

Early New Zealand Books Project
The University of Auckland Library



The New Zealand Rebellion

Henry Sewell

First published by Macmillan in 1864

Digitised and made available online by the University of Auckland Libraries and Learning Services.

Epub © 2013 [Early New Zealand Books Collection](#)

ISBN 978-1-927288-62-7

Contents

1. [\[Front Matter\], P 1-2](#)
2. [\[Letter Pages 3-29\]](#)
3. [\[Letter, Pages 29-56\]](#)
4. [Publication details](#)
5. [Conditions of use](#)

[TITLE PAGES]

THE
NEW ZEALAND REBELLION.

A LETTER
FROM
HENRY SEWELL , Esq.,
LATE ATTORNEY-GENERAL OF NEW ZEALAND,
TO THE
RIGHT HON. LORD LYTTTELTON.

London and Cambridge:
MACMILLAN AND CO.
1864.

Page 1

Page 2

[Page 2 is blank]

[Pages 3-29]

AUCKLAND, NEW ZEALAND,
December 26, 1863.

Page 3

MY DEAR LORD,

I send you three Acts just passed by the General Assembly: –

1. An Act entitled the "SUPPRESSION OF REBELLION ACT."
2. An Act entitled the "NEW ZEALAND SETTLEMENT ACT."
3. An Act entitled the "LOAN ACT."

The first authorises the Governor to punish "by death, penal servitude, or otherwise," any person concerned in the present rebellion, and to arrest and detain suspected persons, without limit of time. It suspends the right of Habeas Corpus, and enables the Governor to constitute Military Courts for the trial of offences under the Act, which is to continue in force until the next session of the General Assembly.

The second Act authorises the Governor to establish at pleasure settlements upon any land "whether belonging to the Crown, to the Natives, or to private owners, within any district within which any land shall be situate, being the property, or in the possession of a tribe, section, or considerable number of Natives, as to whom the Governor shall be satisfied that they have been engaged in rebellion against Her Majesty's authority." Observe, it is not confined to lands of parties in rebellion, nor even to districts within which rebellion may exist; but it extends to districts within which "any land may be situate" belonging to tribes or individuals engaged in the rebellion. Within any such district, all lands, whether belonging to natives, private individuals, or the Crown, whether cultivated or uncultivated, no matter how occupied, or to what use applied, are placed at the disposal of the Government,

for the purpose of enabling it to form settlements at pleasure, subject (except in specified cases) to payment of compensation to the owners, such compensation to be awarded by Judges appointed and removable by the Government. After appropriating so much land as may be required for the formation of such settlements, the residue of the land in such districts is to be sold to defray the charges which the Colony will be put to, including the present loan.

Page 4

The third of these measures authorises a loan of three millions, to be raised upon the credit of the Colony (already burthened by loans, General and Provincial, to the amount of three millions and a half); so raising the aggregate debt of the General and Provincial Governments to upwards of six millions and a half.

These funds have been placed at the disposal of Government and appropriated, without any detailed estimates; nor has any additional taxation been proposed to meet the increased burthen on the Colonial Revenue.

The General Assembly, brought together at an inconvenient season of the year, and impatient to disperse to their homes, has been hurried into these measures of panic-legislation, with very slight information as to facts, and without time for inquiry or thought. If at any time members showed a disposition to hesitate, threats of a Ministerial crisis, for which they were not prepared, drove them on.

Towards the close of the session, the signal successes of Her Majesty's troops brought matters to a point, at which, under wise management and with reasonable forbearance towards our conquered fellow-subjects, the peace of the Colony might be secured, without recourse to these violent expedients. But the Acts are passed, and effect is to be given to them, without even waiting till the Queen's pleasure is known about them, – because there is no time to be lost. To wait till Her Majesty's pleasure is ascertained, would be to risk the objects for which they have been passed; and therefore, in open and wilful disregard of the Imperial Guarantee Act, 1857, the Settlements' Act omits the clause, expressly required, and hitherto universally inserted, in Acts touching the Waste and Native lands, namely, that it "be reserved for the Queen's assent:" and the Government proceeds to act upon a law, which it knows to be invalid.

The groundwork of these extraordinary measures is stated in the preambles to the first two Bills. The first recites, "That a combination for the subversion of the Authority of Her Majesty's Government has for some time existed amongst certain aboriginal tribes of the Colony, and has now manifested itself in acts of open rebellion; and that persons in furtherance of the said rebellion, have committed murders on some of Her Majesty's subjects engaged in their peaceful occupation; have pillaged their homesteads, and destroyed their property." The Settlements' Bill recites, "That the Northern island of the Colony of New Zealand

has from time to time been subject to insurrections amongst the evil-disposed persons of the native race, to the great injury, alarm, and intimidation of Her Majesty's peaceable subjects of both races; and involving great loss of life and expenditure of money in their suppression. That many outrages upon lives and property have recently been committed, and such outrages are still threatened, and almost of daily occurrence, – that a large number of the inhabitants of several districts of the Colony have entered into combinations and taken up arms with the object of attempting the extermination and expulsion of the European settlers, and are now engaged in rebellion against Her Majesty's authority."

Page 5

I will endeavour to supply you with the means of judging as to the accuracy of these statements.

It will be convenient shortly to review the events which have occurred in the Colony, from the breaking out of the war at Taranaki in 1860. You will remember how, at that time, Colonel Browne, the then Governor, employed military force to compel the survey and occupation of a small block of land at the Waitara, purchased of certain natives, the title to which land was disputed by adverse native claimants, headed by William King, – how the natives openly resisted the Government, and a war commenced, in which the natives in other parts of the Colony became more or less implicated, – how our want of military success at first emboldened the natives, – and how the war dragged on, with no marked success on our side, till the spring of the year 1861, when peace, or rather a hollow truce, was made, under which some of the insurgents made apparent submission, others stood sullenly aloof, others rested on their arms, prepared to resume the war upon the first occasion.

Hostilities being thus suspended at Taranaki, Colonel Browne removed the bulk of the troops from that Province, intending to turn his arms against the Waikato tribes, some of whom were the principal allies of the Taranaki insurgents. The country of the Waikato lies southward of Auckland. The River Waikato, the northern frontier of the Waikato district, is distant from Auckland about forty miles. It has been long an object with the Auckland settlers to open this district for colonization. It has a good deal of fertile land, and excellent water communication by navigable rivers running through it. The Waikato River empties itself into

the sea on the west coast. The Thames and the Piako, on the other side, flow into the gulf of the Thames. Between these rivers is a rich delta. Between the Waikato River and Auckland the country is for the most part taken up by settlers; – south of the Waikato the native title is in general unextinguished.

The Waikato country is rather thickly inhabited by native tribes, divided into sundry hapus or clans, but who are spoken

of by the general term of Waikatos. In truth, though they own a common ancestry, they are distinct from each other in their territorial divisions and social organisation. Towards the west coast, in the direction of Taranaki, are the Ngatimaniapotos (a branch of the Waikatos), a powerful and numerous tribe (under their chief Rewi), who have played so considerable a part in late affairs that I would beg your special attention to them. They are a lawless turbulent set of men, living in a remote and difficult country, and ready to engage in any work of mischief. In this respect they resemble the Taranaki and Ngataruanui natives, southward of Taranaki, who have been the great source of our troubles in that province.

Apart from the Ngatimaniapotos, and yet closely connected with them, are other Waikato tribes, under leading chiefs (of whom Wm Thompson is one), who have been for years past the principal movers in what is termed the King Movement. One of the undoubted aims of this movement has been to establish a kind of national independence, which has gathered to itself by obvious affinity whatever there was amongst the natives tending to resistance of British authority. The Ngatimaniapotos with many of the King party in the Waikato joined the insurgents at Taranaki. The Taranakis on their side acknowledged allegiance to the Native King. But the chiefs of the King party never identified themselves with the insurrectionary movements at Taranaki, and a large section of them kept themselves aloof and exerted themselves for peace.

As, in discussions upon these subjects, acts are frequently attributed to the whole body of the Waikatos, which are in fact properly chargeable against the Ngatimaniapotos, I must pray you to keep in view the distinctions which I have pointed out.

No one can understand the real state of the Colony without considering this Native King movement, its causes and its tendencies. It is a rude attempt on the part of certain native tribes at self-organization, and self-government. Its promoters have desired, as was natural, to embrace in it the whole native race; but they have never succeeded in attaching to their cause, more than a limited support, confined principally to the central parts of the Northern Island. Some of the leading chiefs engaged in this movement are men of powerful minds and patriotic intentions. Long experience in past years has taught them to regard it as hopeless to expect relief from their miserable condition of barbarous anarchy through the intervention of our own Government. So they have attempted to do for themselves the work which we have neglected. I can perceive nothing wrong in this. On the contrary, I am disposed rather to sympathise with and admire it. In 1860 a Committee of the House of Representatives reported their opinion, "That a great movement had been going on amongst the Native people, having for its main object

the establishment of some settled authority amongst themselves; that such movement need not have been the subject of alarm; that its objects were not necessarily inconsistent with the recognition of the Queen's Supreme Authority; and that it would have been from the first and still would be unwise to counteract it by positive resistance."

Those who take a hasty view of this question may conclude that the very conception of the idea of a Native King and Native Self-Government has in it necessarily something treasonable and criminal; and that the attempt to draw a line round a certain territory with a view to exclude European settlement, has the character of unlawful conspiracy. Whatever may be my opinion, as to the wisdom or probable success of such a policy, I differ entirely from those who regard it as a political offence. I hold to the opinions expressed by the Waikato Committee, of which I was a member.

It is obvious that such a movement may become dangerous, and it may be essential for the peace of the colony to put it down with a strong hand; but what I insist on is, the broad distinction between what is politically inexpedient and what is criminal. Sir George Grey may be justified in taking up arms against the Waikato tribes and forcing them to abandon the King movement, and yet it may be tyranny to punish them for it, as for a political crime.

This question involves a consideration of what are the respective rights and obligations of two races placed in such political relation to each other as ourselves and the natives. The case is anomalous; but, I think, a pretty exact parallel will be found in the case of the American Indians and their relations with the United States. The United States inherited from ourselves the principles on which these relations are established; and they are of general and universal application.

In the case of Worcester v. the State of Georgia, Chief Justice Marshall said, –

"America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the land they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered which annulled pre-existing rights of its ancient possessors.

"After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this Western world. They found it in possession

of a people who had made small progress in agriculture or manufactures, and whose general employment was war, hunting and fishing.

"Did these adventurers by sailing along the coast and occasionally landing on it, acquire for the several governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil from the Atlantic to the Pacific, or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?

"But power, war, conquest give rights which, after possession, are conceded by the world, and which can never be controverted by those on whom they descend. We proceed, then, to the actual state of things, having glanced at their origin, because holding it in our recollection might shed some light on existing pretensions.

"The great powers of Europe discovered and visited different parts of the continent at nearly the same time. The object was too immense for any of them to grasp the whole, and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all should acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was, that discovery gave title to the Government by whose subjects, or by whose authority it was made, against all other European Governments, which title might be confirmed by possession.

"This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery the sole right of acquiring the soil, and of making settlements upon it. It was an exclusive principle which shut out the right of competition among those who had agreed to it. It regulated the right given by discovery amongst the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by

virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell.

"The relation between the Europeans and the natives was determined in each case by the particular Government which asserted and could maintain the pre-emptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political, but no attempt, so far as is known, has been made to enlarge them. So far as they existed only in theory or were in their nature only exclusive of the claims of other European nations, they still retain their

original character and remain dormant. So far as they have been practically exerted, they exist in fact, are understood by both parties, are asserted by the one, and admitted by the other.

Page 9

"Soon after Great Britain determined on planting Colonies in America, the King granted charters to companies of his subjects who associated for the purpose of carrying the views of the Crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country. They purport generally to convey the soil from the Atlantic to the South Sea. The soil was occupied by numerous and warlike natives, equally willing and able to defend their possessions. The extravagant and absurd idea that the feeble settlements made on the sea-coast or the companies under whom they were made acquired legitimate power by them to govern the people or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not affect to claim, nor was it so understood." – 6, 7, Peter's, 229.

Again, he says, "The Indians are acknowledged to have an unquestionable and hitherto unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to the Government. It may well be doubted whether those tribes which reside within the aboriginal boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a right, independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupillage. Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection, relying upon its kindness and power – appeal to it for relief to their wants, and address the President as their great Father."

"The occupancy of their lands," says Judge Washington, "was never assumed except upon the basis of contract and on the payment of a valuable consideration.

"At no time has the sovereignty of the country been recognised as existing in the Indians, but they have always been admitted to possess many of the attributes of sovereignty. All the rights which belong to self-Government have been recognised as vested in them. Their right of occupancy has never been questioned, but the fee in the soil has been considered to be in the Government. This may be called the right to the ultimate dominion, but the Indians have the present right of possession.

"In the management of their internal concerns they are depea-

dent on no power. They punish offences under their own laws, and in doing so they are responsible to no earthly tribunal. They make war and form treaties of peace.

Page 10

The exercise of these and other powers gives to them a distinct character as a people, and constitutes them in some respects a State, although they may not be permitted to possess the right of soil.

"By numerous treaties with the Indian tribes we have gained accessions of territory of incalculable value to the Union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognised in them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties, but we have inflicted the punishment on them as a nation, and not on individual offenders amongst them as traitors."

In 1814 the American war ended. Great Britain, during the war, had contracted alliances with Indian tribes within the territories of the United States, and employed them against the enemy, the United States protesting against their savage modes of warfare. In arranging terms of peace, Great Britain insisted on including their Indian allies in the treaty. This the American Plenipotentiaries decline.

"The Indians," they say, "residing within the United States are so far independent that they live under their own customs, and not under the laws of the United States; that their rights upon the lands which they inhabit or rule over, are secured to them by boundaries, defined in amicable treaties between the United States and themselves; and that whenever those boundaries are varied, it is also by amicable and voluntary treaties, by which they receive from the United States ample compensation for every right they have to the lands ceded by them. They are so far dependent as not to have the right to dispose of their lands to any private persons, nor to any power other than the United States, and to be under their protection alone, and not under that of any other power. Whether called subjects, or by whatever name designated, such is the relation between them and the United States." They therefore deny the right of Great Britain to interfere in any manner between them and these tribes. To this the British Plenipotentiaries rejoin, "The American Plenipotentiaries, probably aware that the notion of such a qualified independence for certain purposes and not for others, could not be maintained, either by argument or precedent, have been compelled to advance the novel and alarming pretension, that all the Indian nations living within the boundary of the United States must in effect be considered as their subjects, and consequently if engaged in war against the United States, become liable to be treated as rebels or disaffected persons. They have further stated that all the territory which these Indian natives occupy is at

the disposal of the United States; that the United States have a right to dispossess them of it, to exercise that right whenever their policy or interests may seem to them to require it, and to confine them to such spots as may be selected, not by the Indian natives, but by the American Government. Pretensions such as these Great Britain can never recognise. However reluctant His Royal Highness the Prince Regent may be to continue the war, that evil must be preferred if peace can only be obtained on such conditions." The American Plenipotentiaries deny that these alleged pretensions have been stated by them either in terms or in substance. The question is settled by a general amnesty.

