PAPERS

RELATIVE TO THE

RIGHT OF ABORIGINAL NATIVES TO THE ELECTIVE FRANCHISE.

Presented to both Houses of the General Assembly by command of His Excellency.

ELECTIVE FRANCHISE.

COPY OF A MEMORANDUM BY MR. RICHMOND.

NATIVE AFFAIRS

Auckland, 25th June, 1859.

In accordance with a Resolution of the House of Representatives passed during the late Session of the General Assembly of New Zealand, His Excellency's Responsible Ministers have the honor respectfully to request that the accompanying case on the subject of the Right of the Aborigines to the Elective Franchise under the Constitution Act, may be submitted for the opinion of the Law Officers of the Crown in England.

Ministers also forward for transmission to the Secretary of State Copy of a Memorandum written by Mr. Carleton, a Member of the General Assembly, and the Mover of the Resolution above referred to, explanatory of that gentleman's views upon the subject of the Resolution, together with a copy of a Letter addressed by Mr. Carleton to the Colonial Secretary of New Zealand.

(Signed) C. W. RICHMOND.

CASE.

Right of the Natives to the Elective Franchise under the Constitution Act.

19th August, 1858

The following is a Resolution of the House of Representatives passed in the Session of 1858 :—*Elective Franchise.* "On motion of Mr. Carleton, *Resolved*, That in the opinion of this House, "the New Zealand Government ought to endeavour to obtain an opinion from the Law Officers of "the Imperial Government, on the subject of claims to vote, preferred by Aboriginal Natives under the "seventh and forty-second sections of the Constitution Act, whether Natives can have such possession "of any land that is used or occupied by them in common as tribes or communities, and not held "under title derived from the Crown, as would qualify them to become voters under the provisions of "the forecited sections; this, with a view to petitioning the Imperial Parliament, or taking other, the "proper measures, to be relieved from the grave inconveniences and probable dangers to the "Government of this Country, which are to be apprehended, should it be found that a large body of "men, who are destitute of political knowledge, who are mainly ignorant of the language in which "our laws are written, and among whom respect for the law cannot be as yet enforced, have been "allowed the right of interference with the enactment of law."—*Journals p.* 185

By the New Zealand Constitution Act (15 & 16 Vic., c. 72,) the Electoral Qualification for the different Representative Assemblies created by that Act is as follows, viz.

"Every man of the age of 21 years or upwards, having a freehold estate in possession, situate "within the district for which the vote is to be given, of the clear value of £50, above all charges and "incumbrances, and of or to which he has been seised or entitled either at law or in equity for at least "six calendar months next before the last Registration of the Electors; or, having a leasehold estate "in possession, situate within such district of the clear annual value of £10, held upon a lease which, "at the time of such Registration shall not have less than 3 years to run, or having a leasehold estate "so situate, and of such value as aforesaid of which he has been in possession for three years or "upwards next before such Registration, or being a householder within such district occupying a "tenement within the limits of a town (to be proclaimed as such by the Governor for the purposes of "this Act), of the clear annual value of ten pounds, or without the limits of a town of the clear annual "value of five pounds, and having resided therein six calendar months next before such Registration "as aforesaid, shall, if duly registered, be entitled to vote, &c."

In 1840, the British Crown assumed the sovereignty of the Islands of New Zealand at that time and still inhabited by an Aboriginal Race, believed to be of Malay origin—having certain leading characteristics in common with the inhabitants of other Islands of Polynesia. Their numbers at present have been ascertained at about 56,000—principally resident in the Northern Island.

The circumstances under which the Colony was established, the peculiar relations contracted towards the Natives under the Treaty of Waitangi, the controversies which have arisen respecting the Title of the Natives to their lands, and the dealings with the Natives respecting their lands, are too well known to require recapitulation.

The following documents are referred to as throwing light on these questions.

Abstract of Correspondence between the Colonial Office and the New Zealand Company, &c.—(P. P. 29th July, 1844, Appen. p. 101).

Report of Protector Clarke on the Tenure of Native lands.—(*Ibid.*—Appen. 356.)

The Report of the Committee of the House of Commons, Sess. 1844.—(P. P. 29th July, 1844.)

