E—No. 2

# FURTHER PAPERS

RELATIVE TO THE

# TARANAKI QUESTION.

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(*In continuation of Papers presented 24th August*, 1860.)

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF HIS EXCELLENCY.

NOTE.—The Numbers between parentheses () refer to the "Notes" which follow Sir William Martin's Pamphlet.

# THE TARANAKI QUESTION.

## No. 1.

COPY OF A PAMPHLET BY SIR WILLIAM MARTIN, D.C.L.

The Natives have a proverb "Women and land are the destroyers of men:" meaning that quarrels in which men are slain arise either from women or land.

The present is a land quarrel (1). The points of it cannot be fully understood without some knowledge of the main principles of the Native tenure of land.

These then must be briefly stated in the first place:—

### I.—*Native Tenure of Land* (2).

1. The land occupied by a Native Community is the property of the whole Community. Any member of the Community may cultivate any portion of the waste land of the Community. By so doing he acquires a right over that particular piece of land, and the right so acquired will pass to his children and to his descendants. If he have no descendants, the land may then be cultivated by others of the Community, as agreed upon amongst themselves.

Thus the whole Community has a right like what we should call a reversionary right over every part of the land of the Community.

The word "Community" is used here rather than the more common terms "tribe," "sub-tribe," or "family," for this reason,—Each of the original tribes (*iwi*) of the Maories has in course of time broken up into a great number of sub-tribes or families (*hapu*), which have from time to time planted themselves in separate villages on different parts of the common territory; each family retaining the name of its ancestor or founder. Such sub-tribes are exceedingly numerous. Sometimes it has happened that inter-marriages for many generations between such sub-tribes have so blended them together as to render it impossible to draw any distinction between them for any practical purpose.

Owing to this process of fusion and intermixture, there may be a difficulty sometimes in determining the exact limits of the Community. It may be the whole tribe (3), it may be less than the whole tribe, yet larger than any one sub-tribe or family.

However that may be, every Cultivator is a member of some Community or Society (4), and not free to deal with his land independently of that Community or Society.

2. The Chief naturally represents and defends the rights of his people. He has his own personal interest like the rest. He is also especially charged with the protection of their honour and interests; and would lose all his influence if he did not assert their rights manfully.

It is a common thing for the head man in a Community to have but little claim upon a spot belonging to the Community, and yet to claim great powers (5) in the disposal of it. In these matters the tribe generally support what he says. Still, as a general rule, he makes it his business to confer with the lesser Chiefs and the whole tribe, and does not venture to act without them.

In some very rare instances, a Chief has disposed of a piece of the land on his own authority without first consulting the people, and his act has been subsequently recognised. In cases of this kind, much depends on the respect in which the Chief is held by his people, and on a variety of circumstances affecting the internal politics of the Community.

To make a sale thoroughly regular and valid, both Chief and people should consent (6).

In some cases the Chiefship is divided: where, for example, a younger brother has by superior ability or bravery raised himself to the level of the elder or even above him. So that in each particular purchase, there is a necessity for carefully ascertaining what is the Community, and who the Chief or Chiefs, whose consent is needed to make the Sale thoroughly valid and unquestionable.

3. In old times land was sometimes ceded by one Tribe to another as a payment for assistance rendered in war. Also, land was occasionally transferred as payment for losses in war. Where a Chief of superior rank had been slain on one side, land was yielded up by the other, in order to end the war on fair terms.

This was the case at Kororareka in the year 1837, when the *Ngapuhi*, from Whangaroa, Matauri, and the Bay of Islands, made an attack on Kawiti and Pomare at Kororareka. Hongi, a superior Chief, fell; and though the assailants were repulsed, Kororareka, together with a large portion of land as far as Cape Brett was ceded to them.

Even in our times, lands have changed owners on account of a murder or life otherwise lost.

4. The holdings of individual cultivators are their own as against other individuals of the Community. No other individual, not even the Chief, can lawfully occupy or use any part of such holding without the permission of the owner. But they are not their own as against the Community. If it is said of a piece of land "the land belongs to Paora," these words are not understood by a Maori to mean that the person named is the absolute owner, exclusive of the general right of the Society of which he is a member.

So entirely does a Maori identify himself with his Tribe, that he speaks of their doings in past times as his own individually. We speak of *our* victories of Blenheim and Waterloo. A Maori, pointing to the spot where his Tribe gained some great victory, long ago, will say triumphantly "*Naku i patu*," "it was *I* that smote them."