Page 11

Did the New Zealanders any more than the American Indians imagine that by placing themselves under the guardianship of the British Empire they forfeited their inherent rights to govern themselves according to their own usages, and to retain the ownership of their land? As to the latter, the treaty of Waitangi expressly reserves to them their territorial rights. As to the former, it is true they surrendered to the Queen the "Kawanatanga" – the governorship – or sovereignty; but they did not understand that they thereby surrendered the exercise of the right of government over their internal affairs, a right which we never have claimed or exercised, and could not in fact exercise. The acknowledgment of sovereignty by the New Zealanders was the same in effect as in the case of the American Indians. It carried with it the exclusive right of pre-emption over their lands, and the exclusion of interference of foreign nations. No doubt it imposed on us the right and the duty of extending our law to them so soon as they should be able and willing to understand and accept it; but it could not authorise us to inflict on them the penalties of laws which they never heard of, expressed in language of which they are ignorant. It could not for instance subject them to the penalties of Popish Convict Recusants for refusing to take the oath of allegiance, as has been absurdly argued in this colony; a doctrine which has even received countenance from the Supreme Court.

I have searched the records of this Colony and find everywhere intimations of similar doctrines as to our relations with the Native race. Practically we have

adopted the same rule. We have left to them the internal management of their own affairs; we have refused to extend the jurisdiction of our courts to the settlement of their disputes; we deny them the electoral franchise. When we go to war with them we make treaties of peace; and we have always heretofore extended to them the rights of belligerents. In the very case of the insurgent tribes at Taranaki, Governor Browne proposed to them terms of peace which some of them accepted. The Colonial Government seeks now to escape from the logical conclusion drawn from this fact by treating Col. Browne's offer as a condonation of a supposed treason.

Nor is there anything inconsistent with these views in the language from time to time used by the Imperial authorities in reference to the government of the Natives.

Page 12

Lord Stanley in his despatch to Governor Fitz Roy, of the 10th February, 1841, says, –

"I know of no theoretical or practical difficulty in the maintenance under the same sovereign of various codes of law for the government of different races of men. In British India, in Ceylon, at the Cape of Good Hope, and in Canada, the aboriginal and the European inhabitants live together on these terms. Native laws and native customs, when not abhorrent from the universal and permanent laws of God, are respected by English legislatures and by English courts; and although problems of much difficulty will occasionally arise out of this state of things, they have never been such as to refuse all solution, or as to drive the local authorities on the far more embarrassing difficulty of extending the law of England to persons wholly ignorant of our language, manners, and religion."

The Emperor of the French has adopted similar principles in reference to his Arab subjects in Algeria. "He refuses," says an article in the Guardian newspaper, of the 5th August, 1863, "in spite of the pressure of French colonists, either to confiscate land thus nomadically occupied, or to force upon the tribes the French law, for which they are not yet ripe."

The Constitution Act recognises the same principles. It empowers the Crown to set apart native districts, within which the natives may enjoy their own usages and customs, so far as they may not be repugnant to humanity. If instead of attempting in an irregular way to constitute a native district, within which they might enjoy the rights of self-government, by making their own laws, to be executed by magistrates of their own choice, they had moved the Governor to exercise the powers expressly vested in him for that end by the Constitution Act, would they not have observed a strictly legal course? And because in their ignorance they have pursued the substance, but neglected the form of law, shall we hold them guilty of treason?

It is of course possible to embarrass this question by difficulties of a superficial kind. The Queen's sovereignty, it is said, extends over the whole Colony. All persons therefore within it are subjects of her Majesty. All are therefore subject to the same law. This is the sort of flimsy reasoning to which Lord Stanley gives the answer which I have quoted from his despatch. Natives as well as settlers are, it is true, equally subjects of her Majesty, but there is nothing inconsistent with her Majesty's paramount authority in permitting natives to enjoy as law their own usages and customs, nor anything criminal in their seeking to embody this native law in some fixed form under a head and magistrates of their own choice. On the contrary, I perceive in

such a movement an effort which, rightly directed, might have elevated and saved the race.

Page 13

The risk of course in such a case is that such distinctions may grow into absolute separation. There was obvious danger in leaving it to take its own course. A wise and vigilant Government would have turned the King Movement to good purpose; but the Government of the Colony has been neither wise nor vigilant. In 1857 a feeble attempt was made and abandoned to introduce civil institutions into the Waikato district. In 1860 the King Movement had become a dangerous political fact; exciting the native mind to a high state of inflammation, in which state of things it was thought politic by the Government to initiate a war by way of corrective. What has followed has been the inevitable sequence of cause and effect. When war broke out at Taranaki, the party of the King Movement sympathised with and assisted the insurgents: and, with a view of crushing the insurrectionary spirit, Colonel Browne determined in the summer of 1861 to attack the Waikatos.

Fortunately for Colonel Browne, the Colony, and I think the credit of the British army, Colonel Browne's plans were interrupted. Had he then attempted an invasion of the Waikato the chances are that it would have led to disaster. At that time there was no road to the River Waikato beyond Drury – a distance of not more than twenty-five miles from Auckland. Beyond Drury, for about twenty miles, the intervening country was dense, impenetrable bush, through which it would have been impossible to keep communications open. The projected invasion became practicable, only after Sir George Grey had completed the road to the river; till then, the idea of such an invasion into the native territory appeared to me, as I know it did to men of military science, a rash adventure. Colonel Browne's plans were put an end to by the appointment of Sir George Grey as his successor, in July, 1861. Just about the same time, a material change had taken place in the Colonial Ministry. The war party went out of office, and were succeeded by Mr Fox and the party who, with him, desired, if possible, to bring about a peaceful solution of our Native difficulties. I joined Mr Fox's Government as Attorney-General in July, 1861, exactly at the same time that Sir George Grey's advent was announced. Between the new Government and the new Ministers, there was a general agreement in political views. With as little delay as possible, we inaugurated what has been termed "Sir George Grey's policy," – I prefer calling it the "Policy of 1861." In truth, it was not more Sir George Grey's policy than it was that of his Ministers. It was an attempt to give practical effect to the principles enunciated the year before by the Waikato Committee. Whatever there may be of credit or responsibility in the policy so inaugurated, I claim an equal share of it on behalf of the Colonial Ministers. If it has failed, as it is alleged to have done, a just

proportion of the blame must equally fall on us. The essence of that policy was to supply the natives with Civil Institutions, founded on the principle of self-government, but subordinate to the paramount authority of the Queen. We hoped in this way to satisfy their reasonable requirements, and to divert the King Movement into a safe channel. We prosecuted this object with diligence, and, I think, with a fair prospect of success, till the General Assembly again met in 1861. To assert that it had at that time positively succeeded would be an exaggeration. The cure of a deep-seated chronic disease, such as that with which we had to deal, could not be effected suddenly. Our operations had been partial, and the results were imperfectly developed. As might have been expected, we made mistakes. In some cases magistrates and officers were appointed, who were not equal to their duties. We spent money too freely, thinking to attach the Natives to the new institutions by motives of self-interest, instead of addressing, as I think we should have more wisely done, their higher and better impulses. But upon the whole, a work had been begun which, with time and patience – unless interrupted by external disturbances – might have restored peace to the Colony, and reconciled native self-government with British supremacy. By such a course, I am persuaded, and by no other, can we hope even now, to prevent a conflict of races, and to pursue a course of peaceful colonization.

Page 14

The Assembly met at Wellington in July, 1862. The instant the session opened it was apparent that there were influences at work to counteract what we had begun. Those who had led the country into war and looked upon force as the sole means of quieting the natives, would have been disappointed at the success of principles opposed to their own. There was besides strong personal dislike both to Mr Fox and Sir George Grey. The latter in some of his despatches laid before the Legislature, had reflected severely on the war policy of Colonel Browne. The old Ministers took up the cudgels ostensibly in defence of their chief, but mainly in a

spirit of self-justification. Believing, as they conscientiously did, that a policy of peace would be unsuccessful, they determined, nevertheless, that the experiment should be carried out, in order that what they believed would be its signal failure might redound to the discredit of Sir George Grey. In the same party spirit they compelled a change of Ministry, and both Houses of the Legislature refused the Duke of Newcastle's offer of Ministerial Responsibility in Native affairs in resolutions and addresses which a not unjust criticism has pronounced to be petulant, unstatesmanlike, and inconsistent. Mr Fox resigned, and a new Government was formed under Mr Domett – a gentleman whose views and sympathies were wholly on the side of the war party. The new Government professed its intention to give fair play to the policy of 1861, but it was impossible that a Ministry which disbelieved in that policy could carry it into

successful operation. It has not surprised me to hear from their partisans that it has failed. Judging from after events, my belief is that, under the system of Responsible Government, from the moment the Ministry of Mr Fox was displaced by that of Mr Domett, the hope of a peaceful settlement of our Native difficulties was at an end. The change of Ministers in itself created distrust in the Native mind. They watch the course of public events, and understand the characters of leading men. Mr Fox to them represented a friendly principle. They asked why he had been displaced? Mr Domett has also taken a sufficiently prominent part in public affairs to be also known to them. His sentiments are expressed in a memorandum, to which I shall presently draw your attention, and in which, after developing his plans for planting military settlements in Native districts, he says: –

"It may be objected to the foregoing plans that they are based solely on the idea of force; and it is true that physical power is the main element of the conception. The basis of physical power is the best and only one on which to rear the superstructure of moral sway.

"Power, first, as the only thing that commands the respect of these undisciplined men, after it, the humanising influences; after it, every wise and mild treatment to elevate and improve them. This is the natural order of things. Until you get rid of the rank growths of savagery, how can you rear the plants of civilization? The axe and the fire are wanted before the plough and the seed corn."

I do not think I misconstrue this somewhat florid language as meaning that we must thrash the natives into submission before we can hope to civilize them. I differ from Mr Domett. I think it is a shallow and unsound philosophy which bases civil society on physical force. Men are bound together in civil communities by higher influences. By these alone can we hope to raise the New Zealander from his present degraded state. To crush him is to destroy him. There is a remarkable chapter in De Tocqueville's America, in which he expresses sentiments with respect to the American Indians exactly the opposite of those of Mr Domett, and considers it hopeless to civilize the broken remnants of their tribes, because they have been conquered. Guizot traces the mode in which the barbarous races of Europe emerged into civilization, by processes exactly the reverse of those which Mr Domett proposes to have recourse to in the case of the New Zealanders. But these are speculative opinions. I desire to point out that, under a Minister entertaining Mr Domett's views, there was little chance of a peace policy succeeding.

I am told that this policy has failed. I do not admit the fact. I do not admit that it has been fairly tried. I write with imper-

fect information on this point. The Government has, I will not say, suppressed, but at any rate, omitted to lay before the Assembly any papers on the subject; but so far as I can judge, under the most unkindly influences, it seems to me to have borne and to be bearing good fruit. The northern natives are quiet. There are no signs of disturbance at the Bay of Plenty, the East Cape, the Wairarapa, Wellington, or Wanganui. Even close upon the Waikato itself, in the district of Taupo, the Magistrate placed there under Mr Fox's administration, remains doing his work; and his people are steady supporters of the Government. In the Waikato, the experiment, I will not say has failed, for from the first it was regarded as hopeless, at least by many persons, myself included, until a right direction had been given to the King Movement. The fact that, under circumstances so exciting as the present war, the great bulk of the country remains quiet, is a practical testimony in favour of the policy of conciliation and forbearance. Some Magistrates have been removed from their districts, it is true, hastily, and I think when the circumstances come to be examined it will be found injudiciously; but the broad fact remains and is incontestable, that the Native districts I have enumerated, including three-fourths of the native territory, are at this moment in a state of peace. They are, it is true, anxious and distrustful of our intentions. What the effect will be of the measures now about to be inaugurated, it is impossible to foresee.

I propose now to follow the course of events, from the session of the General Assembly, 1862, to the present time, with such imperfect means of information as are open to me. It has been matter of grave and frequent complaint, that the Assembly has been left without information upon vital questions on which it was called on to legislate. Whether purposely or carelessly, the Government seems to have omitted to publish anything which does not in some way tend to justify their measures.

I gather that, during the latter part of the year 1862, an uncomfortable feeling was growing amongst the Waikato natives. Their suspicions were awakened as to the real intentions of Government. It was announced that the Governor was about to place an armed steamer on the Waikato. The road to the Waikato being completed, the General established a military post on the river, at a place called the Ia. The prospect of the steamer seems especially to have alarmed them. They held Runangas, and declared their intention, if possible, to stop it.

On New Year's day Sir George Grey left Auckland for the Waikato almost alone. I refer you to his despatch to the Duke of Newcastle of the 6th of February last, and its enclosure, which I believe to be official (taken from the New Zealander newspaper). "The Governor was welcomed," says the Reporter, "by natives of all parties, Kingites included, with the most unfeigned affection, the natives expressing their surprise at seeing their Father

so unexpectedly and alone." The next morning, at a great meeting, the whole assembly stood up, taking off their hats, and when the Governor told them, in answer to their questions, that all his intentions were good, they welcomed His Excellency as their Father, the countenance of their Father Potatau, their friend the Governor, – saying that had he not left the country the King movement had never been dreamt of." The same feeling was expressed at subsequent meetings, at which, amongst other things, they stated frankly their objections to the steamer – which objections were answered by Sir George Grey, who seems to have removed their suspicions. Then they discussed the King movement, with respect to which the natives said that hitherto they had employed all their energies to establish the institution, and had no time to devote to the making of laws, but that now the thing had obtained a position amongst the people, they would elect from amongst their chiefs those who were most learned, to form rules and laws for the good Government of the people, – these laws would be handed by Matutaera to the Governor for his sanction, and if assented to by the Governor, they should become law.