Report on the State of Native Affairs—transmitted to the House of Representatives, New Zealand, July 9th, 1856.—(*Votes and Proceedings of the House of Representatives, Sess.* 4, 1856. B.—No. 3.) Transmitted.

The total quantity of land in the several Islands is estimated at about 68 millions of acres. Of this about 44 millions of acres have been ceded to the Crown and are in course of settlement by Europeans. About 24 millions of acres remain unceded in the hands of the Natives; over which they are thinly dispersed, residing for the most part in clusters of villages, or pahs.

Several Acts or Ordinances have been passed by the Local Legislature, relating to dealings with Native Lands, viz.

Land Claims Ordinance, No. 1—(J. 1.)—Sess. 1. No. 2. Transmitted.

" " Amendment Ordinance—(J. 2.)—Sess. 3. No 3. Ditto.

Native Land Purchase Ordinance—(J. 6.)—Sess. 7. No. 19. Ditto.

Native Territorial Rights Act, 1858. Ditto.

The accompanying Memorandum describes the present domiciliary habits of the Maori population. Ditto.

In point of fact, notwithstanding the Native Land Purchase Ordinance—many European Settlers have located themselves on Native lands in various parts of the Colony, under arrangements in the nature of lettings. Those persons occupy as tenants and (in some cases, but rarely) pay rent; subject of course to the risk of the Native Land Purchase Ordinance being enforced against them—but practically undisturbed. The rent and value of holdings is in many instances no doubt sufficient in amount to be the basis of qualification, if the land were held under ordinary English tenure—but, whether in the eye of the law, land so held can be regarded as of value, *i.e.*, marketable value, to satisfy the requirements of the Constitution Act seems to depend in some degree on the effect of the Local Ordinances referred to—in particular of the Native Land Purchase Ordinance, which renders all dealings with Natives for land illegal, and subjects the parties so dealing to penalties.

As to the intention of the Imperial Legislature to confer or withhold the Elective privilege in respect of the occupation of Native Lands, there is no light beyond what is afforded by the language of the Constitution Act, and the terms in which the Franchise is conferred.

It may, however, be well to point out—that in the Imperial Act 9 & 10 Vic., c. 103, (called Lord Grey's Constitution of 1846) there is clear indication of an intention to exclude this kind of Franchise which does not exist in the Act of 1852. Under the Act of 1846 the Electoral (or Municipal) Districts are confined to "such parts of the Islands as are or shall be owned, or lawfully "occupied by persons of European birth or origin."

Persons are also disqualified who "are not able to read and write in the English language," which is the condition of almost the whole Native population at the present time.

No case has occurred in which the Supreme Court of the Colony has assumed jurisdiction where the Native Title or right of occupancy was in question between Natives.

The opinion of the Law Officers of the Crown in England is requested upon the question raised by the Resolution of the House of Representatives.

MEMORANDUM AS TO DOMICILIARY CONDITIONS OF NATIVES.

The dwellings of the New-Zealanders, at the present time, are much in the same state as were those of their forefathers, and in many parts of the Country the change has been for the worse. Rude temporary huts constructed in a few hours, with rough poles cut from the forest, and thatched with *toetoe*, a species of grass, and the sides covered with *raupo*, or bulrush, are the domiciles of the common people, whose migratory disposition, and indifference to the comforts of life, lead them to regard the labour of erecting a substantial and roomy house, a superfluity. Many, indeed, content themselves during the summer months—the season of planting and fishing—with the shelter afforded by a few leaves of the *Nikau* Palm (Areca Sapida) so plated and interwoven as to protect them from the heavy night dews and light summer rain.