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

assured to them "full, exclusive and undisturbed possession of their lands and other properties which they may collectively or individually possess, so long as it is their pleasure to retain the same." This Tribal right is clearly a right of property, and it is expressly recognised and protected by the Treaty of Waitangi. That Treaty neither enlarged nor restricted the then existing rights of property. It simply left them as they were. At that time, the alleged right of an individual member of a Tribe to alienate a portion of the land of the Tribe was wholly unknown (8).

The rights which the Natives recognised as belonging thenceforward to the Crown were such rights as were necessary for the Government of the Country, and for the establishment of the new system. We called them "Sovereignty"; the Natives called them "*kawanatanga*" "Governorship."

This unknown thing, the "Governorship," was in some degree defined by a reference to its object. The object was expressed to be "to avert the evil consequences which must result from the absence of Law." To the new and unknown Office they conceded such powers, to them unknown, as might be necessary for its due exercise. To themselves they retain what they understood full well, the "*tino Rangatiratanga*," "full Chiefship," in respect of all their lands (9).

These rights of the Tribes collectively, and of the Chiefs have been since that time solemnly and repeatedly recognised by successive Governors (10), not merely by words but by acts. For, through the Tribes and through the exercise of the Chiefs' power and influence over the Tribes, all the cessions of land hitherto made by the Natives to the Crown have been procured (11).

## II.—*The Waitara Purchase.*

1. The Valley of the Waitara River lies about 10 miles to the Northward of the Town of New Plymouth, in the Province of Taranaki, and about 4 miles beyond the Northern boundary of the land settled by the English.

Previously to the year 1827, the Waitara valley and considerable tracts, both North and South of the valley, were occupied by the *Ngatiawa* Tribe. They held it by unbroken descent from remote ancestors.

About the year 1827, part of the Tribe migrated to the Northern side of Cook's Strait, (Waikanae, and the neighbourhood,) being desirous of trading with the European vessels which were beginning to visit those parts.(12.) William King's father was the leader of the party.

2. About 1830, the Waitara and a large tract of country to the Southward of it was over-run by an invasion from Waikato. A large pa of the *Ngatiawa*, Pukerangiora, 4 or 5 miles up the Waitara valley on the Southern side of the river, was stormed with great slaughter. Of those who escaped, the greater part fled to Cook's Strait to join their brethern. A few, about fifty or sixty, found a refuge in the Sugar Loaf Rocks, near the site of the present town of New Plymouth. It is said that the Waikato invaders intended to occupy the land which they had over-run—that a partition amongst the conquering Chiefs was actually made immediately after the conquest, and the boundaries marked. But it is quite certain that such intention was never carried out. The Waikato invaders did not occupy or cultivate the Waitara valley(13). The refugees in other places, wheresoever they were scattered, never abandoned their claim or their intention of resuming possession of the land of their fathers. One instance of this feeling is recorded by Colonel Wakefield.

"The Natives here (Queen Charlotte's Sound) some of the ancient possessors of Taranaki, are very desirous that I should become the purchaser of that district, *in order that they may return to their native place without fear of the Waikato tribes* (14). (*Journal, 2nd Nov.* 1839.)

Another instance occurred about the year 1842, when Te Pakaru, one of the Waikato invaders, proceeded to the Waitara for the purpose of taking possession, and commenced felling timber. William King sent a deputation from Waikanae to warn him off; upon which, Te Pakaru withdrew and returned to Waikato (15).

3. In 1841, the settlement called New Plymouth, was planted. The circumstances are thus stated by Mr. F. A. Carrington, formerly Chief Surveyor of that Settlement,) in a letter to the Earl of Shaftesbury, dated New Plymouth, 12th July, 1858. (*Taranaki Land Question, p.* 9.)

"I arrived in New Zealand in December of that year [1840], and after conferring with Colonel Wakefield, the Agent of the New Zealand Company, and having explored several hundred miles of the coast of the Northern and Middle Islands, I finally selected the Taranaki district, now known as New Plymouth for the Company's settlement. Prior to this, however, Agents of the New Zealand Company landed on the coast and treated with the resident aboriginal inhabitants—*the only people then occupying the country*—agreed with them as to price, and paid them in part for the land."

"Quickly it became known to the Waikatos that white people were settling in this part of New Zealand; then some two hundred of them made a descent on the country, put forth their claim to the land, *and, in the name of their Chief, threatened to occupy it.* This threat was averted by Governor Hobson purchasing from them their rights and claims to this territory.

In 1841, Potatau (then commonly called Tewherowhero,) received, in satisfaction of the claim of his Tribe, money and goods to the amount of about £500.

4. The fear of a second invasion being now removed, the refugees began to re-occupy the land. Many disputes arose between them and the settlers who claimed under the New Zealand Company.