How this occasion was lost for turning the King movement to good use, and settling our native difficulties, at least with the Waikatos, has yet to be explained. Sir George Grey in his despatch intimates indeed that the natives subsequently withdrew from the proposed arrangement, but the ground which (as he says) they alleged for such withdrawal, namely the wrongful detention of the Waitara was within his own control, – and the subsequent cession of the Waitara shows that this circumstance need not have stood in his way. But the golden opportunity went by. Sir George Grey returned to his place, and the natives relapsed into their state of distrust, which was aggravated by new circumstances.

It will, I believe, be found that the real difficulty was the state of things at Taranaki. We still retained the Waitara. The natives still held the Tataraimaka block. It was impossible that the latter could be permitted. Forcibly to resume it was to risk, as the event proved, the revival of war – a result which the Waikato natives, I firmly believe, desired to avert. With this view they proposed, as I am informed, themselves to obtain the surrender of the block. Sir George Grey, perhaps rightly, thought that such a course would be derogatory to the Government. He declined their intervention, and in the beginning of March he proceeded to Taranaki.

Now it will be necessary to follow the course of events at Taranaki and in the Waikato side by side,

Sir George Grey's movements at Taranaki produced considerable excitement amongst the Waikatos, who foresaw the results. The Ngatimaniapotos prepared themselves to take part with the Taranakis in resisting the resumption of the Tataraimaka block.

It is, I believe, known, that they instigated the attack on the escort on the 5th of May. I have no doubt that from this time they began to plan hostilities against the settlers. They forcibly carried away some half-caste children from their European parents; in some instances separated native wives from their European husbands, threatened the out-settlers, and generally assumed an attitude of hostility.

Page 18

In March an occurrence took place which, though not in itself very important, led to important consequences, and indicated an increasing spirit of disaffection.

During Mr Fox's government it was thought right to try the experiment of placing a Magistrate in the Waikato. By offering the King natives Institutions under our own law, it was thought possible, that they might be induced to abandon the King movement. The Government employed for this purpose Mr Gorst, a gentleman of great ability and attainments, but whose tact and judgment do not appear to me to have been equal to the occasion, who understood the language, and was on friendly terms with some of the leading chiefs of the King party. Mr Gorst's mission as a Magistrate was not successful; but he was personally liked by many of the chiefs, and was for some time allowed to remain in the district unmolested, though unable to enforce his magisterial authority. Whether it was wise to continue him at his post, after the natives had distinctly shown their indisposition to receive him, may be questioned. To force a magistrate upon them was putting them to a severe test. They rejected it. Under Mr Domett's government, a new experiment was tried. An industrial school was established at a place called Te Awamutu, under Mr Gorst's direction, and at first with good results. Natives of all parties sent their children to school. Carpenters and blacksmiths attached to the new Institution found their services appreciated. Altogether it promised well. In an evil hour, however, it was determined to set up a Maori newspaper (the Pihoihoi), in opposition to the Maori Gazette (the Hokioi) published as the official organ of the native King. (You see the natives have advanced sufficiently to set up a newspaper of their own). The Pihoihoi had, I believe, the best of it in point of ability, and was writing its antagonist down. Its leading idea was to bring Kingship with its institutions into contempt, by treating it with ridicule. The King natives smarted under Mr Gorst's clever writing, and resented an attempt to undermine their political institutions. Sir George Grey had told them that he meant to dig round and overthrow their Flagstaff, and they saw that he was employing Mr Gorst and his newspaper as a means to his end. The Ngatimaniapotos determined to put a stop to the obnoxious publication. After several threats, at length, on the 24th of March, they made an attack on the printing press, which they broke up and carried off, types and all, though without personally molesting Mr Gorst or his party. This act of violence was exclusively the work of the

Ngatimaniapotos. Matutaera, William Thompson, and the other leading chiefs of the Waikato strongly disapproved of and endeavoured to prevent it. The printing press and materials were subsequently restored, though in a damaged state. Aporo, a native chief, one of the ringleaders, was afterwards arrested in Auckland, tried in the Supreme Court, and convicted, to everybody's amazement, of larceny. The stoppage of the publication was considered by the Judge to be a sufficient *lucri causa* to invest the transaction with a larcenous character. He is, I believe, now undergoing a sentence of two years' penal servitude in Auckland gaol. This affair is invested with more importance than it deserves, from the manner in which it is appealed to by the Government and its partizans as a proof of a treasonable conspiracy against the Queen's authority, and of a plot to exterminate and expel the settlers.

Page 19

Another outrage was committed by the natives. Sir George Grey's despatch of the 30th March, 1863, refers to it, but does not fully disclose the facts. I will state them from what I believe to be good authority.

The Government had proposed, for some time past, to build a School and Court-house on the banks of the Waikato river, at a place called The Kohekohe. The Native owners consented – at least the principal ones, though a question was afterwards raised upon this point – and the plan was proceeded with in the spring of this year. As the buildings advanced, it became evident that they were designed for something beyond their avowed object; in fact it was clear – and is admitted by the Government – that, under colour of a School and Court-house, it was meant to erect a building capable of being turned into a police station, or, if need be, a military stockade. The plan of the building and the strength of the timbers betrayed its real purpose. The Natives became alarmed. Coupling it with other circumstances – the movements at Taranaki, the advanced military post, and the coming steamer – they regarded it as an indication of hostile intentions on the part of Government. "There is death in it," they said; so they determined that the building should not proceed. In a remarkably orderly manner, they removed the timbers, floated them down the river, and delivered them on the Queen's land at The Ia.

No one can, of course, justify this proceeding, but the circumstances, I think, extenuate the offence. The Native owners of the land had consented to the building of a School-house and Court-house. Some of them, at all events, dissented from the building of a Stockade. They were, perhaps unreasonably, but not unnaturally, alarmed at the unexpected appearance of a building adapted for military purposes, commanding an important point of the river. They misconstrued the intentions of Government; and the appearance of disguise about the transaction, (unintentional as I believe), tended to foster their suspicions.

This very unfortunate circumstance created, perhaps more than any other, distrust in the mind of the Waikatos, as to the intentions of Government.

Page 20

The apprehension of Aporo upon the charge of larceny, for the attack on Mr Gorst's printing press, created a good deal of excitement in Waikato. The Ngatimaniapotos began to concoct schemes for rescue or retaliation. Connecting itself with the events at Taranaki, it drew to a head the dangerous humours which had been some time gathering. It was from this time that threats began to be used against the out-settlers, and warnings were given them which induced them, for the most part, to leave their districts, and come to Auckland.

I now turn to Taranaki. On the 6th of April the Governor writes to the Secretary of State developing his plan of operations. As to the Waikato tribes generally, regarding them "as the head and front of a great and general conspiracy" he proposes "gradually and surely to take measures which would not only place the settlement of Auckland in a state of fair security against them, but would place us in a position which would enable us, with just hopes of success, to strike a blow at them, if they deserved punishment; and at the same time so to threaten them that, if we ever required to take measures against the natives elsewhere, they would hardly venture to detach any considerable force to aid such people when a force capable of readily invading their territories lay at their own door."

I do not think I misconstrue this language as conveying Sir George Grey's intentions, the result of a long-settled determination, to carry war into the Waikato, in the event of his movements at Taranaki leading to a renewal of hostilities. The Waikato natives appear, in truth, to have rightly divined the Governor's intentions;

and their alarms were not without foundation.

I am not prepared to argue that Sir George Grey was not justified, as a measure of policy, in thus planning a blow against the Waikatos, in anticipation of possible hostilities at Taranaki. That question may be left an open one; but I utterly deny that a war so commenced can be stigmatized with the opprobrious terms of "treason" and "rebellion" on the part of the natives; or that resistance to an attack originated by ourselves, under such circumstances, can be made a ground for charging them with High Treason, or treated as evidence of a plot to exterminate and expel the European settlers.

Sir George Grey's operations at Taranaki at first promised a favourable result. He took possession of the Tataraimaka block, without resistance. It soon, however, became apparent, that the Natives did not mean to surrender it quietly. There were rumours of intended ambushes. On the 4th of May an escort, consisting of two officers and eight men was attacked, and fired

upon, by a body of about forty natives: eight were killed. The war had recommenced. The question, whether this unprovoked slaughter of the escort ought to be treated as a case of murder has been a subject of discussion. According to our views, it undoubtedly had that character: a large portion of the Natives so regard it; others, mixed up with the former war, would consider it is an event following in the ordinary course of war. We cannot so regard it; but we ought not, I think, to pass unqualified condemnation on those amongst the Natives who, judging by the light of their own customs, may extenuate the offences of their countrymen. Sir George Grey is of opinion that, had the Waitara been previously surrendered, as in his judgment it ought to have been, this catastrophe might have been avoided. I offer no opinion on this point. If it were so, it would be a circumstance to be taken into account in weighing the moral guilt of the transaction.

From this point we must date the renewal of the war. Within a few days after the attack on the escort, Sir George Grey surrendered the Waitara. He alleges as the ground for this step (which I think was at least unfortunate in point of time) that new circumstances had been discovered, disclosing a fatal defect in the original purchase. The two Houses of the Legislature in their late session adopted resolutions intended to convey reflections on Sir George Grey for the course thus taken. They declared at the same time, that the case required further investigation, following the old Rhadamanthian rule, "castigatque auditque." It may perhaps be well that I should state my own view about this unhappy Waitara question. It will, I think, be found to turn on simple questions of fact. The purchased block consisted of about nine hundred acres of land. Upon a portion of this, William King and some of his people occupied a pah, with some adjacent cultivations, under an agreement which, according to one party, amounted to a tenancy at will; and according to the other party, was a permanent tribal arrangement. So far as Colonel Browne was concerned, I have no doubt whatever, from circumstances within my own knowledge, that he never meant to include in the purchase this debatable land, I mean the portion of the block occupied by William King and his party. It is also clear, that the Colonial Ministers and the officers of Government engaged in the transaction, did intend to include it in the purchase. There can be no doubt that such a purchase was an unwise one, to say the least. On the other hand, my opinion always has been, and still remains, that William King's opposition to the Government was grounded on political motives, and was not merely, if at all, intended to be in assertion of his proprietary claims. His object was to circumscribe the area of British Settlement, and to resist any further acquisition of land by the Government. The verdict of posterity will, I believe, be

that war under these circumstances was excusable, but exceedingly unwise. Sir George Grey's cession of the Waitara may well be justified on grounds of expediency.

I need not recapitulate the military operations of Taranaki. Indeed, the imperfect state of the papers laid before the General Assembly prevents me from following their course with exactness. Generally, however, for some weeks operations were carried on with the usual gallantry and success on our part which has marked all General Cameron's movements, but without any decisive result. It then appears that, for reasons not stated, but doubtless with a view to attack the fountain head, the Governor determined to transfer the scene of action to the Waikato. In, I think, the month of June, the principal body of the troops returned to Auckland, leaving only a garrison at Taranaki, under Colonel Warre.

Meanwhile the news of the attack on the escort of the 4th of May had produced a great sensation throughout the Colony, both amongst Natives and Europeans. By the Natives it was variously received. The Ngatimaniapotos and their adherents regarded it with satisfaction, as the completion of their own work. They thought, no doubt, that it would have the effect of rousing the natives throughout the Colony, and bringing on a general war, which they had been for some time trying to stir up.

On the 15th of April, Mr Fulloon (an officer of the Native department) reports thus: –

"It is quite apparent that the Ngatimaniapoto and Lower Waikato are doing and will do their best to provoke hostilities, but the Ngaruawahia and the Ngatihaua people are afraid of war."

On the 25th of April, Mr Purchas writes from the Waikato: –

"A great discussion has been going on at Kihikihi, between Rewi and his followers, together with Reihana, on the one side, and Te Paea, Potatau, and Ngaruawhia on the other. Rewi's side are for an immediate descent upon the Ia, with a view, I am told, not of attacking the troops, but of making a raid against the settlers, while Te Paea and Patera strenuously oppose the plan: –

On the 2nd of May, Mr Purchas reports that "Matutaera (the King) was greatly vexed at the proceedings of Maniapoto."

Waikato was divided into three parties – one, the party bent on war, consisting of the Ngatimaniapotos and their adherents, under Rewi; another consisting of loyal natives, of whom Waata Kukutai and William Naylor are the principal chiefs; a third, comprising the leading men of the King movement, including Matutaera himself, William Thompson, and others, who, though

bent on furthering the King movement, were yet sincerely anxious to maintain peace.

I can offer no reliable estimate as to the relative proportions of these three parties in point of numbers and influence. The smallest numerically was that of the loyal natives, but their chiefs were men of great influence. The violent party was, I conceive, numerically the strongest. The young men generally throughout the Waikato sympathised with it. The middle, or King party, included the leading and most influential chiefs of the Waikato, and though the young men of their tribes were disposed for mischief, yet the influence of the chiefs was sufficient to keep them to a great extent in check.

Beyond Waikato the occurrences at Taranaki did not produce the effect of rousing the natives.

On the 11th May the Superintendent of Wellington writes thus: –

"My own impression is, that inasmuch as almost in every Runanga that has been held in the province, the Natives, whether loyal or King's men, have declared that Tataraimaka belonged to the Queen, and have deprecated any assistance being afforded to the Taranaki tribe in any attempt they might make to dispute the occupation by the troops, they will repudiate and denounce the barbarous onslaught."

From Wairarapa, Mr Wardell, resident magistrate, reports on the 23rd of June, "That the King's Runanga of the district decided last month that the Tataraimaka had been fairly bought by the Queen, and that the Governor should be allowed to take peaceful possession of it. And further, when the news of the murders of the 4th of May reached them, they expressed but one sentiment, namely, that the murderers should be punished, and that if the tribe refused to give them up, the whole tribe should be treated as murderers."

On the 7th July the Governor transmits to the Secretary of State an address from the Ngapuhi natives (the great Northern tribe), numerous signed, disapproving of the murders, and expressive of their royalty. On the 13th of July the Governor transmits to the Secretary of State addresses of a like kind from Natives of the Bay of Plenty and the Thames.

On the 28th of July Sir George Grey expresses his opinion to the Secretary of State that "the existing insurrection will only be a partial one, and that the majority of the native population will remain faithful to the Government."

Down to the latest period, before the commencement of hostilities, in the Waikato itself there were the same divisions of party and opinion which I have noticed. On the 16th June, Archdeacon Maunsell writes to the Governor, enclosing letters

from an alarmist native, in which he says that he (the Archdeacon) does not coincide with his views: and that "of Thompson and Matutaera he has of late heard several indisputable reports that confirm him in his belief that they desire peace."

Page 24

On the 30th of June, Mr Ashwell, the Missionary, writes from the Waikato, referring to a plan for an attack which the Ngatimaniapotos were meditating, "that he thinks most of the Ngatihaua are opposed to it, but some are favourable."