In their *pas*, or fortified villages, however, much time and labour was, and is still occasionally, bestowed upon their dwellings. The head of each family generally selected the site of the future dwelling, and superintended the work. Every member was expected to take some part in the undertaking; the old men felled the timber and adzed it down to its required shape, while others went to the swamps to cut *raupo* (Typha Angustifolia) and prepare the stalks of the *kakaho* (reed) for ornamenting the sides. The house, when built, was claimed by all the members of the family residing in it, though the Chief, or head of the family, was nominally the owner of it. It was spoken of as his house; but any young man having a claim to it would, in the event of marriage, bring home his wife to the family dwelling. Many of the houses on the East Coast were of considerable dimensions, and would accommodate from twenty to thirty persons of both sexes. On the death of the Chief his place is taken by his eldest son, who succeeds to the family honors, and is the nominal owner of the house. If he has no son, the head of the family succeeds. If he leaves the village, or the tribe, leaving no family behind him, any relation may take possession. For the most part the Maories have now a

small hut for each family. Any one may enter a house and sleep there, but this is not a matter of right, but the exercise of hospitality. As a rule, a Maori hut lasts in tolerable condition for about four years. They are generally unlocked; though the custom of locking doors is growing into favour.

(Signed) F. D. FENTON.

COPY OF A LETTER FROM MR. CARLETON.

Auckland, 1st November, 1858.

SIR,—

On the occasion of moving a resolution, in the House of Representatives, declaratory of the evils that would ensue from the swamping of the European Constituency by Maori votes, and from the consequent introduction of Native Members to the House, I refrained from arguing the question at length, because, as it was well understood that the motion would be carried without a dissentient voice, I had no desire to occupy the time of the House, at that late period of the Session, by raising a prolonged discussion.

Since then, I have seen reason to regret, on account of the gravity of the question, and the probability of a reference to the Home Government having to be made, that the opinions of the Representatives were not more fully elicited in debate, and therefore propose to lay before you, in the form of a Memorandum, an outline of the arguments which I should have adduced in support of the Motion, had I thought it necessary to address the House at length. This Memorandum will at least serve the purpose of placing on record the political bearings of the case, under the present circumstances of the Colony.

Permit me to observe in reference to the remarks submitted to you, that although they be couched in strong terms, no undue bias can be attributed to one who has, for thirteen years past, been engaged in advocating the real rights and the real interests of the Maori race.

I have, &c.,

(Signed) HUGH CARLETON.

The Honorable
the Colonial Secretary.

MEMORANDUM REFERRED TO ABOVE.

Having reference to the following Resolution, moved and carried in the House of Representatives on the 19th of August, 1858.

"*Resolved*,—That, in the opinion of this House, the New Zealand Government ought to "endeavour to obtain an opinion from the Law Officers of the Imperial Government, on the subject of "claims to vote, preferred by Aboriginal Natives under the seventh and forty-second sections of the "Constitution Act, whether Natives can have such possession of any land that is used or occupied by "them in common as tribes or communities, and not held under title derived from the Crown, as would "qualify them to become voters under the provisions of the forecited sections; this, with a view to "petitioning the Imperial Parliament, or taking other, the proper measures, to be relieved from the "grave inconveniencies and probable dangers to the Government of this Country which are to be ap-"prehended, should it be found that a large body of men, who are destitute of political knowledge, "who are mainly ignorant of the language in which our laws are written, and among whom respect for "the law cannot be as yet enforced, have been allowed the right of interference with the enactment "of law."

This resolution was moved, in consequence of Clause 4, in the Qualification of Electors Bill, providing that "No Estate, House, Tenement or Hereditaments, shall be deemed to confer such qualifi-"cation, unless the same be held or occupied by Title derived from or through the Crown,"—having been negatived in the Legislative Council. The object of that provision was, to hinder the great body of Natives from placing themselves on the Electoral Roll, and thus acquiring the power materially to influence the elections of European Candidates, or even to send up Maori Representatives to the General Assembly.

It is unnecessary, for the purpose of this Memorandum, to enter into the legal question, whether land held in common by Tribal tenure and not in severalty, can confer a qualification under the Constitution Act. It suffices that there is a doubt, and that the restriction imposed by the forecited Clause was introduced by the Government for the purpose of placing the question beyond a doubt.

