

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.—[*Chief Protector Clarke.*]

The Government has denied the Seigniorial and Tribal Right at the Waitara.—[*Bishop of New Zealand and Clergy.*]

It is established by a singular concurrence of the best evidence that the rules above stated [in his Pamphlet] were generally accepted and acted upon by the Natives in respect of all the lands which a tribe inherited from its forefathers.—[*Sir W. Martin.*]

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. [*Commissioner Spain.*]

I have not been able to discover that any such thing as Manorial Right distinct from ownership in a greater or less degree, has been lodged in the Chief of a District, in the Chief of a Tribe, in the Chief of a Hapu, or in any other person of the Aborigines. [*Rev. J. Hamlin.*]

I have no hesitation in saying that the rules which Sir W. Martin lays down as established by a singular concurrence of the best evidence, are not rules of Native origin.....I, in fulfilment of this duty, which rests upon me not only as a loyal citizen, but as an agent in creating this national obligation [the Treaty of Waitangi], am bound to say that Sir W. Martin ascribes to the Natives rights which they never possessed, and claims for them privileges to which they have not a shadow of title. [*Mr. Busby.*]

NOTE 3.

“It may be the whole tribe”..... (Page 1).

It is to be regretted that the words “community,” “society,” “tribe,” “sub-tribe,” “hapu,” “family,” “clan,” “people,” are so interchanged as they are throughout the pamphlet. It seldom clearly appears whether Sir W. Martin intends a particular argument to apply to the whole tribe, or to a subdivision of it. In any case affecting Native Tenure this would have to be determined; but in the case of Taranaki it is indispensable to be exact, because there the question entirely depends upon whether the right of property and the right of alienation are in the whole tribe (*iwi*) or in its numerous subdivisions (*hapu*).

This interchange of terms, indeed, shows the difficulty in treating with Natives for the purchase of land, and the reason why it is impossible to lay down any definite rule as to Native Tenure. It is not disputed that the Native title is tribal rather than individual; this is “the necessary consequence of the existence of clans or tribes.” But the question is always in every case, how far is the title “tribal”? Is it in the whole tribe, or in a subdivision or family? This is not to be determined by any arbitrary rule: it depends wholly on the state of the Natives themselves in particular localities.

In some localities the “community,” as regards the title to land, may be the whole tribe: in others, it may be a group of *hapus*; in others, it may be a single *hapu*; in others, it may be the subdivision of a *hapu*; more rarely, the title is admitted to lay in individual proprietors.

Detailed illustrations of the different manner in which land is held by different tribes would be out of place in this note; for the present purpose it is sufficient to refer to the Ngatiawa.

From a period long anterior to the establishment of British sovereignty, it was a well known rule that the various sections of the Ngatiawa claimed their land separately, and that they admitted no overriding general tribal right. When they migrated from their ancient inheritance, or were driven out by the Waikato conquests, they were dispersed into several new localities, and were well known in each locality to act independently of each other and independently of any general right of the whole tribe. This is quite certain.

At a later period (after the establishment of British sovereignty) when the captives taken in the Waikato invasions were manumitted, and numbers of those who had voluntarily migrated to other places began to return to Taranaki, the proprietary right, and the right of alienation, were undoubtedly acknowledged to exist in separate small sections of the tribe without any reference to general tribal right. This was a necessary consequence of their returning as they did in parties of two or three at a time. The *Tribe* never returned, and has not returned to this day. Those families which remained in the new places where they had settled, were never admitted to exercise authority over those who returned, in the disposal by the latter of their own land. For the last