On the 7th of July, Mr Purchas reports an interview with Tamati Ngapora, one of the leading "King" Natives, in which Tamati says – "That if" (as the event proved) "no murder was committed nor any attack made before next Sunday, then his mind would be greatly relieved, as he would feel sure that the advocates of peace had gained a hearing, and that the people were quietly considering the matter."

I have now brought matters down to the very verge of the Governor's movement into the Waikato, the first act of which may be dated from the ejection of the frontier natives (to which I shall presently refer) on the 11th and 12th of July, and the crossing of the Mangatawhiri, by the General, on the 12th of July.

The following letters, written at a subsequent time by leading Native Chiefs of Hawke's Bay to the Superintendent of Wellington, represent the state of things in the Waikato at the time the war commenced in that district, from a Maori point of view; –

"MATAHIWI, September 7, 1863.

"To DR. FEATHERSTONE, – Friend, Salutations to you. The report has reached us of your visit to Otaki, where you were told by W. Tako and Heremia that they had received a letter from the Kingi telling them to kill the Europeans. We have doubts about this. We enclose the letter the King wrote to us, which is simply a caution to us, and which we send to you, that you may see yourself what he says. If the letter to Wi Tako and Heremia had been from him, he would have sent a similar one to us, to urge us also to turn upon the pakeha.

"Sir, we have been searching in vain to make out why our pakeha friends say that murders were the cause of the war in Auckland. Not being able to satisfy ourselves, we sent an express messenger to the seat of war to make enquiries, and he returned last Saturday evening. His report was that the Governor's war had not been caused by murders as the Pakehas alleged. Murders could not be heard of (i. e. preceding the war). The only grounds that could be alleged were – first, the expulsion of the Maoris from Auckland, from their own lands, and the burning of their properties and houses; and secondly, the crossing of Mangata-

whiri. If you know of any other cause, we should be glad if you would point it out to us, that we may speedily know it.

Page 25

"Sir, we can clearly see the error of our Native tribes in slaying the pakehas at Tataraimaka. But at the same time we cannot lose sight of the error (or injustice) of the Governor in not making known his decision respecting the Waitara in proper time (i. e. before any other steps were taken), that (the Waitara) being the source of the evil in New Zealand, and having made clear what is the root and source (of the evil) before following up the branches i. e., Tataraimaka, &c

"We were here waiting in vain to see (or hear from) the Governor upon the subject of our request to him, when he visited us, that the Waitara should be investigated. The Governor on that occasion stated that it was Waikato that was holding it (Waitara) back (from investigation); to which we replied, 'Give Waikato one more trial, and if they do not consent, enough to them. Then do you fix a day for the investigation, for there are many tribes who wish for one, and let us turn and investigate that evil that it may quickly be done away with.' All at once we were astounded by hearing that pakehas had been killed at Tataraimaka. The next thing is we are again astonished by the news – 'Ah! here is Waitara handed back to us.' It was held back until evil was created (i. e., the renewal of hostilities,) and then returned. Why not have returned it in a time of peace that it might have been seen whether the evil (of the Maori) would have been audacious enough to have climbed over (ki te piki mai) the Governor's just acts; and if so, it would have been clear that the Maori had (independently of the Waitara question) evil intentions towards the Europeans.

"Sir, use your best exertions to put down the evil in this Island of ours, being assisted by your friends exerting themselves in the same cause – that of drawing over the people to what is right.

"That is all.

"From RENATA TAMAKIHIKURANGI,
"KARAITIANA TAKAMOANA,
"TE WIRIHANA TOATO."A."

"To DR FEATHERSTONE, – Friend, Salutations to you. Hearken. Many men assembled on Saturday, at the Pawhakairo, to wait for you, as we wished to hear what you had to say, and to let you hear what we had to say. When you did not come, we were all dark (much annoyed). Enough. We now send our letter after you. Friend, exert yourself to discover the cause of the war, which the Governor is now carrying on in Waikato. The war we hear of, but the cause we do not know. The Pakehas tell us that the causes were ambuscades, and murders on the

part of the Maoris. We have not heard of those ambuscades and murders. This was what we heard of – Rewi's demand for war, after Aporo had been apprehended and imprisoned. Rewi proposed then to fight, but it was disapproved by Matutaera, by Tamehana, by Te Paea, and the Chiefs of Waikato. In consequence of their strong opposition, Rewi desisted, and he came to Taupo to the tangi for (the death of) Te Heuheu. On his return, he was met on the road by the news of the driving away of the Maoris from their land, of the crossing of Mangatawhiri by the troops, and of the death of Te Huirama. As our messenger, whom we sent for information about the Waikato war, was returning, he met them on the road, and then they went to Meremere – Rewi himself, and his tribe the Ngatimaniapoto. The going of Taati te Waru and Porokoru Titipa's party was not an unwarrantable act. They had been requested by Mohi to follow him, after he had been expelled by the Governor. As for the driving away of the Government and all the Pakehas, it was Rewi who called upon the Ngatimaniapoto to drive them away. It was then that the Waikato commenced to find fault with Rewi. As for the stand made by Te Huirama at Te Koheroa: when it was seen that the soldiers had crossed Mangatawhiri, and that they were coming to fight the Waikatos, he stood forward to ward off the blow. We heard from the Pakehas that Rewi intended (or attempted) to murder the Governor, the time he went up the Waikato; but we disbelieve it, for we had from the Maoris a full account of the Governor's visit to Ngaruawhia, of his viewing Potatau's grave, of Te Paea's weeping, and of Matutaera being followed, that he might come and see the Governor at Ngaruawhia. How comes it then that we were not told of Rewi's murderous intentions towards the Governor?

"We inform you of the things which we have heard, that you may enquire and see whether they are correct or not, and then inform us, and show us what words caused the wrong. Enough.

"From your friends,
"RENATA TAMAKIHIKURANGI,
"KARAITIANA TAKAMOANA,
"WIRIHANA TOATO.""

Page 26

Page 27

Up to this time it is clear that whatever may have been the evil designs of some natives in the Waikato, no overt act of hostility had been committed by them, except so far as the Ngatimaniapotos were concerned in the hostilities at Taranaki. There were, it is true, plans and designs abroad which threatened to imperil the peace of the Colony and the safety of the settlers. I do not presume under such circumstances to quarrel with Sir George Grey for striking the first blow. I do not say that the doubtful attitude of the King party may not have justified him in directing his first attack upon them. That question may be left an open

one, and the action of Government under very difficult circumstances deserves the most favourable construction. But I am sure that there is not one tittle of evidence to show that at that time the King party (apart from the Ngatimaniapotos and their adherents) meditated hostilities against the settlers, or were engaged in a plot to exterminate and expel them, or in any other criminal designs, except so far as the King movement may be regarded as criminal. On the contrary, there is evidence to show that the leaders of that party were exerting themselves to maintain peace, and that they actually opposed and checked the Ngatimaniapotos and the other violent natives, but

"Saepe Diespiter
Neglectus incesto addidit integrum."

Along the northern side of the Waikato river are a number of native villages intermixed with European settlements. The inhabitants of these villages belong to Waikato tribes and partake of the sentiments of their people. In the event of a general rising there would be risk to the settlers from these natives. In case of war, some of them at all events would join the enemy. It is alleged that the Government had evidence that some of these natives were engaged, in concert with the Ngatimaniapotos, in a distinct plan to attack the settlers. This may be true. I have, on the other hand, been assured by good authority that some of them were loyal and peaceable men.

Looking, no doubt, to the safety of the settlers, – probably having regard to the intended military operations, – not choosing, in fact, to leave a possible enemy in the General's rear, – the Government determined, either to disarm the natives of these frontier villages, and so incapacitate them for mischief, or to eject and force them to retire across the river.

Here again is a measure for which, under the circumstances, the Government may be held justified; though the manner in which the operation was conducted was, I think, open to great exception; but we are bound to take these circumstances into account when we seek to incriminate the natives for the part they have taken in the war which ensued.

Regarded as a measure of policy, I cannot but think that, had these native families, with their women and children, been permitted to continue in their own settlements, under judicious treatment they would have been in the nature of hostages, and that, without interfering with proper defensive measures. The ejection of these villagers en masse was sure to drive them into open rebellion. The loyal would become rebels under such treatment. At any rate, if such an operation were necessary to be performed, the work should have been done effectually. To eject men from their homes with arms in their hands, leaving them free to go where they pleased, was simply to cast abroad a blazing firebrand. From that moment war was begun.

I subjoin in detail the documents relating to this transaction. On the 9th of July, 1863, the Native Minister addressed the following circular to certain Magistrates: –

Page 28

No. 1.

"NATIVE OFFICE, AUCKLAND, July 9, 1863.

"SIR, – Immediately on receipt of this letter, you are to proceed to Ihumatao, Mangare, Pukaki, Patumahoe, Tuakau, and Pokeno, and there administer the Oath of Allegiance to such natives as will take it. You will also require them to give up their arms and ammunition to yourself, to be sent by you to Otahuhu, Drury, or Queen's

Redoubt.

"You will give notice to those natives who refuse to take the Oath and deliver up their arms, to quit the settlement herewith.

"I have, &c.,

"H. HALSE, Esq., J.P.,

"JAS. ARMITAGE, Esq.,

"MAJOR SPEEDY, J.P.,

"TITUS ANGUS WHITE, Esq.,

"J. C. GORST, Esq., J.P."

Enclosure 2 in No. 1.

NOTICE.

"To Natives of Mangare, Pukaki, Ihumatao, Te Kiri Kiri, Patumahoe, Pokeno, Tuakau.

"All persons of the Native race living in the Manukau district, and on the Waikato frontier, are hereby required immediately to take the Oath of Allegiance to Her Majesty the Queen, and to give up their arms to an officer appointed by the Government for that purpose. Natives who comply with this order will be protected. Natives refusing to do so are hereby warned forthwith to leave the district aforesaid, and retire to Waikato, beyond Mangatawhiri. In case of their not complying with this order, they will be ejected.

"BY HIS EXCELLENCY'S COMMAND."

July 9th, 1863.

On the 10th of July Major Speedy writes to the Native Minister: –

"MAUKU, July 10, 1863.

"SIR, – I have the honour to forward you the enclosed Warrant and to inform you that agreeably to your instructions, I proceeded this afternoon with my interpreter to Patumahoe, and after having distributed among several natives of the Settlement

copies of His Excellency the Governor's Proclamation of the 9th instant, and having explained its purport, I only found one native, who is named in the margin, willing to comply with the same, who, after taking the Oath of Allegiance, delivered me up his gun (a double-barrel).

Page 29

"I do not consider there is another belonging to the Settlement who would do the same; but, on the contrary, are ready to join in rebellion against the Government.

"I am informed they are preparing to leave the Settlement, but I fear only to form themselves into marauding parties.

"I have, &c,

"JAMES SPEEDY,

"Resident Magistrate.

"The Native Minister, Auckland."

On the 10th of July, Mr Halse writes: – ,

"MANGARE, July 10, 1863.

"SIR, – I have the honour to inform you that the Mangare Natives have decided upon going to Waikato to join their relatives and friends there.

"Tamati Ngapora expressed himself grateful to the Governor for allowing him and his people to depart in peace, and wished to know whether they would be permitted to remain here till after Sunday next.

"Tamati proposes to send the elderly women and children by way of Waiuku, and their luggage by way of Mangatawhiri, and would be glad to be informed if any objection exists to such a proposition.

"The only other thing I think it necessary to report is that the answer of all the people, when I read the notice was, why does not the Governor 'whakawa' (investigate) the 'he' (misconduct) of Waikato before he puts forth the 'ringa kaha' (strong hand).

"I am now off for the other settlements, and hope to get back this evening. – I have, &c.

"H. HALSE.

"To the Honourable the Native Minister."

On the 13th of July, Mr Halse writes thus: –

"NATIVE OFFICE, AUCKLAND, July 13, 1863.

"SIR, – I have the honour to inform you that on receipt of your letter dated the 9th instant, I immediately left for Mangare, Ihumatao, and Pukaki, for the purpose of

administering the Oath of Allegiance to such of the Natives residing at those villages as

copies of His Excellency the Governor's Proclamation of the 9th instant, and having explained its purport, I only found one native, who is named in the margin, willing to comply with the same, who, after taking the Oath of Allegiance, delivered me up his gun (a double-barrel).

"I do not consider there is another belonging to the Settlement who would do the same; but, on the contrary, are ready to join in rebellion against the Government.

"I am informed they are preparing to leave the Settlement, but I fear only to form themselves into marauding parties.

"I have, &c,

"JAMES SPEEDY,

"Resident Magistrate.

"The Native Minister, Auckland."

On the 10th of July, Mr Halse writes: – ,

"MANGARE, July 10, 1863.

"SIR, – I have the honour to inform you that the Mangare Natives have decided upon going to Waikato to join their relatives and friends there.

"Tamati Ngapora expressed himself grateful to the Governor for allowing him and his people to depart in peace, and wished to know whether they would be permitted to remain here till after Sunday next.

"Tamati proposes to send the elderly women and children by way of Waiuku, and their luggage by way of Mangatawhiri, and would be glad to be informed if any objection exists to such a proposition.

"The only other thing I think it necessary to report is that the answer of all the people, when I read the notice was, why does not the Governor 'whakawa' (investigate) the 'he' (misconduct) of Waikato before he puts forth the 'ringa kaha' (strong hand).

"I am now off for the other settlements, and hope to get back this evening. – I have, &c.

"H. HALSE.

"To the Honourable the Native Minister."

On the 13th of July, Mr Halse writes thus: –

"NATIVE OFFICE, AUCKLAND, July 13, 1863.

"SIR, – I have the honour to inform you that on receipt of your letter dated the 9th instant, I immediately left for Mangare, Ihumatao, and Pukaki, for the purpose of administering the Oath of Allegiance to such of the Natives residing at those villages as

might be willing to take it. On my way to Mangare I met the Rev. Mr Purchas and Tamati Ngapora; the former proposed that we should go to his house and talk over the object of my mission with Tamati, before seeing his people. As Tamati agreed, we went there, and after tea the notice was read to Tamati Ngapora. He listened attentively, and requested that it might be read a second time. His request was complied with. After the customary Maori silence, Tamati put the following questions to Mr Purchas: – 'Kua tata ranei te ra o te kotinga witi?' ['Is the day of harvest close at hand?'] 'Yes,' Mr Purchas replied. Tamati then asked why the Governor had not caused an investigation to be made into the wrongs of Waikato before moving the troops? I said it was not my business to discuss that question; ample time had been given, and now that the troops had been moved forward to prevent Waikato natives making an attack on Auckland, I heard of the desired investigation for the first time. Tamati then asked why the natives could not have their king as well as the Pakehas? I replied that I had come to read the notice, and not to talk about the Maori king. Tamati, in a thoughtful mood, said that, if he had influence, there should be no fighting. He had dear friends living in the midst of the English, and dear friends living with the Maoris, and would like to know why they were to be killed. He would not cease to urge for the investigation. I gave Tamati a copy of the notice, and he left for Mangare, accompanied by Mr Purchas as far as the ferry.

