in the Colony if liable to Militia Service. And a somewhat similar anticipation is expressed in the memorial addressed to Her Majesty by the Houses of Representatives, and mentioned in your despatch of the 6th October, 1862.

This is a matter which more properly belongs to your own advisers on the spot, responsible as they now are for the conduct of Native Affairs; and I do not urge these objections for the purpose of discouraging within moderate and practical limits a scheme from which you expect the best results, but only trust, in order to ensure success, these limits may be carefully considered in the first instance.

I shall have occasion to recur to the subject of lands taken for sale in considering the proposal for a guaranteed loan.

Considering that the defence of the colony is at present effected by an Imperial Force, I should perhaps have been justified in recommending the disallowance of an Act couched in such sweeping terms, capable therefore of great abuse—unless its practical operation were restrained by a strong and resolute hand—and calculated, if abused, to frustrate its own objects and to prolong instead of terminate war. But not having received from you any expression of your disapproval, and being most unwilling to take any course which would weaken your hands in the moment of your military success, Her Majesty's Government have decided that the Act shall for the present remain in operation.

They are led to this conclusion not merely by a desire to sustain the authority of the Local Government, but also in no small degree by observing that no confiscation can take effect without your personal concurrence, and by the reliance which they so justly place on your sagacity, firmness, and experience, and your long-recognized regard, as well for the interests of the Colonists as for the fair rights and expectation of the Native Race.

I have, therefore, to convey to you the following instructions, as embodying the decisions of Her Majesty's Government:—

It is in their opinion very much to be desired that the proposed appropriation of Land should take the form of a cession imposed by yourself and General Cameron upon the conquered tribes, and made by them to the representative of the Queen as a

condition on which Her Majesty's clemency is extended to them. The advantages of such a settlement (in which, however, I need hardly say the position of the Maoris as defeated rebels should be unequivocally exhibited) are too manifest to need explanation.

But if this should be found impossible, you are at liberty, subject to the following reservations, to give your concurrence in bringing the Law into operation.

A measure should be at once submitted to the Legislature to limit the duration of the Act to a definite period, not exceeding, I think, two years from its original enactment—a period long enough to allow for the necessary enquiries respecting the extent, situation, and justice of the forfeiture, yet short enough to relieve the conquered party from any protracted suspense, and to assure those who have adhered to us that there is no intention of suspending in their case the ordinary principles of Law.

The aggregate extent of the forfeitures should be at once made known, and their exact position as soon as possible.

A Commission should be constituted for the special purpose of enquiring what lands may properly be forfeited. The members of this Commission should not be removable with the Ministry, and should be so chosen as to guarantee a fair and careful consideration of the matters brought before them.

It should be clearly understood that your own concurrence in any forfeiture is not to be considered as a mere Ministerial act, but that it will be withheld unless you are personally satisfied that the confiscation is just and moderate.

And here I must observe that if in the settlement of the forfeited districts all the land which is capable of remunerative cultivation should be assigned to Colonists, and the original owner—the Maori—be driven back to the forest and morass, the sense of injustice, combined with the pressure of want, would convert the native population into a desperate bauditti, taking refuge in the solitudes of the interior from the pursuit of the police or military, and descending when opportunity might occur into the cultivated plain to destroy the peaceful fruits of industry. I rely on your wisdom and justice to avert a danger so serious in its bearing on the interests of the European, not less than of the Native Race.

Turning to that part of the law which authorizes the dispossession of persons who have not been involved in the recent rebellion, I have to observe that although Her Majesty's Government admit with regret that the tribal nature of the native tenure will sometimes render it unavoidable that innocent persons should be deprived of their lands, they consider that land should not be appropriated against the will of the owners merely because it is in the same district with rebel property, and may conveniently be used for purposes of

settlement, but only in cases where loyal or neutral natives are unfortunate enough to be joint owners with persons concerned in the rebellion, or because it is absolutely required for some purpose of defence or communication, or on some similar ground of necessity. But every such case of supposed necessity should be examined with the greatest care, and admitted with the greatest caution and reserve.

The compensation to be given to persons thus dispossessed is properly by the Act itself made the subject of inquiry in an open Court. But the 5th section of the Act ought to be so modified that the powers of the Court may not be limited in any manner which would prevent its doing complete justice to the claims of every innocent person, or extending reasonable consideration to those whose guilt was of a less heinous character—a class which, in the varying temper of the New Zealand tribes, is probably large. I trust that in accepting any cession, or authorising confirmation of any forfeiture of land, you will retain in your own hands ample power of doing substantial justice to every class of claimant for restitution or compensation.

Finally, when you have taken all the powers and received all the cessions which you think necessary for the satisfactory pacification of the islands, you will do well to accompany these measures of justice and severity by the announcement of a general amnesty from which those only should be excepted who have been concerned in the murders of unoffending settlers, or other like offences of a heinous and strictly exceptional character. In order to mark as much as possible the discriminating character of British justice, the exception from the amnesty should not be couched in general terms, but should recite one by one the specific outrages which remain unpardoned.