In 1844, the Land Claims Commissioner, Mr. Spain investigated the New Zealand Company's title, and reported in favour of it, recommending that a Crown Grant should be issued to the Company to the extent of their claims. Mr. Spain had assumed that the enslaved or fugitive members of the *Ngatiawa* Tribe had, by their captivity or absence, lost all claim to the land. This doctrine was denied by the Governor's Chief Adviser in Native Affairs, Mr. Clarke, then Chief Protector of Aborigines. The Governor acted on the opinion of Mr. Clarke. Accordingly on the 3rd of August,

1844, a large Meeting of English and Natives was assembled at New Plymouth, to hear the final decision of the Governor. The Governor informed the Assembly that "he did not take the same view of the question as Mr. Commissioner Spain, and that he should not confirm the Award." "*He would allow in all their integrity the claims of those of the Ngatiawa tribe who were not parties to the sale in* 1840." (Papers E. No. 2. p. 13.)

In consideration of a further payment, the Natives interested in the piece of land on which the town had been planted, gave up all claim to that site, and the adjacent land, 3500 acres in all. The Governor publicly and officially recognised the right of the ancient owners to resume the rest of the district, including the Waitara (16).

William King and his people still remained in Cook's Strait. In the year 1846, when Te Rangihaeata was in arms against the Government, William King took up arms in our favour, and was the leader of our Native allies. In 1848, William King and his people returned to the Waitara (17).

5. The Town of New Plymouth has no harbour. From the first Mr. Carrington saw clearly the value of the Waitara. On the 15th Oct. 1841, he wrote as follows to Captain Liardet, then Agent of the Plymouth Company:—

"The boundary line which the Governor has been pleased to order for this Settlement (18) excludes the most valuable, and indeed the very piece of country which was the cause of my giving preference to this part of the New Zealand Company's land. I told Colonel Wakefield at the time I chose this place, that I intended fixing the town at the River Waitara; but, from unforseen causes, I was obliged to place it where it is, about two miles east of the Sugar Loves, and ten miles west of the Waitara. If we are deprived of this river, we lose the only harbour we have for small craft, and also the most valuable district for agriculture; in lieu of which we shall have a dense forest which will require much capital, time, and labour to clear. Forest timber comes within a quarter of a mile of the town boundary, runs parallel with the shore for a few miles, then gradually bears away inland, and opens out the district of country round the Waitara, where I intended to lay out the majority of the sections. In fact I am now cutting a base line from this place to that river, for the express purpose of so doing.

"I close this letter entreating that you will submit for His Excellency's consideration the subject herein contained. If we are deprived of the Waitara district, and are obliged to cultivate the most impenetrable forest, I, in this case, see no hope for this Settlement. If, on the other hand, we are permitted to retain the Waitara land, we shall flourish." (*Land Question*, 6.)

Efforts have been constantly made to induce the *Ngatiawa* to sell the Waitara, or some part of it, to the Government. They have all along steadily refused to sell.

In 1844 (17th Dec.) Mr. McLean wrote thus to Chief Protector Clarke:—"The Natives of the Taniwha and Waitara, who occupy the Northern portion of the land claimed by the New Zealand Company, *have not shown at any time an inclination to dispose of the land in their neighbourhood;* nor do they consider themselves empowered to negotiate for the same, *without the consent of several absentee Chiefs, residing at Kapiti, who own the greater portion of the land.* They do not acknowledge the claims of the Company to any part of that district; they never received payment, and were not cognizant of a sale thereof, *and will not be induced to suffer European settlers to establish themselves there.*" (*Parl. Pap.*, 8th April, 1846.)

6. At a Meeting held at Taranaki, on the 8th of March, 1859, the Governor being present, the Native Secretary, on behalf of the Governor, stated: "The Governor thought the Maories would be wise to sell the land they cannot use themselves, as it would make what they could use more valuable than the whole; but that he never would consent to buy land without an undisputed title. He would not permit any one to interfere in the sale of land, unless he owned part of it; and, on the other hand, he would buy no man's land without his consent."

At this Meeting, Te Teira offered to the Governor a block of land, about 600 acres, on the Southern bank of the mouth of Waitara. On the block stood two pas, in which William King and his people were then residing, and had been so for years past (19). William King being then present, said: "Listen, Governor. Notwithstanding Teira's offer, I will not permit the sale of Waitara to the Pakeha. Waitara is in my hands; I will not give it up. I will not. I will not. I will not."

The Governor accepted Teira's offer, subject to his shewing a satisfactory title.