"On the following morning I went to Mangare. By the time Mr Purchas arrived, to see a sick native woman, about twenty men had assembled in Tamati Ngapora's house. Inviting their attention, I read the notice to them, and asked if they wished me to read it again. Two men said there was no occasion, because they all understood it. In the course of a few minutes a native, whose name I did not obtain for the reason that his friends objected to give it, jumped up and said 'I belong to Waikato; I am going to Waikato.' He then sat down.

"Rihara then said, 'Hearken. My fathers and my friends are in Waikato; I am going to them.' An elderly native then rose, and looking at several natives who had not spoken, asked me whether I understood the meaning of their silence. I asked him to explain. He said their thoughts were the same as the previous speakers, and all would go to Waikato. Tamati Ngapora, who had been reclining, sat up and said, 'When I arrived here last night I gave the Panuitanga to the people for their consideration, without attempting to influence them either one way or the other. You have now heard their decision. I have nothing to say in addition to what took place between us last night. We are one tribe, and cannot be separated.' After this Tamati resumed the reclining position, and a general silence prevailed. It was evident that these people had made up their minds the previous night to clear out for Waikato, and as I did not deem it to be

my duty to endeavour to turn them, I gave Tamati Ngapora ten copies of the notice and left the house. On receiving a message from Matire (Hori's widow) to visit her, I did so. There were five women with her and six men (two of whom were visitors from Ngapuhi). Matire told me that the men were willing to take the Oath of Allegiance, and I accordingly administered it to them. When I called upon them to give up their arms and ammunition to me, they said they had not any. They asked to be supplied with a distinguishing mark in order that the pakehas might know them. The women expressed great fear of the sailors belonging to the vessels of war, and hoped the Governor would protect them.

"I started for Ihumatao, with a young Ngapuhi Native as guide, and found the people of that settlement assembled at Puketapapa, a small village close by. There were about thirty men and six women. I was informed that several of the Ihumatao Natives were absent at Onehunga selling poultry, having previously disposed of some of their cattle. I read the notice to all present twice. Three men replied, to the same effect, viz., that they had all decided (including those absent at Onehunga) on going to

Waikato. Their women and children would go by way of Waiuku, weather permitting, themselves and their baggage by way of Mangatawhiri. I was told there were some infirm natives here, and that the Governor would be expected to take care of them. Before I could reply, a native, who appeared to carry the feelings of the meeting with him, said, 'The turoros will be taken away by us,' and the subject was not again mentioned. After distributing copies of the notice amongst these people, I left for Pukaki, and arrived there at three p. m. Mohi, the principal chief, had just left, with his Lordship the Bishop of New Zealand, to point out a burial ground, preparatory to handing it over, together with the Native Church, to the care of his Lordship. The people of the settlement had packed up their traps, and were ready for a start. On Mohi's return, he told me without hesitating that all his people were going to Waikato; that they would go during the night by way of Kirikiri or Mangatawhiri. I told Mohi the object of my visit. He asked me for a copy of the notice. I gave him one, and he read it aloud to the people present. Repeating the decision of his people to go to Waikato, he went into his house, where Bishop Selwyn was seated. As a matter of form, I then read the notice to the Natives assembled about Mohi's house. One man only replied. He said the Natives were of one mind about going to Waikato, and that they would take their arms with them. He also said that the result of my visit to Mangare was known to the people of Pukaki. I should perhaps state that one of the three or four young men, seated outside the house, told me that they were entirely guided by Mohi: had he given the word to remain, they would have remained, and agreed to the 'pukapuka' (notice), but as he had given the word to go, they would all go. I left a few copies of the notice with

these Natives, and returned to Mangare. Here I met with Himiona, and at his request administered the Oath of Allegiance to him. I was afterwards told that Tamati Ngapora had directed him to remain, but no reason was given.

Page 32

"On crossing over to Onehunga I met Mr William Webster, of New Plymouth, who had shortly before arrived in the steamer 'Stormbird' from the South. In the course of conversation he told me that a canoe from Wangerie came alongside as soon as the steamer anchored, and that in it he recognised a native who was present and wounded at the battle of Mahoetahi, in 1860. Mr Webster could not recollect his name. The native knew him, and asked for the news from Taranaki. I understand that Mangare Natives have long been in the habit of boarding steamers to obtain information from the South, -- I have, &c"

"H. HALSE"

"To the Honourable the Native Minister.

"P.S. -- His Lordship the Bishop of New Zealand told me before the notice was read to the Pukaki Natives that they had 'quite made up their minds to leave for Waikato.' I met his Lordship at Pukaki on the 10th July, 1863. H. H."

On the 12th of July Mr Armitage writes thus: --

"MANGATAWHIRI, July 12, 1863.

"SIR, -- I have the honour to acknowledge the receipt of your letter of the 9th instant, directing me to proceed to Tuakau, and administer the Oath of Allegiance to such Natives as will take it.

"Your letter reached me on the evening of the 9th, and early on the 10th I proceeded to Tuakau, and assembled the Natives there, eleven in number, including Te Atua, the principal Chief.

"I communicated to them the purport of my mission, and was informed by Te Atua, for himself and others -- except Hira Kerei and Te Atua, who dissented from same -- that they would not take the Oath of Allegiance, nor give up their arms, &c, nor leave their lands, unless driven away by force, which force they would resist.

"Hiri Kerei expressed his willingness to take the Oath of Allegiance; and, on my proceeding to administer it, I was prevented from so doing by threats on the part of a Native named Heri Mokena. The latter also intimidated Hira Kerei, and caused him to defer his desire to take such Oath, though he is still desirous of joining the friendly party assembled here. He is a son of the old Te Atua above mentioned.

"I have directed Waata Kukutai to invite him to come here. I have also the honour to inform you that, on Sunday morning last, I communicated the result of my mission to the Lieutenant-General, as directed by you.

"I wish also to inform you that I have sent notices to several

King natives at the Onewhero and Takihakiha to leave that part of the river. I have done so for my own personal safety in passing to and fro between the Ia and Cameron.

Page 33

"I have, &c,

"JAMES ARMITAGE.

"The Hon. the Native Minister."

On the 2nd September Mr Fulloon reports as follows: --

"AUCKLAND, September 2, 1863.

"SIR, -- In accordance with the Honourable Mr Wood's Minute of this day's date I have the honour to report that I saw Ihaka te Tihi at Pukekiwiriki on the 10th July, and that he told me that had he known before he left Pukaki that he had the option of taking the Oath of Allegiance and remaining at his place he would certainly have done so. As the Proclamation of the 9th July was read to him, he understood it to be a positive order to leave; but, now that he saw he could remain, he would do so with some of his men, allowing all those that chose to go to Waikato, to do so, rather than that they should remain, and eventually lead them into difficulty.

"Owing to so many old people and some eight or nine sick persons, Isaac asked for one or two days to enable those that were going to Waikato to make some arrangements for the conveyance of their property and invalids, which was granted by Mr Dillon Bell, who himself came out, accompanied by Messrs, Gorst and Mainwaring, on the 14th. Mr Bell saw Ihaki, Mohi, and about ten others, on the 15th, at Pukekiwiriki, and they all said had they known before they had left their respective homes that they could have remained they would have done so. They were then, in a long speech from Mr Bell, urged to take the Oath and return to their 'kaingas.' Mohi and one or two others spoke to the effect that, as they had been driven away from their homes without any apparent cause, they would not do so, but remain where they were, or go on to Waikato. Then Mr Bell told them why the Government had issued the Proclamation; that it was owing to a conspiracy to attack Auckland and murder all the Europeans, and that the information was received from reliable sources, in fact, from some of the principal chiefs of Waikato. Ihaka and others denied knowledge of the fact, and

asked for the names of the informants. Mr Bell told them that he could not give the names without his Excellency's permission, which he would try and obtain. If he did obtain it, he would send a telegram message to me, and I could let them know. They all then said that if the Governor would do so they would take the Oath of Allegiance and remain, as this was a 'kohuru' of Waikato against them. Mr Bell left them late in the afternoon and returned to town; and at about 10 o'clock the same night Colonel Murray received a

telegram from the Governor to capture Ihaka and the whole of his party; for report of which vide my Reports.

Page 34

"During the three days that I had constant communication with Ihaka I never understood him to refuse to take the Oath or deliver up his arms, but always that he would do so as soon as a duly authorised person came to administer the Oath. His Lordship the Bishop of New Zealand will bear testimony to this.

"I have, &c

"JAMES FULLOON.

"The Native Secretary."

The following is a Memorandum by the Governor, appended to the papers on this subject laid before the General Assembly: –

"A regular plan of military operations, as against the European race, had been agreed on by many Native Chiefs when I arrived in New Zealand.

"A part of this plan was that Paparata should be the base of a series of operations against the European settlements; that the minor posts occupied should extend along the South Road from the left bank of the Mangatawhiri to Maketu and Kirikiri. The inhabitants of Tuakau and the people of Ihaka and Mohi were to take a leading part in these operations.

"Ihaka and Mohi did their best to sow dissension between the two races. They advised the people to begin the disturbance at Kohekohe in March last, and having done so went straight up the river to the people and chiefs now in arms against us. The Government was several times informed that Ihaka was doing his best to raise the natives against us, especially at Wairoa.

"Subsequently a plan was laid for a general rising, and for a massacre of a part of the European population. The chief planners of this were some of Ihaka's people. The plot was discussed, and was in part originated, close to the village, when several other natives, shocked at it, gave us warning. He did not do so, but continued in close intimacy with the disaffected people.

"He would not take the Oath of Allegiance, and when the troops moved, instead of retiring up the Waikato, fell back with parties of armed hostile natives, on the line of operations which it had been arranged they were to occupy for hostile purposes. He was at one of the points named in their plan of operations, with these armed bands of hostile natives, when the Merediths were murdered near the South Road. He was still with them when he was taken, and had neither voluntarily come in, nor offered to make any submission to the Government after the attack on the escort.

"That the Natives he was with were a hostile band, their subsequent conduct has shown. Colonel Nixon told me, when he

went to them, he saw that some of them kept him covered with their guns so long as he remained there."

Page 35

On the 12th July, General Cameron crossed the Mangatawhiri Creek, and entered the Waikato country. This hostile incursion into native territory, together with the ejection of the Natives from the frontier villages, is referred to by the King natives as the *casus belli* which justified them in taking up arms. The Hawke's Bay Chiefs, in their letter to Dr Featherstone of the 7th September, say that from enquiries they had made, the causes of the war were – first, "the expulsion of the Maories from their own lands, and the burning of their properties and houses, – and secondly, the crossing of Mangatawhiri." The same causes are referred to in the King's letter urging the natives in other districts to join him.

On the 16th July, Colonel Murray reports that he had captured twenty-three natives – thirteen men, seven women, and three children. As regards the captured prisoners I may here state that they were detained for about nine weeks, at the end of which time they were liberated. Two of them, I believe, died in confinement; but I have never heard it suggested that they had received other than kind treatment. I never heard that any charge of a criminal nature was made against them.

On the 17th July, a few days after the ejection of the frontier natives, the first attack was made on an escort party under Captain Ring. Our troops sustained a loss of four killed and ten wounded. Some of the ejected natives are supposed to have been the attacking party. On the same day the murder of the Merediths took place.

On the 18th of July the first attack was made by the General on the natives, at Koheroa, with great slaughter of the enemy.

So soon as the Mangatawhiri was crossed, the King natives took up arms. William Thompson and the leading Waikato chiefs, who had hitherto endeavoured to maintain peace, joined the Ngatimaniapotos. The whole body of the Waikato natives made common cause, and endeavoured, with more or less success, to obtain help from other parts of the colony. Communications were sent to Wanganui, Otaki, Wellington, the East Coast, and generally throughout the native districts, urging the natives of those districts to rise.

The natives of Hawke's Bay sent Dr. Featherstone a copy of a letter written to them by Matutaera (the King).

It is as follows: –

"NGARUAWAHIA, WAIKATO, August 21, 1863.

"To NOA, To KARAITIANA, To RENATA, To PAORA, and TAREHA, but to you all.

"FRIENDS, PEOPLE, – Salutations to you. This is my word to you. Be watchful of yourselves (i. e. of your own persons), lest

you all be imprisoned in a similar manner to the chiefs of Waikato by the Governor, because the people of this island will be treated in a similar manner. Some will be

Page 36

punished (lit. flogged); some will be imprisoned. Be aware of the proceedings of the Governor, the people of the Hutt, Wairarapa, Otaki, and other places, that are not knowing (on the alert, suspicious). Enough of that word. Hearken all of you. On the 9th July a letter from the Governor to the people of Manukau arrived, telling them to go to the other side (i. e. South side) of Mangatawhiri, in Waikato. They left their land at Mangare, Pukaki, Patumahoe, and Te Kirikiri, which was occupied by the soldiers on the 10th. On the 11th July the soldiers arrived at Pokeno and Tuakau. The property at those places was consumed by fire. Some of the people were driven off those lands. On the 12th July the soldiers crossed to this side of Mangatawhiri. On the 13th Waikato went to Koheroa. On the 17th July was the engagement. On the 17th July (they) fought on the road. These engagements took place on the same day. On the 22nd July was the engagement at Kirikiri. There the pa was destroyed. Hearken; this (the present war) is the fence of this Island (for our protection). It will not be allowed to be broken. If it is broken, all the goods in the house will be burned. The flood will not be allowed to roll in (upon us). Friends, – the Governor has not only now made up his mind. He commenced (determined) when I went to Hauraki (the Thames); and although he went to Taranaki, his thoughts were upon Waikato. (He had already determined upon invading Waikato). Enough.

"NA MATUTAERA POTATAU."

The missives to other places were doubtless to the same effect.

At the same time letters were sent to Europeans, in districts exposed to danger, warning them to leave. A good deal has been said about a letter of this kind written by William Thompson to Archdeacon Brown, of Tauranga, in the Bay of Plenty. The letter is as follows: –

"OTOROKAI, MATAMATA, July 26, 1863.

"To Archdeacon BROWN, – Salutations. Friend, hearken. The reasons are many that induced me to go and view the work between the Waikato and the Governor.

