

Enclosure 3 in No. 1.

REMARKS BY NATIVE SECRETARY.

October 13th, 1858.

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

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

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

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

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

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

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

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

The converse is equally true; if found to operate injuriously, it might be repealed.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

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

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

Those objections are, briefly:—

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

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

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

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

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

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

(Signed) DONALD McLEAN.