The Legislative Council appear to have been influenced, in the course which they pursued, by an idea which was prevalent at an earlier period of the Colony, but which is now fast becoming obsolete in New Zealand, (though not, perhaps, in England) that Natives and Europeans ought to be placed upon a precisely equal footing, in all things; endowed with equal political rights, upon abstract considerations, and without reference to the possible uses or abuses of those rights. This theory really did seem plausible to some, while the advocacy of it

was useful to many others. It was the basis of a great deal of very effective Despatch-writing; it seemed liberal and philanthropic, though in reality frought with infinite mischief to both races; and being dwelt upon by one who, from his position, was necessarily well acquainted with the Colony, commanded the attention of the Home Government. The effect of those representations was to postpone the introduction of representative institutions. For it was tacitly admitted that the Natives ought not yet to be placed on an equal footing with Europeans, and the suspension of the Charter of 1846 was deemed the lesser evil of the two.

The danger which had been thus evaded, recurred in full force on the passing of the Constitution Act. And it is becoming more imminent, year by year. For the Natives are advancing in knowledge, and must pass through that phase of knowledge, which is sufficient for evil, before rising to that which will render them able for good.

For a while the European settlers, themselves, succeeded in keeping the Natives, with a few exceptions, off the Electoral Roll. The question was left, as it were in abeyance ; although political strife was carried to extremes, in the Northern portion of the Colony, neither of the contending parties took the desperate step of seeking Native alliance, and swelling their own returns by the help of Native votes. For the admixture of a Native Constituency with our own must necessarily throw into utter confusion our whole system of representation; it will throw the power of the State into the hands of those who are the least scrupulous about the means employed to obtain it; through the evil effect of those means, it will debase, instead of elevating the Native race; and it must also end in the debasement of the House of Representatives. For a Native constituency implies, Native representatives; and what greater debasement to the House can be conceived, than the occupation of seats in it by men raised, as yet, but one step above barbarism—who would not only be unable to comprehend the reasons adduced concerning the measures upon which they were about to vote, but even to understand the language in which those reasons would be given. What could be more debasing to the House than the inevitable endeavours of rival parties to catch the votes of the Native members—not by force of argument, but by any means available. The first evil would be, the wholesale corruption of the Native electors, —for it is idle to talk of enforcing the provisions of the Bribery Act against them; the second would be, the corruption of the House itself; and the third would be, the permitting men who do not yet obey our laws to take a share in making laws,—men who in reality acknowledge no allegiance to the Crown,—a large body of whom are even now overtly engaged in treasonable proceedings.

The danger of corruption of the House, would probably be treated, in England, as a common place —an argument adduced for the purpose of making a case, and unjust towards men against whom no opportunity of making good the assertion, has been afforded. But it is not even an impeachment of the Native character. In New Zealand we are aware that we have to deal with a race whose point of honour consists in receiving payment, as ours in refusing it.

It would seem scarcely necessary to refute an argument, which has nevertheless been seriously adduced, that the Natives, being British subjects, have a natural or inherent right to vote, even though unable to exercise that privilege with advantage to the State. From what is such assumed right derived? No such abstract right is acknowledged in the Mother Country; for if it were, manhood suffrage would be the logical consequence. The natives have a natural right, not to vote, but *to be well governed;* and whatever is likely to interfere with good governance is actually an *infringement* of that right. Even to those who argue that as tax-payers, they have a right to be represented, the answer is equally simple. They *are* represented even as the whole nation is represented in the Mother Country—even as those in England are virtually represented who, nevertheless, are not qualified to vote. That they are practically, as well as theoretically represented in the Assembly, the annals of the present Session suffice to shew. There are those in that Assembly who guard their rights and watch over their interests more carefully and effectually by far than some of those who made much more profession, in former times, before Representative Government had been introduced. Be it remembered that in the great debate which took place in the first Session of the General Assembly on the subject of the establishment of Ministerial Responsibility, one of the arguments most strongly insisted upon was this,—that Responsible Government had become necessary for the real advancement of the Native race who had merely been made use of, until then, as material for Despatch writing, and the acquirement of an ungrounded reputation; nothing of consequence in fact having then been actually accomplished, beyond that which had been effected by the labours of the Missionaries. The result has made good the argument; it is to the Responsible Government, so far as its share in Native management extends, that the decisive, and so far as they have been brought into operation already, successful measures which have been devised for the civilization of the Maori are due.