"This is a word of mine to you, to let you know my views. I shall spare neither unarmed people nor property. Do not suppose that the Waikatos are wrong and the Governor right. No; I consider that he is wrong. The faults that I have seen are, 1st, I said to him leave these years to me, do not go to Tataraimaka, leave me to talk to the Ngatiruanui; do not persist, that tribe is still hostile. It was Governor Browne who taught them. The hot-tempered Governor said, that all the land over which he had

trod should be his, i. e. Waitara. The Taranakis then said, in regard to Tataraimaka, very good, and we will also hold the land over which our feet have trod.

Page 37

"Governor Grey, however, did not agree to my proposal.

"2nd. The Governor persisting in Mr Gorst's staying as a magistrate in the midst of the Maoris. I said to Mr Gorst, go back, the Maoris do not want you. But the Governor still persisted in sending Mr Gorst. Now it appears that it was for the purpose of provoking a war that he persisted.

"3rd. The taking up of the post at Mangatawhiri.

"4th. The unwarrantable conduct of the soldiers in driving the Maoris off their own land at Pokeno.

"5th. The defeat or death (mate) of the Waikatos you have heard and know. The law discriminates in cases of crime, and does not include the many. These are wrongs which I have seen.

"Father, listen. I have consented to attack the whole of the town. If they prove the strongest, well and good. If the Maoris prove the strongest, this is how it will be: the unarmed people will not be left. Enough. You hear what I say. This turns.

"From your son,

"WILLIAM THOMPSON TE WAHAROA.

"To Archdeacon Brown."

The expression "I shall spare neither unarmed people nor property," conveys the idea that the writer deliberately intended to carry on a war of extermination. It has been so construed, and great odium, on account of it, has been thrown on Thompson and his party.

I have myself conversed with Archdeacon Brown on this subject. He assures me that the expression is idiomatic, and that the meaning intended to be conveyed is this: – "I have determined to join the war party. I am going to fight. The native practice in war is to spare neither unarmed people nor property. You therefore are in danger, and I warn you to go." So far from regarding the letter as a savage threat, the Archdeacon treated it as a friendly warning. That such was its true construction is evident both from the general tenor of Thompson's conduct, as well as from another letter written by him at the same time to the Governor, as follows: –

"Sir, – On this very day I came to Waikato with all my tribe, I have a word to say to you about my letter to the Minister Brown – a warning from me to you to bring to the town the defenceless, lest they be killed at their farms in the country.

"But you are well acquainted with the customs of the Maori race."

Page 38

In point of fact, so far as is known and believed, William Thompson and the leading chiefs of the King party have made efforts to lessen the barbarities of war.

Here is a curious document found at Rangiriri. It contains several points worth noting, indicating a change of native habits and ideas: amongst others the injunction against stripping the dead.

PROCLAMATION.

"NGARUAWAHIA, October 3, 1863.

"Listen, all tribes of this island. This is a proclamation according to the law of God and of man.

"At the time of raising the King and his laws, his councils, his magistrates, and his chiefs, within the jurisdiction of this King were established laws held in esteem by the tribes of this island, resting on the Word of God. They continued in force up to the time of fighting, (when) these laws fell. The mode of falling was this: – He (the King) had no council, no magistrate, no policeman, no soldiers. This man, the King, was wandering about without place of abode. The place appointed for his abode was Ngaruawahia. His old council had been put aside, and the magistrates.

"2. The law consents that (the King) should be restored to his dwelling at Ngaruawahia. This is the dwelling-place of the King of the island.

"3. The law consents that a learned council be established as a fountain head for the laws of this island. If the King has a word to say, let it go before that council for them to consider. If judged right, that council will write to all the chiefs and to the chiefs of the army also.

"4. Let the magistrate attend to his work because evil has spread among the people.

"5. As for all the forces of the island, let them come to Ngaruawahia that they may be selected – –

"200 out of each 1,000

"50 500

"40 400

"20 200

"10 100

"10 50.

"Listen, all tribes, all chiefs. This is my word sent to all of you.

"1. To all the tribes to occupy Meremere.

"2. If a tribe wishes to go to any place, let it be sent with the consent of the tribe, and of the chiefs of the army, lest it go or remain in discontent. If consent is not given it must stay. The cause for consideration for the great day (of battle).

"3. About property and food. Take all guns, powder, bullets, copper caps, cartouch boxes, coats, watches, money, rings, hats. These take. The things to leave on the body of the slain are shoes, stockings, shirt and trousers, leave these on his body.

Page 39

"4. Let the plunder of each tribe and of each man be brought to one heap. One for Waikato, one for Maniapoto, one for Ngatiana, each having its own guardian.

"Let the name of each man be written on the property (plundered by him). It will be marked with the King's seal. The only things which will be quickly delivered (to the man who took them) will be guns, powder, copper caps, and bullets; other property leave alone till the end, when his own will be restored to each man.

"All these laws have been consented to publicly.

"By King MATUAERA POTATAU."

Within two or three days after the ejection of the frontier natives, the first murders were committed on two settlers of the name of Meredith. Since the war began, twelve settlers have been killed under circumstances which, according to our notions, have the character of murder. The natives probably, after war begun, would regard them differently. In Auckland, so soon as the forcible expulsion of the natives was heard of, some such retaliation was expected.

Little is known of the particulars of these murders, but there is nothing to implicate the natives generally in them. On the contrary, so far as rumour and general belief go, the leading chiefs have disapproved of and endeavoured to repress such outrages. In the case of one poor woman who was murdered (a Mrs Fahey), it is said that the murderers were seized and tried by the natives themselves, – I never heard that they inflicted punishment on the offenders.

The language which we commonly hear, and which is used in official documents and the preambles of statutes, in reference to this subject, is, to say the least, exaggerated.

I may note, as to Archdeacon Brown, that he and Mrs Brown some time ago returned to Tauranga, where they found their property untouched, and in charge of a volunteer guard of natives.

I shall not trouble your Lordship with details of military operations in the Waikato; the particulars of which you have means of learning from other sources, and which culminated in a successful attack on the hostile natives at Rangiriri. The natives suffered great loss; 183 prisoners were captured, including several leading chiefs. On our side we suffered heavy loss. The defeated natives were mainly of the King party. The Ngatimanipotos had before retreated to their own country. I am told that they there show no signs of submission, and that there is a quarrel between them and their Waikato allies. Further operations, it is said, are con-

templated against them. The King party in the Waikato are, I believe, effectually crushed. They have lost several of their leading chiefs. The General has since pushed on and established a post at Ngaruawahia, the King's place of residence. Elsewhere throughout the colony our military success in the Waikato appears greatly to have strengthened the position of the Government, and to have quieted all fears lest the rebellion should spread. You will read the following letters with interest: –

Page 40

"PENE PUKEWHAU to HIS EXCELLENCY THE GOVERNOR.

"O friend the Governor, – Salutations! This is to say to you. The fight has been fought, and some are dead; some live. Restore to us Waikato. Let it suffice to you, the men are dead. Restore to us those who live. Enough.

"From your friend,

"PENE PUKEWHAU,
"From all the Chiefs of the Waikato.
"To Governor Grey."

"The Hon. Mr Fox to Pene Pukewhau.

"AUCKLAND, Nov. 30, 1863.

"Pene Pukewhau, – Your letter has arrived, and the matter has been considered.

"This is the reply to you, and also to all the people of Ngaruawahia.

"The Governor will hold no communication whatever with you while you continue in arms; but give up all your guns, your powder, and all your arms to the Governor. Then only will a way of communication be open for you; at present there is none. That is the word.

"From your friend,

"W. FOX."

"PENE PUKEWHAU to HIS EXCELLENCY THE GOVERNOR.

"NGARUAWAHIA, Dec. 2, 1863.

"O Friend Governor, – Salutations! O Friend, we are waiting the reply to our letter. Can it have reached you or not? These are the words of that letter. Restore the Waikato men. Suffice for you the dead. Enough.

"From the Chiefs of Waikato,

"From PENE PUKEWHAU."

Page 41

"WIREMU TE WHEORO to the HON. MR FOX.

"TAUPIRI, Dec. 4, 1863.

"Friend Mr Fox, – Salutations. This is my communication to you that you may hear what was said when I went up to Ngaruawahia on the 3rd day of December. I did not see any men anywhere except at Ngaruawahia. When we arrived there they assembled, and fired from both sides of the road. We were between them while they fired as they went along. When we reached the house of Matutaera, which has a carved verandah, he and his people stood up [to receive us]. Ngatimaniapoto were on the Waipa side, and Waikato on the Horotiu side.

"They stood up for a while, and then sat down. Paroa Te Ahuru stood up to make a speech. 'Welcome, my child. Welcome, all of you, your ancestors and your fathers. Come to see your fallen tribe and your broken canoe. My fighting has ceased; peace made.' After him Tikaokao stood up, – 'Come, my child, come to see your fallen tribe and your broken canoe.' Then Patara Te Tuhi stood up, – 'Welcome, my brother, come to see your fallen tribe and your broken canoe.' Then I, Te Wheoro, stood up, – 'Welcome me, O my father; welcome me, O my brother; I am come here to see the fallen tribe and the broken canoe. It cannot be helped. It is right, O my fathers, that peace should be made. I have nothing to say, I did not come to speak, but the speech is in the letters. Do not let us make speeches, but be quick and answer the letters.' They sent to Tamehara for Tamehana. They came to me and said, – 'If we give up the guns we shall perhaps be made prisoners. We don't clearly see how to answer the Governor's letter, because we are afraid of the steamers and soldiers which are coming this way. For this reason we came here from Paetai.' I said to them, – 'I have nothing to say to you; I was not sent here to deliver a message.' In the morning Ngatimaniapoto came to cut down the flag-staff at Ngaruawahia. Waikato would not allow them. The quarrel was great. Both sides fired without aiming. Then Tamata Ngapora, Mohi Te Ahiatenga, Patere Te Tuhi, Paora Te Ahuru, and W. Thompson gave it (the flag-staff) to me with these words, – 'Wheoro, we give over the flag-staff to you with those buried here, and Ngaruawahia, for you to give over to the General and the Governor. Especially let not the remains of the buried be ill-treated by the soldiers. As for Ngaruawahia, the cultivations, leave them alone. We are going away through fear.' Moses gave his koeroa (a weapon made from the jaw of a whale) for the General for a pledge of peace, and the flag-staff for a pledge of peace. I returned with the letters for the Governor.

"These were all the chiefs then present: – Tamata Ngapora, Mohi Te Ahiatenga, Wi Tamehana, Tikoakoa, Paroa Te Ahuru, Patere Te Tuhi, Kai Ngarara.

"Enough, from your loving Friend,

"WI TE WHEORO."

Page 42

I turn now to the civil measures of Government and the Legislature.

Upon the breaking out of hostilities at Taranaki, the Government conceived a plan for locating military settlers upon the lands expected to be obtained from the insurgent natives. They took upon themselves to issue proclamations inviting volunteers from the neighbouring provinces and colonies, with promises of grants of land upon a kind of military tenure. The same course was repeated in the case of the Waikato war.

The principles involved in these proclamations, considered in connection with the New Zealand Settlement Act, demand, I think, consideration from the Imperial Government, at least if it thinks itself any longer concerned in such matters. That the Crown has a right to assume possession of lands belonging to native tribes who take up arms against it, cannot, of course, be disputed, but these proclamations, to which legal effect purports to be given by the New Zealand Settlements Act, are of far wider scope, and amount, in fact, to a revolution in our Colonial policy, as regards the territorial rights of the natives.

The first time on which a question of this kind arose, was during Mr Fox's government, when my opinion was asked as Attorney-General, as to the power of the Government to take native land, "for roads and permanent military positions or purposes of defence."

My opinion was as follows: –

"These questions cannot be answered by reference to ordinary rules of law. Land over which the Native Title is not extinguished, cannot be dealt with as Waste Lands of the Crown or private lands, with a view to the formation of roads or the maintenance of military positions. In Great Britain, as in all civilized countries, there are special laws providing for those exigencies of Government. In this colony provision is made for the same objects in the various general and provincial laws and regulations relating to Waste Lands, and in local acts relating to Highways, &c. But these laws and regulations do not affect land over which the Native Title is not extinguished. By the Treaty of Waitangi the Crown guaranteed to the natives their territorial possessions; the natives on their part ceding to the Crown the sovereignty. The power of the General Assembly under the Constitution Act to legislate in respect to the Waste Lands does not arise, until the land has been ceded to the Crown by the natives.

"But, in my opinion, the right of passage through a country, and ex necessitate, the right of using and constructing all the ordinary means of passage, such as roads, bridges, &c, is an essential condition of sovereignty. It belongs to and is exercised in fact by all sovereign powers. Property is held by private persons subject to this and other conditions of a like kind. It is a power

constantly exercised by our legislatures, which, for this purpose, are the Sovereign Power.

Page 43

"But as regards Native Lands (until they become subject to the power of the General Assembly by cession to the Crown), the Crown is in my opinion the sole Sovereign Power. And whether we consider (as is sometimes done) the lands of the natives as properly lands of the Crown, subject to the occupational right of the natives, or as lands over which the natives hold private proprietary rights, by a kind of allodial tenure; in either point of view, the Crown as Sovereign, by virtue of what is termed its Eminent Domain, has in my opinion the right of making roads through such lands, in order to enable it to exercise its functions of sovereignty.

"It is scarcely necessary to consider the question of possible damage to private property. The Government, of course, only proposes to carry roads through uncultivated land. If a possible case of damage should arise, it will be one for compensation.

"The same principle, in my opinion, governs the question as to land required for purposes of military protection or defence.

"I do not find any express authority on these questions, which are out of ordinary course, but see

"Vattel, Book 1. cap. 20, sec. 112 et seq.

"Book 2. cap. I, sec 180.

"Book 3. cap. 10, sec. 183, 184.

"HENRY SEWELL.

"November 22nd, 1862."

This opinion was controverted by the Assistant Law Officer, who thought that an Act of the Colonial Legislature was necessary to authorise the taking of native land for the above purposes.

These opinions were referred to the present Attorney-General, Mr Whitaker, who gave the following opinion: –

"In my opinion the Crown has a legal right to use land, over which the native title has not been extinguished, for the purpose of making roads and for military defence.

"In order to arrive at a correct conclusion on the point, it appears to me to be essential to determine what is the nature of the Native tenure of land, and in relation thereto, what are the relative positions of the Crown and Aborigines.

