

No. 14.

MEMORANDUM by the GOVERNOR.

The Governor has received the Memorandum of his Responsible Advisers of this day's date, in which they state that they have never advised him that those Natives who have been fighting against the Queen's troops, have forfeited all their lands.

The Governor only intended to quote the words of a Proclamation drawn up by his Responsible Advisers, and the other day presented to him under their advice for his signature. This Proclamation purported to be addressed by the Governor to the Chiefs and Tribes of Waikato, who have been fighting against the Queen's troops, and they are told in it that they have been perverse and obstinate, and by their conduct have justly forfeited all their lands.

The Governor thought that before advising him to sign this Proclamation, his Advisers had satisfied themselves that the Natives had, in point of law, by their conduct forfeited all their lands, of which it was proposed in the Proclamation to restore small portions to them; and he would feel obliged to his Ministers now to advise him whether he is, or is not, justified in point of law in informing those Natives who have fought against the Queen's troops, that they have forfeited all their lands, and in then taking all such lands from them.

If Ministers are of opinion that the Governor is justified in point of law in doing this, he trusts that they will explain the grounds on which their opinion rests.

G. GREY.

Auckland,
6th May, 1864.

No. 15.

MEMORANDUM by MINISTERS.

In reply to His Excellency's Memorandum of the 6th instant, Ministers have respectfully to state for His Excellency's information that in advising him to sign the Proclamation referred to, they did not wholly rely on the authority of the declarations formerly made by His Excellency, though they presumed that these were not made without sufficient grounds; but that Ministers otherwise satisfied themselves that His Excellency would be justified in point of law in informing the Native Chiefs and Tribes to whom the Proclamation was addressed, that they had "justly forfeited all their lands, and in then taking all such lands from them."

It appears clear to Ministers that the claim which the Natives have on the good faith of the Crown to the possession of their lands, under the treaty of Waitangi, can last only so long as they fulfil their share of obligations of that treaty. Therefore, when they throw off their allegiance and levy war against the Queen's authority the guarantee ceases, both in law and reason, to be of any binding force, and they forfeit that right of possession which they previously enjoyed.

But if there were any doubt on this point, as a matter of law, the New Zealand Settlements Act, 1863, would virtually justify the declaration which it was proposed that His Excellency should issue and would afford ample means of practically carrying it into effect.

F. WHITAKER.

10th May, 1864.

No. 16.

MEMORANDUM by the GOVERNOR.

In reply to the Ministerial Memorandum of the 10th instant, on the subject of the forfeiture of all the land of those Natives who have been fighting against the Queen's troops, the Governor would offer the following remarks:—

This question is one which concerns the whole future destiny of the Maori nation. The Governor may by sending forth a few words be made the means of reducing whole generations, including the offspring of many loyal Englishmen from wealth to poverty, and of depriving of property they would otherwise have inherited, men who have rendered services to the Government, upon account of the misconduct of relations, over whose actions they had no control, and of which they disapproved. He also may possibly be made the means of involving hitherto peaceful settlements in the miseries of war. He cannot therefore lightly dismiss this question.

At the end of April, the Governor acting under the advice of his Ministers, signed a Proclamation, in which he informed those Natives who had been fighting against the Queen's troops, that they had forfeited all their lands, and he proceeded in the same Proclamation to treat all such lands as already actually forfeited, undertaking on the part of the Crown to restore small portions of such lands to the Native owners, who might comply with certain conditions before the 1st of July next. In signing this Proclamation he believed that his Advisers had carefully satisfied themselves that the Governor was doing that which the law required him to do, before they advised him to do it. Subsequently, he doubted whether this important question had been fully considered by them.

He therefore wrote to them on the 5th instant, reminding them that they had advised him that those Natives who had been fighting against the Queen's troops, had forfeited all their lands.

His Advisers then placed him in a most painful position by directly contradicting this statement, and by replying upon the 6th of May, that they had not given him such advice, nor had they been asked to advise upon the subject,—and this direct contradiction of theirs, still remains unrecalled, the whole responsibility in this matter being thus thrown upon the Governor.