5. It is established by a singular concurrence of the best evidence that the rules above stated (7) were generally accepted and acted upon by the Natives, in respect of all the lands which a Tribe inherited from its forefathers. Of course many cases must have existed in which might overcame right. Still the true rule is known and understood: the Natives have no difficulty in distinguishing between the cases in which the land passed according to their custom, and those in which it was taken by mere force.

In the year 1856, a Board was appointed by the present Governor to enquire into, and report upon, the state of Native Affairs. The Board "considered it necessary to avail itself of the best information which could be obtained from persons acquainted with the Natives," and with that view examined many witnesses. Amongst other subjects of enquiry, they reported on "Claims of individual Natives to Land" in the following words:—

"Each Native has a right in common with the whole tribe over the disposal of the land of the tribe, and has an individual right to such portions as he, or his parents, may have regularly used for cultivations, for dwellings, for gathering edible berries, for snaring birds and rats, or as pig-runs.

"This individual claim does not amount to a right of disposal to Europeans as a general rule,—but instances have occurred in the *Ngatiwhatua* Tribe, in the vicinity of Auckland, where Natives have sold land to Europeans under the waiver of the Crown's right of Pre-emption, and since that time to the Government itself. In all of which cases, no after claims have been raised by other members of the tribe, but this being a matter of arrangement and mutual concession of the members of the tribe, called forth by the peculiar circumstances of the case, does not apply to other tribes not yet brought under its influence.

"*Generally there is no such thing as an individual claim, clear and independent of the tribal right.*

"The Chiefs exercise an influence in the disposal of the land, but have only an individual claim like the rest of the people to particular portions."

Among the questions put by the Board to the witnesses was the following:—

"Has a Native a strictly individual right to any particular portion of land, independent and clear of the Tribal right over it?"

This question was answered in the negative by twenty-seven witnesses, including Mr. Commissioner McLean, and by two only in the affirmative.

6. This state of things is the necessary consequence of the existence of Clans or Tribes. The Clansmen are equally free and equally descended from the great Ancestor, the first planter or the conqueror of the district. They all claim an interest and a voice in every matter which concerns the whole Tribe; and especially in a matter which touches them all so nearly.

As to the disposal of land, the Natives are fond of arguing thus: "A man's land is not like his cow or his pig. That he reared himself; but the land comes to all from one Ancestor."

7. Englishmen seem often to find a difficulty in apprehending such a condition of things. Yet it is in fact the natural and normal condition of a primitive Society. It may be worth while to turn aside for a moment to shew this.

"However familiar the appropriation of land may appear, the history of mankind affords sufficient proof of the slow development of individual possession, and the difficulty of arriving at the principles upon which such an exclusive claim is founded. The first and most obvious right accrues to the people, or nation, as is the case with the Aborigines of North America.—In ancient Germany, no one man was enabled to acquire any permanent property in any distinct portion or parcel of the soil."—Sir F. Palgrave. *English Commonwealth*, 1, 71.)

8. In Ireland, a few centuries ago, the tribal right was even more strongly recognised than it is now amongst the New Zealanders.

"On the decease of a proprietor, instead of an equal portion among his children, as in the *gavel kind* of English Law, the Chief of the Sept made, or was entitled to make, a fresh division of all the lands within the district, allotting to the heirs of the deceased a portion of the integral territory along with the other members of the tribe. The policy of this custom doubtless sprang from the habit of looking on the tribe as one family of occupants, not wholly divested of its original right by the necessary allotment of lands to particular individuals."—(Hallam. *Constitut. Hist.*, Chap. 18.)

9. Among our Anglo-Saxo Fathers, we notice the actual transition from the earlier, to the more advanced, state of things, from Clanship to Nationality.

Their land was either *folkland* or *bookland.*

"*Folcland*, as the word imports, was the land of the folk or people. It was the property of the community. It might be occupied in common, or possessed in severalty; and, in the latter case, it was probably parcelled out to individuals in the *folcgemot*, or court of the district, and the grant attested by the free men who were then present. But, while it continued to be *folcland*, it could not be alienated in perpetuity; and therefore on the expiration of the term for which it had been granted, it reverted to the Community, and was again distributed by the same authority.

"*Bocland* was held by book or charter. It was land that had been severed by an act of government from the *folcland*, and converted into an estate of perpetual inheritance.—It might be alienable and devisable, at the will of the proprietor. It might be limited in its descent, without any power of alienation in the possessor.—It was forfeited for various delinquencies to the state." Hallam. (*Middle Ages* Suppl. Note, 140.)

Folkland then corresponded to the Native Tenure; Bookland, to the Tenure under a Crown Grant.

10. The Treaty of Waitangi carefully reserved to the Natives all then existing rights of property. It recognised the existence of Tribes and Chiefs, and dealt with them as such. It