"From the year 1840 to the present time I am not aware of an instance in which either the Crown or Legislature, Imperial or Colonial, has recognised a title in the Aborigines cognisable in a Court of Law. But, on the contrary, it has throughout been assumed, both on the part of the Crown and by the Legislatures, and in some instances, distinctly declared, that native lands are in law Demesne Lands of the Crown. The Ordinance of the Legislative Council of New Zealand (Sess. I., No. 2, 1841) which declares and enacts that all unappropriated lands within the colony,

subject to the rightful and necessary occupation and use thereof by the Aborigines, are, and remain, Crown, or Demesne Lands, especially may be referred to.

Page 44

"Assuming then the land over which the native title has not been extinguished to be Crown lands, subject to the above-mentioned qualification, it follows of course that the Crown has a right in law, so long as there is no interference with the rightful and necessary occupation and use thereof by the Aborigines, to use the land for the above purposes.

"It may be objected that this would be contrary to the treaty of Waitangi.

"To this I answer, that a positive enactment of the Legislature would prevail over the terms of the treaty if there were any conflict; but, without discussing the precise meaning of the second article, it appears to me that such is not the case.

"Under the first article all the rights and powers of sovereignty which the ceding parties then exercised or possessed, or may be supposed to exercise or possess over their territories, were ceded to Her Majesty; and it appears to me that a right of road through those territories, and of constructing the necessary conveniences for the exercise of that right, as well as a right of constructing works necessary for military defence, are essential and necessary incidents to the Sovereignty, and were therefore ceded to Her Majesty.

"FREDERICK WHITAKER.

"21st February, 1863."

If we carefully examine this opinion, as practically exemplified by the New Zealand Settlements Act, it is this, – that native lands are demesne lands of the Crown, subject only to the rightful and necessary occupation and use thereof by the Aborigines; – that the title of the Aborigines is not cognizable in a court of law, and is liable to be overridden by an Act of the Colonial Legislature; – that an Imperial treaty with the aboriginal race is not, as American jurists would hold, a fundamental part of the law of the colony, limiting the power of the Colonial Legislature; but that, in case of conflict between the two, a positive enactment of the Colonial Legislature will prevail over the terms of the treaty. I have great respect for Mr Whitaker, but I dissent from his doctrines. If they can be maintained, the territorial rights of the natives are held upon a slender tenure. If they are practically enforced, the pacification of the colony will be postponed to a remote date.

The second ground of Mr Whitaker's opinion is that on which mine was based, viz. – that the right of carrying roads through a country is a common incident of Sovereignty. Though he does not advert to the right to compensation, I take for granted that he would admit such right, to the extent of the owner's

Page 45

rightful use and occupation. I founded my opinion on the general principle of the *eminent domain* of the Sovereign power. As to the question, where that sovereign power resides, I thought, and still think, that quoad the territorial rights of the natives till ceded, the Crown, exercising its functions through the Imperial Executive, is the sovereign power. The powers of the Colonial Legislature are defined and limited by the Constitution Act, which confers the right of legislation on the General Assembly, only over lands ceded by the natives. It will be necessary, for the protection of the natives, scrupulously to guard against the Colonial Legislature exceeding its powers in this respect. I thought so, in the case of the Native Lands Act of last session, an act passed ostensibly for their benefit; I think so, as regards the New Zealand Settlements Act just passed, which is of an opposite character.

The Government of the United States holds the rights of the Aborigines so sacred, that it does not assume the right to carry roads through their land, except with their consent. This is, I think, an extreme view. The circumstances of this colony make it indispensable that such a right should reside in the sovereign power. It is only by means of roads that the peace of the colony can be permanently secured. In this we shall be following the example of the Romans in Britain, – of England herself in the cases of the Highlands and Ireland. This is a work which may be done without violating any constitutional rights.

But I could not have imagined that the principle, which authorizes the State to take land of its subjects, for purposes of a strictly public nature, such as roads or military posts, making compensation, could be so stretched and misapplied as to justify the taking land for the purpose of parcelling the same out amongst new settlers, or reselling at a profit.

Upon this question, the Duke of Newcastle expresses himself as follows (22nd March, 1863):

"I should hesitate to admit, as a matter of strict law, that Her Majesty had the power, without any legislative sanction, of appropriating for any purpose, the acknowledged property of any of her subjects.

"But even if it were true, that the peculiar legal condition of New Zealand authorized the application of this arbitrary principle, I am of opinion that the question cannot be dealt with as one of strict law.

"With a large proportion of the native population either already in arms or prepared to take them up in defence of their supposed rights, and most especially of rights to land, policy not less than justice requires that the course of the Government should be regulated with a view to the expectations which the Maories have been allowed to base on the treaty of Waitangi, and the

apprehensions which they have been led to entertain respecting the observance of that treaty.

Page 46

"I cannot doubt that the proposed appropriation of land, if effected contrary to the will of the owner, and justified on principles, which, whether technically correct or not, are alike contrary to the principles of English and native law, would be considered as a violation of native rights; would be resisted on the spot, and would provoke throughout the islands warm resentment and general distrust of British good faith. It will be very fortunate if, under these circumstances, the colony escapes the revival of the war, now happily dormant, in more than its original intensity."

His Grace will find it difficult to reconcile these views with the principles of the New Settlements Act.

On the 29th August, Sir George Grey transmits to the Duke of Newcastle a Memorandum by Ministers, dated 31st July, as to the formation of Military Settlements.

His Excellency in his despatch refers to this merely as a plan for the location of settlers "upon land intended ultimately to be taken from the territories of tribes in arms against the Government." His Excellency probably had in view, not so much the confiscation of land by act of law, as, what is usual in such cases, compelling the natives to cede land, as a condition of peace. There is no reason to doubt that the natives when beaten will submit to such a cession. The Waikato natives have in fact already intimated as much.

The Ministerial Memorandum, referred to by the Governor, proposes generally to locate the settlements on "lands to be taken from tribes in, arms against us."

Founded on these proposals, the Proclamations were issued; and no doubt were meant, at the time, to apply only to lands of natives actually in arms against us. The views of the Colonial Government appear to have expanded as they advanced.

Constitutional objections might be raised to these Proclamations, as assumptions of power not warranted by law. So far as they may have encroached on the powers of the General Assembly, the subsequent legislation of that body has removed the objection, by confirming and giving effect to the Proclamations. But the precedent is dangerous, and the Assembly has ground to complain, that it has been obliged to legislate on the subject, under compulsion, in order to keep faith with parties with whom the Executive Government has entered into actual (though unauthorized) engagements.

About 2500 persons have been drawn from the neighbouring provinces and colonies upon the strength of these Proclamations. I hear that a farther draft is intended from the same sources. Nothing but pressing and urgent necessity (which has for the present disappeared) can justify a forced immigration of this cha-

acter. To drain the neighbouring provinces and colonies of the sound part of their population (which they are importing at great cost) is a manifest wrong. To introduce the lees and sediment of a labour-market tainted with convictism is to inoculate ourselves with a terrible social disease.

Page 47

The General Assembly met on the 19th of October. The season of the year was inconvenient and unusual. Members from the southern provinces were impatient to get back to their homes. So it has happened, that the important business which they have been called on to transact has been hurried through without time for thought or deliberation.

Almost immediately after its meeting, a change, or rather a reconstruction of the Ministry, took place. Mr Domett retired from the Premiership, and Mr Bell from the office of Native Minister. The former was succeeded by Mr Whitaker, the Attorney-General. Mr Fox undertook the joint offices of Colonial Secretary and Native Minister. The principles of the new government must not, however, be confounded with those of the government of which Mr Fox was the head, and of which I was a member.

A change of government at the commencement of a session is attended with great inconveniences. The new government was obliged to plunge into its work, without preparation. This circumstance will to some extent palliate its mistakes.

Mr Domett, previous to retiring, laid before both chambers of the Assembly a paper, which I transmit, containing his views of the policy proper to be adopted. It is remarkable for its boldness, and I may add its novelty. It startled everybody. Passing far beyond the scheme propounded in the Ministerial Memorandum of the 31st of July, he broadly develops a plan for planting military settlements throughout the whole native territory. He has evidently studied the geographical circumstances of the colony, but the scheme rests only on his individual authority, and is supported by no corroborative details or opinions of qualified engineers or surveyors. Politically, economically, and strategically, it does not appear to me to deserve a moment's consideration. It is founded on the idea of sweeping clean, as it were, of native title a great extent of territory round each of the settled districts, and drawing a defensive cordon of military settlements round them. In this province of Auckland, for instance, it is proposed to draw a line across the Island from Raglan on the West coast to the Bay of Plenty on the East, and thence Northward to the mouth of the Thames. On this line, estimated at about 120 miles, Mr Domett proposes to place a series of villages, about a mile apart from each other; each to contain 100 military settlers. Allowing land to each of these settlers at a certain rate, the total extent required for them will be 500,000 acres. "There is," he says, "in the Waikato and

the Thames ample land for these purposes, and a large residue for sale."

Page 48

A similar scheme is proposed as regards each of the other settlements in the Northern Island. This notion of establishing a pale, with an outside native district, has always appeared to me the most fatal mistake which could be made. Its inevitable result must be collision and a conflict of races. A border country is in its very nature a country of war. The character of the settlement now proposed is based on that idea. I observe that Sir George Grey refers to his experience at the Cape on this subject; but in South Africa the establishment of a frontier line is a necessity. Outside there are a number of independent native races, against whom it is necessary to create a barrier. Here the natives are within our own borders, and it is our policy, as well as our duty, to endeavour to incorporate them into our own political community. Good laws, strict observance of our engagements, and forbearing treatment, will, I am persuaded, be a far better defence to the colonists against hostile attack than a line of detached military villages.

Looked at in a military point of view, I have heard a general expression of opinion that the scheme proposed is extremely dangerous. Supposing, as the case supposes, that outside the pale we shall have to guard against a number of hostile natives, rendered desperate by expulsion from their lands, the more extended our frontier is, the more exposed we shall be to attack, – the further our extremities are from our centre, the more difficult will be our communications. There could be no peaceable colonization within such a district, except by first exterminating the natives. For merely defensive purposes there could not be a better frontier line than that which we already have, namely, the Waikato River on the one side, and the coast line on the other. Economically, as I have never seen any estimates in detail of the cost, it seems to me idle to discuss a scheme which includes as one of its conditions the possible maintenance of 20,000 military settlers, with their wives and children, for an indefinite period.

Apart from these considerations, it is a proposal founded on wrong. I do not argue that the lands of those tribes or individual natives, who have taken up arms against us, are not rightfully at the disposal of the Crown; though even as regards them, I doubt the disposing power of the Colonial Legislature; and, in applying the rule of confiscation, we are bound to take into account the extenuating circumstances in particular cases. But three-fourths of the natives are clear of this quarrel. Many of them are in actual alliance with us. The southern tribes at Taranaki with the Ngatimaniapotos in the Waikato are the guilty tribes upon whom punishment ought to fall. It serves the interests of a party to set up an outcry against the whole native race, in order to justify an abandonment of those principles which we have hitherto professed as our rule.

It will no doubt be said that these plans are Mr Domett's, and not those of the present Government; and I am bound in justice to add, that when the new Ministry was first formed I heard from some of them a faint disclaimer of Mr Domett's scheme. The present Government has carefully abstained from announcing any specific scheme of its own. Whenever in the course of discussion anything could be elicited from them as to its details, the lineaments and features of their policy, obscure though they were, betrayed an alarming resemblance to Mr Domett's. And when we look at the act by which they propose to give effect to it, we perceive an absolute identity of principle between the two.

Page 49

After the formation of the new Ministry, one of their first steps was to propose in both houses resolutions adopting Ministerial Responsibility in Native affairs, in accordance with the Duke of Newcastle's final decision. Having thus assumed the conduct of Native affairs, they introduced the Suppression of Rebellion Bill.

I believe that everyone was prepared to arm the Government with all requisite powers for enabling it to bring the war to an end. So far from there being party divisions in the Assembly, there was a general desire to merge all political differences: nobody was prepared to enquire into, or cavil at the circumstances which had placed us in danger. The object was to provide against it – Whatever the Government had done to meet the emergency, the Legislature was, I believe, unanimously ready to sanction and give effect to; whatever powers they could reasonably have asked for, would have been granted without a dissentient voice.

But I heard with a feeling of painful amazement the introduction of The Suppression of Rebellion Bill.

I have already noticed its leading provisions. To apply the law of treason to natives who have taken up arms against us, under the circumstances which I have narrated, is in itself repugnant to justice and reason. To punish by death belligerents taken in arms, who surrendered themselves as prisoners of war, and who were complimented by the General on their conduct as brave men, would be an outrage to humanity. To extend this penal provision to the case of all persons "concerned in the rebellion" no matter in what degree; to authorize the infliction of this punishment by military courts, composed possibly of inferior officers, in a summary way, without the ordinary constitutional guarantee to insure a prisoner a fair trial, is to make that law which is in itself a violation of the first principles of law. There are 180 prisoners taken in arms at Rangariri now on board the hulk in the harbour. I have perfect confidence in Sir George Grey that, so long as he remains here, he will permit no inhumanity to be practised against these men; nor do I impute any intention of that kind to the Ministry, who forced this measure through the legislature. But it is no apology for a law, that those entrusted with its powers dare not put them in force; and the legis-

lature which has armed a Government with such powers is morally responsible for their abuse.

Page 50

The suspension of the Habeas Corpus Act throughout the colony, even in the peaceful gold-digging regions of the South, is matter of less moment. No one, at least no European settler, imagines that he will be dragged from his bed in the middle of the night, and placed out of the protection of the law, at the will of a tyrannical governor or minister; but I confess to having a very uncomfortable feeling at the idea of living in a country where such a power exists. It may be said, that if we choose to pass laws of this kind we have only to blame ourselves. That is true; but the law is in fact directed against the natives, who are unrepresented in the Assembly.

In the Legislative Council, Mr Swainson, the former Attorney-General, argued that it was not competent to the Colonial Legislature to pass an act manifestly repugnant to the first principles of the law of England. He argued that at any rate it should be so modified, as not upon its face to assume to deprive the Court of Queen's Bench of its jurisdiction within the Colony. The minister however declined the suggestion.