Subject to these cautions and conditions, and in full confidence that you will act on the general principles which I have before laid down (and in which I anticipate your cordial concurrence) Her Majesty's Government are prepared to leave in your hands the power with which you have been entrusted by the Legislature of the Colony.

In the Despatch in which you have transmitted to me these measures, you have expressed, in terms with which I entirely agree, your own appreciation of a generous policy, and of its beneficial consequences when adopted on former occasions in New Zealand. You give at the same time your reasons, the justice of which I am not prepared to dispute, for determining that the circumstances of the present case justly and necessarily call for measures of severity, such as have not been adopted at the close of former wars; but you accompany these reasons with the expression of your opinion that this severity ought not to be carried too far. I recognise also with satisfaction the statement of your Ministers on the occasion of their first submitting to you

their views upon forfeiture and military settlement. They said they felt assured that as this would be the first, so it would also be the last occasion on which any Aboriginal inhabitant of New Zealand would be deprived of land against his will.

I trust that on their part there will be no unwillingness to co-operate with you in confining the measures of severity to which it may be necessary to have recourse, within those just and moderate limits to which I have referred.

I now turn to the Act which authorizes a Loan of £3,000,000, for which it is desired to obtain the guarantee of the British Parliament. I observe that of the total sum which it is proposed to raise, £1,000,000 is allotted to the expenses of the War, £200,000 to the repayment of a debt to the Imperial Government which has probably doubled since that time, £200,000 to the compensation of the Taranaki settlers, and the rest in the main in the settlement of the country. The bulk of it appears to be appropriated to the plan of Military Settlement to which I have already adverted.

Her Majesty's Government recognise as exceptional the expenses occasioned to the Colony by the native war. And they are not unwilling to entertain the question of extending the guarantee of £500,000, which they have already conditionally promised to submit to Parliament, to such a further sum as will cover the increased debt of the Colony to the Imperial Exchequer, and so much of these Military expenses, including £200,000 for compensation to the Taranaki settlers, as may properly be defrayed not out of the current revenue of the Colony, but by loan.

But the same reasons do not, in their judgment, apply to the settlement of the country, which, whether successful or not as a measure of defence, is mainly a matter of Colonial interest, inasmuch as its success is calculated to add to the wealth and population of the Colony. To a purpose of this kind the Imperial credit is not generally applicable; and Her Majesty's Government do not consider that the land which it is proposed to acquire under the Settlement Act is of any such definite value as materially to add to the security on which the guarantee of Parliament could be given. The omission of this sum will reduce the whole loan within much narrower limits, and I will consider and write you on a future occasion how far the revenue of New Zealand pledged by the terms of the Act, and the considerations to which I have referred may justify Her Majesty's Government in increasing the proposal they have already promised to make to Parliament. Under any circumstances, the sum will doubtless appear to Parliament larger than it has hitherto been usual to guarantee to a Colony of the size and resources of New Zealand, and could only be proposed by the Government with any pros-

pect of success in connexion with the peculiar circumstances of the present loan, and in the well-founded hope of a final pacification and settlement.

I must now call your attention to the importance of reducing as rapidly as possible, after the conclusion of the troubles, the large force now maintained in New Zealand, and I confidently expect to receive from you such information as may enable me to communicate to the Secretary of State for War the possibility of a great reduction in the number of men, and consequently in the Estimate for the year 1865-6. I must also remind you that for the great expense which this country has already incurred in putting down the present insurrection, the Home Government only calls upon the Colony for that almost nominal contribution which it has already engaged to pay.

The arrangement at present in force respecting the amount of the military contribution, and the proportion of it which is to be returned to the Colony, to be employed for the benefit of the natives, will terminate with the close of the present year. In consenting to guarantee a large loan for the Colony, the Imperial Government will feel it necessary to require that if at the close of that period the Colony should continue to require assistance of the mother country, a much more adequate contribution shall be made to the Imperial Exchequer. I am, however, unable at this moment to convey to you any definite decision on this part of the subject. It is under the consideration of the Government, and I shall take an early opportunity of addressing you again upon it.

I conclude by expressing an earnest hope that the operation in which General Cameron has been engaged may already have terminated the war; and shall rejoice when I am able to congratulate you on having succeeded by the wisdom of your own measures and those of your Government, by the skill of that distinguished Commander, and by the valour of the Queen's troops and seamen and of the Colonial Forces engaged in the conflict, in restoring the blessings of order and good government to the country entrusted to your care.

I have, &c.,  
EDWARD CARDWELL.

His Excellency Sir G. Grey, K.C.B.

*Southland Representation Ordinance, 1864,  
Assented to.*

Colonial Secretary's Office,  
Auckland, 18th June, 1864.

THE following Bill, passed by the Provincial Council of the Province of Southland, intituled

"Representation Ordinance, 1864,"

which Bill was reserved for the signification of the Governor's pleasure thereon, having been laid before the Governor, His Excellency has been pleased to Assent to the same.

WILLIAM FOX.