The difficulties and dangers attendant upon the swamping of the European constituency by the Natives, was got over by a very simple expedient, devised by a Ministry that has done more towards the political advancement of the Native race, than was effected during the whole time that elapsed from the foundation of the Colony, to their assumption of office. They provided that no Estate should confer a qualification, unless held or occupied by Title derived from the Crown. This is not an *exclusion* of Natives from the enjoyment of the franchise; a Native is free to exchange his Maori title for a Crown title; the machinery is provided; every encouragement is given. If he be so intelligent, or even so wordly wise, as to see his advantage in the exchange, he becomes almost, perhaps quite, a fit recipient of the privilege attached. He acquires a stake in the general welfare of the community; he becomes personally interested in the maintenance of order. And more than this,—a Native who accepts a Crown title does actually feel himself bound to render true allegiance to the British Crown. This is a fact which cannot be too strongly insisted on.

It may be said that the prior arguments against the admission of Natives to the franchise, apply to

those who qualify under Crown Title, as well as to those who qualify under Native tenure. In one sense, they do; but these remarks are not intended against the ultimate participation by the Native race, in all European privileges. Whether, as a body, they will ever become fit, is a separate question. It is doubtful; yet the possibility must be admitted. But the Electoral qualification proposed by the Ministry is worthy of support, because it undoubtedly does stave off immediate danger to the community, without doing any real injustice to the Native race. The number of those who apply for Crown Titles will be comparatively small, as yet; and the European Constituency will not be swamped. When that number shall be very much increased, there will be time to reconsider the question, with the advantage of more ample experience and information.

It has been already stated that the question was, until now, practically speaking, in abeyance, on account of a doubt entertained as to the construction of the qualification clauses in the Constitution Act. Unfortunately, it is no longer so; the question having been raised, although with conflicting views by two branches of the Legislature. Issue has been joined in the suit. The Council have negatived the restriction upon the qualification imposed by the House,—a restriction, be it observed, applying not only to Natives but also to Europeans residing in Native districts. And more than this, the *onus* of an authoritative decision, as to the right interpretation of the Constitution Act, would seem o be forced upon the Government. For until now, the Electoral Roll has been of spontaneous formation. Those who applied for the franchise obtained it, and the Natives were persuaded not to apply. Now, however, under the Registration Act of this Session, the Government undertake the formation of the Electoral Roll. For the Government appoint the officers whose duty it will be to make up the Roll, and will, of course, if applied to, be obliged to guide those officers with advice. How will they construe the Constitution Act? Will the Government, or will they not, feel bound to take the initiative in placing the great body of Natives upon the Roll? The setting apart of Native districts, under the 71st clause of the Constitution Act, appears to afford the only escape from the dilemma; and even that clause like many others of that careless enactment, is open to more than one interpretation.

It is unfortunate that all the main amendments made by the Legislative Council in the Qualification of Electors Bill should tend in the same direction,—namely, to the lowering of the standard of the House of Representatives; one amendment among the number bidding fair, if persisted in, to render the proceedings of the House a burlesque upon legislation. Not that any such intention can be supposed; but had they been less exclusively absorbed in themselves, they must necessarily have perceived the danger to the other House. Had they began by petitioning the Governor to introduce a certain number of Natives among themselves, their desire of bringing Natives into the House of Representatives would have been manifested with a better grace.

A very serious consideration arises, from the peculiar position of the Governor in regard to the Natives. The practical result of a mixture of Native Members in the Assembly, would be to invest the Governor with almost despotic authority, notwithstanding Responsible Government. The only remaining check upon the Governor would be the Legislative Council, who have themselves been nominated by the Crown. His influence with the Native members in the House would be paramount because of the large powers retained by him in the management of Native Affairs. By means of the votes of the Native members, he could oust any Ministry that differed from him in opinion, and replace them by such as, for the name of office, might be willing to obey.

Not that any objection is entertained to the Governor's retaining the management of Native Affairs so far at least as originally agreed to by the House in 1856; on the contrary, the arrangement in the Auckland Province, is almost universally approved. The object of these remarks is merely to shew the absolute incompatibility of his retainment of that power, with the election of Natives to the House of Representatives. Either that power must be abandoned, or the Natives must be excluded from the House. Nor is it easy to perceive any preferable mode of effecting the latter object, or less offensive to the feelings of the Native population, than that which was proposed by the Ministers, adopted by the Representatives, but rejected by the Council.