It does not appear that William King stated anything further at that time, as to the nature of the right which he claimed. Nor indeed was that the time or place for so doing (20). The question of the title to the land was not to be discussed then and there in the presence of the Governor. It was expressly reserved for inquiry.

### III.—*The Points in Dispute.*

So imperfect are the documents laid by the Governor before the Houses of Assembly, and so limited the evidence received by the House of Representatives, that even now it is not easy to gather what were the precise points contended for by the agents of the Government, on the one side, or by William King and his people, on the other (21).

1. Two documents were put forth by the Government about the time of the Governor's sailing for Taranaki, at the end of February last, which purport to set forth the Government view of the case. They are both reprinted in *Papers* E. No. 3, p. 19.

There is a remarkable difference between the two. The former relies on the Cession by Potatau. It treats the Government claim as made up of two elements—the Cession by Waikato, and the title made over to the Governor by Teira and the other sellers. The latter document relies on the title of Teira only, and says nothing of the Cession (22).

In some points both agree. Both the documents assume it to be clear that all the individual owners had concurred in the sale.

2. In the first place then, what was the nature and effect of the Cession by Potatau? The Waikato invasion had swept like a flood across the country of the *Ngatiawa* and of the *Taranaki* tribes to the South. The latter tribes, however, had suffered less than the former, and had not been actually scattered and driven off. Their occupation of the land was never interrupted. Yet the Cession purported to cover the whole of the territory so overrun, extending from Tongaporutu, 10 miles South of Mokau, to the Waitotara River, near Whanganui, that is to say, about one hundred and fifty miles of coast. Now, according to Maori usage, it was necessary that the conquering tribe should hold possession of the conquered territory, in order to establish a valid claim or title to it. As soon as they ceased to occupy, the original owners re-occupied. Even if the invaders occupied the land, the conquered tribe were held to be justified in doing their utmost to recover possession, if possible, of their fathers' land. Nothing but their utter inability to do that, made the title of the conquerors complete.

Thus, for example, the *Ngapuhi*, under Hongi, overran the South of this Island. Whole tribes were driven off their land, and did not venture to return for years. The invaders, however, did not take possession of the land of those tribes, and consequently they have never put forward any claim in respect of it. The only two Waikato Chiefs who signed the deed of Cession to Captain Hobson, namely, Potatau, and his brother Kati, had been themselves driven out of their own territory by *Ngapuhi*.

Governor Hobson's own view of the matter is to be gathered from his Despatch, Dec. 15, 1841.

"The Waikato tribe, under the Chief Tewherowhero, are extremely powerful. They conquered and drove away the Ngatiawas from Taranaki, in 1834, leaving only a small remnant, who found refuge in the mountains of Cape Egmont; and having pretty well laid waste the country, and carried off a large number of slaves, they retired to their own district, on the banks of the river Waikato. It appears that in 1839, Colonel Wakefield visited the country, and bought a considerable portion of it from the few Ngatiawas who had resumed their habitations on the retreat of Tewherowhero.

"Now, Tewherowhero claims the country as his by right of conquest, and insists on it that the remnant of the Ngati-awas are slaves; that they only live at Taranaki by sufferance, and that they had no right whatsoever to sell the land without his consent. In illustration of his argument, he placed a heavy ruler on some light papers, saying, 'Now, so long as I choose to keep this weight here, the papers remain quiet, but if I remove it, the wind immediately blows them away: so it is with the people of Taranaki;' alluding to his power to drive them off.

"Tewherowhero certainly has a claim on the land, but not a primary one; as the received rule is, that those who occupy the land must first be satisfied. But he is the most powerful Chief in New Zealand, and I fear will not be governed by abstract rights, but will rather take the law in his own hands.

"I had hopes, until a few days ago, that he would consent to take a moderate compensation for his claim."

That which Potatau really possessed was the power to overrun their land a second time (23). It was might, not right:—the might of a successful invader, and nothing more. According to Native usage, the Waikato tribe had an interest in certain spots where their Chiefs had been slain, and which had thereby become *tapu*. Beyond that, they had no further right in the soil.

We could not expect William King to admit any right in Potatau. He was not bound by a transaction between Governor Hobson and that Chief. He could not possibly doubt the title of his tribe to land which the invader had never occupied (24). We ourselves recognised their ownership, when Governor Fitzroy, in 1844, allowed "*in all their integrity*" the claims of those of the *Ngatiawa* who were not parties to the sale in 1840. We have again and again recognised it, by our subsequent purchases of blocks of land within the region which Potatau relinquished. It was recognised by the Government itself in this very transaction (25), in the purchase of Teira's land. For if Potatau's claim were good for anything, it was equally good against Teira as against William King.