It was matter of surprise to me that such a measure should have passed through the House of Representatives, until I was told by several members, that they had been assured by the Government that it was founded on The Suppression of Disturbances Act of 1833, an Act of the Imperial Parliament. I was startled, but of course was unable to resist the cogency of such a precedent. I examined the Statute-book. I found that in truth the measure had no resemblance to the Imperial Act of 1833. It is in fact taken from the Irish Statute-book of 1799, an ill-omened source from whence to draw political legislation. In the Legislative Council I drew attention to the fact that Lord Grey, in his speech in introducing the Act of 1833 in the House of Lords, expressly pointed out the differences between it and the Irish Act of 1799. I shewed that in the Act of 1833 no alteration was made in the law itself; martial law was not established; no new punishments were introduced; but the Act simply constituted military courts, composed of officers of rank, presided over by a qualified lawyer, to act as Courts of Judicature in disturbed districts, administering the ordinary law in lieu of the ordinary courts. I dwelt specially on the care with which the Act guarded these Courts against dealing with cases punishable with death, and prohibited them from inflicting, in any case, the punishment of death. Even so guarded, Lord Grey admitted and apologised for the unconstitutional nature of the measure.

I endeavoured in vain to induce the Minister to modify his bill in accordance with this precedent.

A strange perversity of judgment seems to have prevailed on this question. Everybody admits that, in an emergency like the present, recourse must be had to military force; and everybody is

prepared to pass whatever acts of indemnity may be required to protect those concerned in its exercise against legal consequences. "But because," says the Government, "it is necessary, in a passing emergency, to exceed the law, therefore we demand a suspension of the law itself." They do not distinguish between acts of indemnity, which are a constitutional form of absolution for things done under special emergencies, and which the legislature jealously guards, and the legal enactment of a kind of plenary indulgence beforehand for violence or excesses of any kind or degree committed under colour of authority.

Page 51

I turn to the second of these measures, the New Zealand Settlements Bill.

The nature and effect of this Act you will be able to test by that scheme of Mr Domett's, to which I have particularly drawn, your attention. The bill appears to have been framed with special reference to that scheme and with a view to give it practical effect.

Passing by the constitutional objections to a measure which exceeds the powers vested in the Assembly, and omits a qualifying clause expressly required by an Imperial Act, we urged, that, as a penal measure, it was an Act of ex-post-facto attainder, repugnant to the ordinary principles of justice. If indeed, under any circumstances, it were just to inflict the penalties of treason upon a people ignorant, to use Lord Stanley's expression, of our language, laws, and customs, it was unjust to make such law retrospective. We were bound to give due warning, and a locus paenitentiae to those who were to be brought under its operation. At any rate, he said, the application of the law should be confined to the guilty parties, – at all events to the guilty district.

The sophisms by which the measure was defended were: – 1st. That not to make the Act retrospective, would be to nullify it. If the natives were to make submission, there would be no confiscation.

2. That to take land from natives not in rebellion, or from settlers, by force of law, is not confiscation, provided we give them what we in our judgment consider to be an equivalent, – money – the quantity to be assessed by tribunals appointed and removable by ourselves.

3. That all property is held subject to claims which the State may make, for objects of public utility or necessity. If therefore the State considers it useful, or necessary for the public security, to take into its own hands the land of a district, for the purpose of parcelling it out amongst military adventurers, or selling it to repay the cost of war, that is a legitimate object, to which all private proprietary rights must be subservient.

Laws founded on doctrines of this kind are so profitable, that it would be dangerous to trust the most virtuous of governments with them. There is peculiar danger in the case of a Colonial Government acted on by popular impulses, liable to be set in motion for objects of self-interest, agitated by a passion for land, and wholly unchecked by an outside public opinion.

These two measures together constitute a new native policy, founded on a reversal of the principles which have hitherto guided us. The one applies to the natives the extreme rigour of our law of treason, unmitigated by any of those salutary checks by which ordinary citizens are protected.

Page 52

The other virtually sets aside all native rights to land, as subordinate to the paramount object of colonization, and to be dealt with at the will of the Colonial Legislature. Arguments may be adduced in support of these measures, but it will be impossible to give effect to them without violating our engagements with the natives, and provoking resistance on their part, which will be certain to end in a conflict of races, disastrous to both, and fatal to the weaker.

I was assured in the passage of these bills, that the Government intended to use the powers vested in them with moderation. I do not doubt the excellence of their intentions. All governments intend to use arbitrary power with moderation; and I have no doubt that the Colonial Government of New Zealand will, in the present case, act up to its intentions, – until, it may be, an accidental panic may agitate the people of Auckland, or until some strong temptation may present itself of acquiring native land (another Waitara for instance) against the consent of the native owners. If occasions such as these should arise, I have no confidence in the strength of purpose in the Colonial Government, armed with such laws, to resist popular impulse.

As regards the third bill to which I have referred, I wish you to read Mr Fitzgerald's speech in the House of Representatives upon the second reading of it. It contains an admirable review of the whole scheme. In England this loan may perhaps be regarded as a purely colonial affair, affecting nobody but ourselves, – except perhaps our English creditors. It is not, however, possible to separate it from the others. Through it the whole scheme is to be effectuated. Will it answer its end? Nobody can tell; for we have seen no calculations or estimates, not even a digested plan of operations. Looked at financially, the enormous debt (in the aggregate six millions and a half) with which the Colony is now to be loaded must be a millstone round its neck for years to come. As to this Northern portion of it, I know not how it will be able to bear it. Of the three millions now to be borrowed, it is estimated that £900,000 will be spent in the province of Auckland. But the Southern Provinces are resolutely bent upon fixing that as a charge specifically upon the province for whose benefit it will have been incurred. The Allocation Act has declared as much. But the whole revenue of the province of Auckland does not exceed £70,000 or £80,000 a year, and it has just incurred a provincial debt of, £500,000, now in the hands of English creditors, which will be posterior in security to that just imposed by Act of the Assembly. I do not attempt to draw in-

ferences from these facts, which may be prejudicial to the credit of the Province and the Colony.

Page 53

It is true that the Colonial Treasurer calculates that the profit which the Colony will derive from the sale of native lands will clear off the whole three millions about to be borrowed, including the expenditure on lighthouses and telegraphs. He says: "Exactly what amount of land will be available it is difficult to say, but if we take

all the land belonging to the rebel natives in the Thames and Waikato, at Taranaki and Wanganui, I think there will be nearly, after locating the settlers upon it, a balance of something approaching two millions of acres" (the value is elsewhere estimated at £2 per acre). "And we consider, that although it will be impossible to realise upon that all at once, yet before long the proceeds of those sales will repay the whole of this expenditure which we now ask the House to grant." According to this estimate, the Colony will be a gainer by the transaction; for we shall have established electric telegraphs and lighthouses out of the profit arising from the confiscation of native lands. As the Loan Bill passed through the House of Representatives, provision was carefully made for keeping the profit of the transaction to the Colony. No part of it is to go to repay the Imperial Government the cost which it is now incurring in putting us in possession of these lands. There is prudence, if there be not justice, in this arrangement. But in truth such calculations are visionary. There is no good reason for anticipating that the present loan will be repaid from the sale of native lands. We shall be fortunate if it should prove to be the limit of our loss.

If indeed circumstances really justified us in incurring this enormous debt, the most ordinary prudence in finance would oblige us to make provision for the increased burthen by specific taxation. Mr Domett's views on this subject are no doubt the rule which governs the Colonial Treasurer who held office under him. "How to procure the money?" Says Mr Domett: "It is not necessary, and certainly it is not desirable, to raise any of this by additional taxation. To borrow on an estate so rich in undeveloped resources, and so easily and rapidly improvable as is a young colony like New Zealand, and to borrow for the purpose of developing these resources and improving such an estate, is not only prudent, but is the simple duty of those who have the management of it."

I do not presume to guess at the reception which these views will meet with in England. In this Colony I need not say, that a policy which promises to open so easily the door to the acquisition of native lands, at a cost partly supplied by imperial funds, and partly by a bill drawn on posterity, is extremely popular.

My object in this letter has been to give a fair and dispassionate outline of the circumstances of the war, without offering an opinion on questions, as to which the lack of information prevents us at present from judging. Till the papers moved for in

the late Session of the Assembly are printed, it will be impossible to form an accurate judgment as to the general policy of the course pursued by the Government.

Page 54

Nearly a month has elapsed since our success at Rangariri, and since the natives have made distinct overtures of submission; and as yet nobody can divine the intentions of Government. The war is prolonged, at least if that can be called war, in which there is no apparent enemy; for the natives have disappeared from all the country in the neighbourhood of Auckland. We continue to scour the bush, but without meeting any armed parties of natives; nor have any outrages been committed giving signs of their presence. The last affair of note took place on the 13th of December.

I subjoin the particulars from the Southern, Cross newspaper of December 15th, 1863:—

"Intelligence reached town yesterday that Captain Jackson's company of Forest-Rifles had fallen in with and engaged a party of Maoris, within a few miles of Papakura. On enquiry we find that the affair took place a long distance back in the bush, in the direction of Paparata.

"The following are the particulars, as far as we can ascertain them:— Captain Jackson and Ensign Westrupp, with twenty-eight men of the Forest-Rifles, left on the 11th, for the purpose of scouring the bush. They did not fall in with any natives until Sunday morning, when the action took place. On Saturday evening tracks were discovered, and these were followed up with success. About day-light on Sunday morning smoke was seen in the bush, at a distance of from four to five miles, and an advance was cautiously made with the view of taking the natives by surprise. The advance was conducted in silence until the sound of a bell was heard, and then the voice of a man singing, as if engaged leading the devotions of the encampment. A consultation was held as to whether it would be better to divide the party and make two attacks; and it was finally determined that the party should keep together, and attack simultaneously. The Forest-Rifles therefore crept stealthily forward, Ensign Westrupp and a few men in advance. As the Maori encampment got nearer, the coloured men who were of the party took the lead, and then succeeded in getting pretty close to the natives, before they were discovered; and as the man on the watch did not give the alarm, it is supposed he thought these men were friends coming to them. The advance file had then got to within about thirty yards of the natives, and Ensign Westrupp (we believe) ordered them to fire. The order was obeyed, and the Maori sentry fell dead. A rush was then made on the encampment, the entire party coming up and delivering fire. The panic amongst the Maoris was intense. One man stood upright, without making an effort to escape or defend himself, and was shot down. Another was wounded in the shoulder by private John Smith, formerly of

the Wairoa Rifles, and the native fired at Smith in return, but missed. He then clubbed his double-barrelled gun and struck at Smith, who parried the blow with the barrel of his rifle, and closed with the native. Although the Maori was wounded, he would have proved match enough for Smith in this hand-to-hand struggle, but for Ensign Westrupp, who came to the relief of his man, and shot the native in the head. He fell, but again rose to his legs, when another man blew out his brains. That was the only instance of resistance shewn by the natives, except a few shots which did no harm. Four of the Maoris were left dead on the field, and several wounded men were carried away, principally by the women of the party. There was an order given not to fire at any of the women. There was a good number of women and children.

Page 55

It is subsequently stated that a good deal of plunder was found in their possession.

Stripped of immaterial circumstances, the case, as stated, appears to be, that some days after the natives had made signs of submission (the white flag was in fact flying throughout the Waikato), Captain Jackson and his corps tracked a body of natives through the bush, followed them up on Saturday night, and on Sunday morning, guided by the sound of a bell (some accounts state the sound of voices singing a psalm), surprised a congregation of natives, men, women, and children, in the act of, or preparing to join in Divine worship, fired upon them, and killed seven men. Great credit is given to him for his care in avoiding the women and children, but it is supposed that one woman was hurt.

In justice to Captain Jackson I should add, that the statement that the natives were engaged in Divine Worship has been since contradicted, but I know not on what authority. There has been no investigation of the facts, and one only knows the particulars as they were circumstantially narrated at the time.

The natives thus surprised had been, no doubt, engaged in hostilities against us. They had some fire-arms amongst them, and some articles which had been plundered from a settler's house, and one of them made resistance. It may or may not be the fact that they were engaged in Divine Worship. This is clear, that the act, as so represented, has been spoken of in terms of the highest commendation by the local press of this province, an unmistakeable sign of the temper of the public mind.

I presume that, however repugnant to one's notions as a civilian, this mode of warfare may be justified by the usage of civilized nations; but I am bound in that case to say, that placed side by side with native ambuscades directed against military escorts, the usages of civilized man do not appear to advantage as contrasted with those of his savage enemy.

They have asked for terms of peace—the only reply as yet

has been, a demand for unconditional surrender, with the actual giving up of their arms. We offer them no conditions in return, but we hold over them the terrors of the Suppression of Rebellion Bill, and keep the sword suspended; need we be surprised if, under these circumstances, they act as desperate men? I hear rumours of another stand being made by them, in which they are preparing for a final death-struggle.

There has been a terrible murder just committed by a native, upon a settler's wife and daughter at Kaipara, about twenty miles to the north of Auckland. The motives of the act are not clear. There are grounds for supposing it to have proceeded from revenge, and the barbarous custom of Utu. The Government appears to have acted with decision. The natives on their part behaved remarkably well in surrendering the delinquent, who is in gaol awaiting his trial. But this is an indication of what may be expected, if the natives are suffered to continue, as at present, ignorant of the intentions of Government; fear will goad them into a state of desperation. This will lead to acts of violence, which will in turn produce retaliation on the part of the settlers, and so the work of extermination will begin.

As regards the Ngatimaniapotos, and Taranakis, our difficulty remains, as at the first. These turbulent and lawless tribes will, it is to be feared, for years be a source of trouble and anxiety, for which, as I believe, the true remedy is to carry roads through their country, and to maintain an armed colonial police of sufficient strength. As to the great body of the natives, there are no circumstances in the present war which can warrant us in departing from the rules of justice and forbearance which we have hitherto observed towards them.

Believe me to remain, my dear Lord,

Your very sincere and faithful servant,
HENRY SEWELL.

CAMBRIDGE: PRINTED AT THE UNIVERSITY PRESS.

Conditions of Use

By their use of these ebooks, texts and images, users agree to follow these conditions of use:

- These ebooks, texts and images may not be used for any commercial purpose without permission from the University of Auckland Library.
- These ebooks, texts and images may not be re-published in print or electronic form without permission from the University of Auckland Library. However, educators are welcome to print out items and hand them to their students.
- Users are not permitted to download our ebooks, texts, and images in order to mount them on their own servers for public use or for use by a set of subscribers. Individuals and institutions can, of course, make a link to the copies at ENZB, subject to our conditions of use. It is not in our interest or that of our users to have uncontrolled subsets of our holdings available elsewhere on the Internet. We make corrections, add tags, add images, etc. on a continual basis, and we want the most current text to be the only one generally available to all Internet users.
- These texts can potentially be used as the basis for additional TEI tagging or for some other etext or ebook project, but we ask that you let us know before you start, so that we can coordinate work on that text and make sure that we are not working on it simultaneously. We would like a copy of the improved text for our collections.

[Request for permission form](#)