It is not easy to foresee the end of this. The collision between the two Houses, which has not ended with the Session, is serious. The Representatives will resist to the uttermost the introduction of semi-barbarian Members among themselves. Either the Council in some future Session, must give way; or the House must appeal to the Imperial Parliament, in the hope of effecting there, what they have failed to effect out here.

COPY OF A MEMORANDUM BY MR. RICHMOND.

Auckland, 30th June, 1859.

NATIVE AFFAIRS

Referring to their Memorandum of the 25th instant on the subject of the right of Aborigines of New Zealand to the Electoral Franchise, His Excellency's Responsible Ministers observe, that the terms in which the question for the opinion of the Law Officers of the Crown is stated by the Resolution of the House of Representatives transmitted in that Memorandum, appear not sufficiently extensive to embrace the whole question which has been actually mooted in the Colony with reference to the Native right to the Electoral Franchise.

The Resolution of the House refers merely to the possession of land used or occupied by the Natives as tribes or communities. It is however asserted that, in certain cases, individual Natives do, as individuals, occupy lands and houses to the exclusion of other members of their Tribe. And it is contended that such exclusive occupation of a house is sufficient to confer on the Native occupier a

qualification as Householder,—and that the Colonial Courts might for this purpose at least, take cognizance of the territorial rights of the Natives *inter se*.

In order that the legal doubts entertained may be if possible removed, it is desirable, that a second and more extensive question should be submitted to the Law Officers of the Crown, viz.,

"Whether the occupation of Lands or Tenements held under the Native Title can in any "case confer the Electoral Franchise in New Zealand."

Whilst desirous that the legal question thus raised should be set at rest, Ministers have to express their conviction that if the right of the Natives should be affirmed, and they should extensively act upon it by getting their names placed on the Electoral Rolls of the Colony, the consequences would be detrimental to both Europeans and Natives.

Ministers consider that it is just in itself, and a political necessity, that no Electoral qualification should be derived from the tenure or occupation of lands or tenements which are not held under a Crown Title.

This dangerous question ought to be finally disposed of in the course of the next Session of the General Assembly, which it is expected will commence about the month of April, 1860. Ministers therefore respectfully submit that it is desirable that His Excellency the Governor should be authorised and instructed by Her Majesty's Secretary of State for the Colonies to assent on behalf of Her Majesty to a Bill, enacting or declaring :—

"That the possession or occupation of Tenements or Hereditaments within the Colony of New "Zealand in which the right of the Aboriginal Natives shall not have been released or extinguished, "shall not be deemed to confer any qualification to vote at any Election of a Member of the House "of Representatives or at any Election of Superintendent of any of the Provinces of New Zealand, or "at any Election of a Member of the Provincial Council of any such Province," or enacting or declaring to similar effect.

(Signed) C. W. Richmond.

COPY OF A DESPATCH FROM THE DUKE OF NEWCASTLE TO GOVERNOR GORE BROWNE, C.B.

Downing-Street,
19th December, 1859.

Sir,—

I referred to the Law Officers of the Crown your Despatch, No. 55 of the 18th of July, forwarding a case drawn up by the Law Officers of New Zealand, having reference to the right of the Natives to exercise the Elective Franchise under the Constitution Act of the Colony. (No. 33.)

I transmit for your information a copy of the Report on the case so prepared which has been received from the Attorney and Solicitor-General.

I have, &c.,
(Signed) Newcastle.

Governor Gore Browne, C.B.,
&c., &c., &c.

THE LAW OFFICERS OF THE CROWN TO THE DUKE OF NEWCASTLE.

Lincoln's Inn,
December 7th, 1859

My Lord Duke,—

We were honored with Your Grace's commands, signified in Mr. Elliott's Letter of the 12th November ultimo, in which he stated that he was directed by Your Grace to request that we would take into our consideration the accompanying case which had been drawn up by the Local Law Officers in New Zealand, having reference to the right of the Natives to exercise the Elective Franchise under the Constitution Act of that Colony. (Enclosure.)

