

proper in reference to them. It is necessary to be most careful in legalising the occupation of Native lands, but the rates charged for trespass, in this instance, are so small, compared with what the Natives have been in the habit of exacting, that I do not suppose these Regulations would operate against land purchases. It is evident that some regulations must be enacted, in order to preserve friendly relations between both races; and, as it is impossible altogether to preclude trespass, I see no other alternative than that of meeting the peculiar circumstances of this district by having such a code of Regulations as are now suggested, subject of course to improvement and revision, submitted to the Governor for his assent, under the "Native Districts Regulation Act." I shall be happy, at your convenience, to have the benefit of your opinion on the subject.

I have, &c.,

DONALD McLEAN.

His Honor the Superintendent,
Napier.

Superintendent's Office,
Napier, June 28th, 1859.

SIR,—

I have the honor to acknowledge the receipt of your letter of the 21st instant, with draft of proposed regulations for legalizing the depasturing of sheep and cattle on Native lands. A careful consideration of the whole subject, and reference to the Native Land Purchase Ordinance and the Native Districts Regulation Act, have completely dissipated the favorable impressions I entertained at first of the proposed regulations when verbally mentioned by you to me. As I am much pressed for time in consequence of my intended departure in the steamer for Wellington, I can only now briefly state my impression in regard of them, and am sorry time does not permit me to make more extended remarks.

REMARKS.

If these regulations did interfere with the Native Land Ordinance, it would only be in regard to the limited districts described and not to the general operation of that law.

The Native Land Purchase Ordinance still remains in force even within these districts, to prevent the leasing of their lands.

The present state of affairs operates much more seriously against the sale to Government.

This is provided against in the proposed regulations, though there no doubt would be difficulty in providing legal proof.

How to prevent it? The object is to legalize the present state of things, under regulations which give the Natives the legal remedy they now want, and to prevent their resorting to extreme measures to recover damages.

This is certainly a strong argument, but the case is provided for in the 10th clause of the proposed regulations. Perhaps it might be advisable to make that clause more stringent, and to increase the penalties.

At present the Natives have simply no redress at all by applying to the Resident Magistrate. If they will not sell with the regulations (which remains to be seen) they certainly will not without, and meantime the peace of the settlement and the safety of the settlers' stock is endangered.

1. In my mind it appears very doubtful that it was ever contemplated by the 1st section of clause 2 of the Native Districts Act to give power to the Governor to legalize the depasturing of sheep or cattle on Native lands. I think it refers strictly to *trespass*, and not the depasturing of cattle or regular occupation of land as contemplated by the 11th clause of the proposed regulations, and which would require six months' notice to be given by the Natives, before it could be terminated, although it might be called *habitual* trespassing.

2. These regulations would be a virtual repeal of the 2nd section of the 1st clause of the Native Land Purchase Ordinance, and if once passed it would be impossible to obtain a conviction under the Ordinance.

3. I believe that under them the Native Land Purchase Ordinance might be set at defiance, that it would be impossible to define the "undue advantage" mentioned in clause 10, and that there would soon be many cases of persons having small freeholds or homesteads on the boundaries of Native land, fully occupying the latter, entirely against the spirit of all the fundamental principles which have hitherto guided the Government in dealing with this matter, and most seriously operating against the future acquirement by the Government of such lands; as it would be most easy, whilst paying the rates fixed by the Government, to give gratuities to the Natives besides, that would in fact amount to such a rent as altogether to prevent the Natives from thinking of selling the land in future.

4. I quite agree that it is desirable to provide for occasional trespass on Native lands, such as occurs also between one European settler and another; but I think there can be no justification for habitual trespassing, or more properly constant occupation to be determined only at six months' notice, unless the Government are prepared to repeal a portion of the Land Purchase Ordinance, and to lessen, to a minimum extent, their chance of purchasing those districts still held by the Natives. For I have no hesitation in saying that under any regulations, such as are proposed, there will not be an acre of Native land that will not be fully stocked before twelve months had passed; and when it is remembered that in very many cases in this Province, run-holders have been obliged to expend several thousand pounds in purchasing their runs, it will be a matter of calculation with some whose intended runs are yet unpurchased, whether it would not be better to pay the Natives several hundred pounds a year even in the shape of rent, presents, or gratuities, and so encourage them to retain the land, than to have to pay perhaps a far larger sum as interest in case the Government acquired the land and that they were obliged to buy a considerable part at 10s. per acre. For the above reasons I am unable, now that I have carefully considered the matter, to conceive that any good would be effected by legalizing the permanent occupation of Native lands; and I think even with regard to occasional trespass, it is a matter for grave consideration whether any better remedies can be proposed than the Natives at present have by application to the Resident Magistrate, unless perhaps that it might be well to join with him one or two Native Assessors in trying any trespass cases on Native lands; but I am strongly of opinion, that any rules tending to encourage habitual trespass or constant occupation would be attended in a very short time with the worst possible results.

I have, &c.,

T. H. FITZGERALD.
Superintendent.

D. McLean, Esq.