

endless complications of such customs were eventually resolved into the law of might The Native has no fixed law to regulate the rights of property. The European has a law to guide him on this subject—the Native has no well-defined law. Powerful tribes took possession of land by driving off or exterminating the original inhabitants; these in their turn drove off other less powerful tribes. The conqueror enjoyed the property while he had the power of keeping it" (18).

GOVERNOR'S DESPATCH.
4th Dec. 1860.

13. And in order to illustrate the difficulties in the way of laying down fixed rules, I beg leave to give Your Grace a few instances of conflicting opinions:—

There is reason to think that an independent right to alienate land without the consent of the Tribe is unknown in New Zealand (19).

In the Bay of Islands, where land purchases were first made, the Native of every degree of rank sold his land without reference to any other authority (20).

The rights of ownership, whether in one or many joint proprietors, were not alienable without the consent of the tribe (19A).

Often there will be only one main proprietor or *take* [source of title]; but if he be not a Chief of rank, the head man will take upon him to dispose of the spot. Often, and more frequently, there will be several *take*, and one of them will sell without consulting the others (21).

Over the uncultivated portions of territory held by a Tribe in common, every individual member has the right of fishing and shooting (22).

The lands of a Tribe do not form one unbroken district, over which all members of the Tribe may wander. On the contrary, they are divided into a number of districts appertaining to the several sub-tribes (23).

Ordinary freemen (*tutua*) cannot alienate that and, which is absolutely their own for all practical purposes, but is not to be disposed of in a manner contrary to the supposed interests of the tribe (24).

When any member of a Tribe cultivates a portion of the common waste, he acquires an individual right to what he has subdued by his labour; and in case of a sale, he is recognised as the sole proprietor (25).

A Tribe never ceases to maintain their title to the lands of their fathers (26).

The title or claim to land by Tribes existed no longer than it could be defended from other Tribes (27).

The right of each Tribe to land extends over the whole of the tribal territory, and entirely precludes the right of any other Tribe over it (28).

No Tribe has, in all instances, a well-defined boundary to its land as against adjoining Tribes; and the members of several other Tribes are likely to have claims within its limits (29).

Conquest, unless followed by possession, gives no title. So distinctly is this principle recognized, that I have no doubt that any attempt to support and maintain the validity of titles derived from conquest only, would be met by a most determined resistance, even if attempted by Her Majesty's Government (30).

Conquest alienates the land, but it has its quibbles. Conquest and occupation give a valid title; conquest without occupation is doubtful (31).

The New Zealanders do not forfeit their territorial rights by being carried into captivity or becoming captives. I have known slaves tenaciously maintaining their territorial rights while in a state of captivity (32).

The question turns upon whether slaves taken in war, and Natives driven away and prevented by fear of their conquerors from returning, forfeit their claims to land owned by them previous to such conquest. And I most unhesitatingly affirm that all the information I have been able to collect as to Native customs throughout the length and breadth of this land, has led me to believe and declare the forfeiture of such right by Aborigines so situated. In fact, I have always understood that this was a Native custom fully established and recognised, and I do not recollect ever to have heard it questioned till [now] (33).

14. The conflicting authorities here quoted furnish a satisfactory answer to an accusation constantly preferred against the Native Department, that in extinguishing Native Title they are guided by no fixed rules, but have, with apparent caprice, dealt with Chiefs in one place and with proprietors in another. No one of my predecessors has ventured to lay down any precise theory on the subject of Native Tenure, nor could I pretend to do so; on the contrary, I have endeavoured to follow in the path traced out by them, and have studied to preserve as much consistency and uniformity of action as circumstances will permit in all dealings with Native Proprietors. I now propose to prove to Your Grace that my dealings with the Ngatiawa Tribe have formed no exception to this rule,

(18) *McLean*,
App. A. 1.

(19) *Bishop of N. Z.*,
App. A. 2.

(19A) *Ibid.*
(20) *Hamlin*,
App. A. 6.

(21) *Mauensell*,
App. A. 4.

(22) *Swainson*,
App. A. 10.

(23) *Sir W. Martin*,
App. A. 3.

(24) *Hadfield*,
App. A. 9.

(25) *Swainson*,
App. A. 10.

(26) *Clarke*, App. A. 8
(27) *Board*, App. A. 5

(28) *Hadfield*,
App. A. 9.

(29) *Board*, App. A. 5

(30) *Clarke*, App. A. 8
(31) *Hamlin*, App. A. 6

(32) *Clarke*, App. A. 8

(33) *Spain*, App. A. 7.