In connection with this subject, Mr. Elliott was pleased to transmit a copy of the Governor's Despatch forwarding the case in question and the other documents which accompanied it, and also a copy of an Act of the New Zealand Legislature, No. 53 of the 21st and 22nd Victoria, to which reference was made in the first paragraph of the Governor's Despatch, and which was left to its operation.

In obedience to Your Grace's commands we have carefully considered the several documents transmitted to us, and have the honor to *Report*—

That the question on which our opinion is desired appears to be that which is stated in the Resolution of the House of Representatives of the 19th August, 1858, viz.,—Whether Natives can have such possession of any land that is used or occupied by them in common as Tribes or communities and not held under Title derived from the Crown, as would qualify them to become voters under the provisions of the 7th and 42nd Sections of the Constitution Act of New Zealand, that is the 15th and 16th Victoria, c. 72?

In answering this question we must first express our regret that the papers before us do not contain an exact statement of the facts or circumstances, which have given rise to the present difficulty. We assume the case to be this:—The Electoral Districts, which have been constituted in New Zealand under the 41st Section of the Constitution Act, do in many instances comprise within their limits or boundaries, lands and districts which still belong to and are occupied by the Aborigines, and have

never been ceded to the Crown of Great Britain; and a question has arisen whether the ownership or occupation of such lands by Natives under Native authority can confer the Electoral Franchise. Now, whatever may be the nature of the ownership of these lands by the Natives, it is clear in the first place that it cannot be described by the term "Freehold Estate" or the term "Leasehold Estate,"—these words are terms of Art in English Law, and plainly presuppose the existence and establishment of the English Law of Tenures in any place to which they can be considered applicable. It is plain that such Native ownership or possession cannot be denominated either Freehold or Leasehold. So far there can be no difficulty. But we suppose the chief difficulty arises under the third head of Electoral qualification—which is, the being a Householder within an Electoral District, occupying a Tenement within the limits of a Town (duly proclaimed) of the clear annual value of Ten Pounds, or without the limits of a Town of the clear annual value of Five Pounds, and having resided therein six calendar months before registration. First, we presume the question can never arise as to Tenements within the proclaimed limits of a Town. No Native Land can be supposed to be within such limits. The case is reduced, therefore, to the resident occupiers of Tenements of the clear yearly value of Five Pounds lying without the limits of any Town. Here again all the terms of description are taken out of the vocabulary of English Law, which is assumed by the Act to be applicable to the subjects of which it speaks. The Elector must be a Householder and the occupier of a Tenement. That is, there must be such a holding, habitation, and occupancy, as English Law would take cognizance of and protect. There is nothing to provide for many persons promiscuously using one common habitation. The occupancy spoken of is several only, and such as is known to English Law. But suppose, in a District of Native Land lying within the limits of an Electoral District, that one Native by consent of the rest is permitted to have exclusive possession of a piece of Land, on which he builds a native hut for his habitation, but is afterwards turned out, or trespassed on by another Native; could he bring an action of ejectment or trespass in the Queen's Court in New Zealand? Does the Queen's Court ever exercise any jurisdiction over real property in a Native District? We presume these questions must be answered in the negative, and that it must of necessity therefore follow that the subjects of Householding, Occupancy, and Tenements, and their value in Native Districts, are not matters capable of being recognized, ascertained, or regulated by English Law. But it seems to us to be clear that no Electoral Title can be conferred by the Statute, except in respect of property known to that Law and within the pale of its jurisdiction, and we therefore think that the Electoral Franchise as conferred by the Constitution Act (Sections 7 and 42) is constituted by the Ownership, Tenancy, or Occupation of such Lands and Tenements only, as are holden under a Crown Title; and in direct answer to the question put to us; "We are of opinion that Natives cannot have such possession of any Land, used "or occupied by them in common as Tribes or Communities, and not held under Title derived from the "Crown, as would qualify them to become voters under the provisions of the 7th and 42nd Sections of "the 15th and 16th Victoria, c. 72."

See the "Native District Regulation Act, 1858." The Colonial Act 21 & 22 Vict. No. 80, was not approved.

We have &c.,

(Signed) RICHARD BETHELL,
HENRY S. KEATING.

His Grace the Duke of Newcastle,
&c., &c., &c.