3. However the claim of Potatau may be defined, it is plain that it could not be equivalent to the rights of the *Chief*, or of the *Tribe*, as distinguished from those of the individual holder. Nor could the relinquishment of his claim put the Governor in the same position as if the Chief and Tribe of *Ngatiawa* had assented to Teira's sale to the Governor. The right, or might, of the conqueror or successful invader was wholly outside of the tribe (26). If it prevailed at all, it prevailed absolutely, displacing the Tribe altogether, and sweeping away all rights of the Tribe, of the Chief, and of the Clansmen alike. If it was withdrawn, and the Tribe returned, they returned of course to all the rights they possessed before the invasion, and in the same measure and manner as before; the individuals to their rights, the Tribe to their right, the Chief to his. They enjoyed their own again as of old. Their old rights and their old relations to one another, were necessarily resumed. They knew of none other.

Why, then, was this claim, so long ago abandoned, set up again by the Government (27)? It must be presumed to have been done for a purpose of policy to disarm any opposition which might be apprehended from the Chiefs of Waikato, for they would naturally be indisposed to disparage their own Cession. Its real value has been candidly stated by Mr. Richmond. "This deed was relied upon as, *at all events, precluding the interference of Waikato in the Taranaki Question.*" [*Papers* E. No. 3. p. 35.] In that way it has not been without its use.

4. The point, then, on which the Government really relied, was that which alone is mentioned in the second document, namely, the position that the individual native cultivators and occupiers of the block of land could make a title without the consent of the Tribe or Chief (28). From the stress laid upon the admission stated to have been made by William King that the land belonged to Teira, it

is plain that it was assumed by the Government that if Teira's right existed at all, it was of necessity an absolute right, excluding all control over his acts by the rest of the Tribe or the Chief.

That it was the purpose of the Government to disregard all claims but those of the individual holders, is clearly shown in two official letters written on the 2nd April, 1859. Teira had written to the Governor on the 15th March, saying:—

"Friend. It is true I have given up Waitara to you; you were pleased with my words, I was pleased with your words. It is a piece of land belonging to Retimana and myself; if you are disposed to buy it, never mind if it is only sufficient for three or four tents to stand upon, let your authority settle on it, lest you should forget your child Teira."

The Assistant Native Secretary wrote in answer: "The Governor consents to your word, that is, as regards your own individual piece, but be careful that your boundary does not encroach upon the land of any person who objects to sell; that is, let it not be included within the boundaries of that land which you publicly offered to the Governor in the presence of the Meeting held on the 8th day of March; but consent will be given to the purchase of land that belongs to yourself." The same Officer wrote on the same day to Wm. King: "Word has come from Te Teira, offering for sale his piece of land at Waitara. The Governor has consented to his word, that is, *as regards his own individual piece*, not that which belongs to any other persons. *The Governor's rule is, for each man to have the word (or say) as regards his own land;* that of a man who has no claim will not be listened to." (*Papers* E. No. 3. pp. 4 & 5.)

The seller was cautioned not to include in his offer any land belonging to any other member of the Tribe. It was at the same time intimated to the Chief, that no claim, but that of the individual holders, would be allowed; that no right would be recognised in the Tribe or in the Chief.

The original principle stated in the Governor's speech at Waitara, now acquired a distinct meaning. In themselves, those words of the Governor were very general and vague. They appeared to enunciate little more than this,—that a man, who had no lawful right to interfere, should not be allowed to interfere. Persons, who read these words at a distance supposed them to refer to an apprehended interference of the King party from Waikato. On the spot they were better understood. The contemporaneous and subsequent proceedings of the Government furnished the interpretation. They were seen to be aimed, not against the interference of strange tribes and strange Chiefs, but against the rights of the tribe itself, and against the interference of the Chief in the affairs of his own tribe (29). That which was darkly intimated by the Governor (30), was broadly and plainly put forth by Mr. McLean, in the following notice, given to some of the Waitara Chiefs about the same time. (E. No. 4. p. 17.)

"Nga Motu, March 18th, 1859.

"Friends—Chiefs of Waitara,—

"Salutations. This is a word of mine to you. That you should make clear your portions of land lying within the block which has been ceded by Te Teira to the Governor.

"*You know that every man has a right (of doing as he pleases) with his portion, and no man may interjere to prevent his exercise of this right as respects his portions, for the thought respecting his own is with himself.* This is a word of mine to you, lest you should, without ground, interfere with Te Teira and Te Retimana's portion, as they have consented to sell their portions in the presence of the people, and in open daylight; and the arrangements with him respecting his (land) will shortly be completed. We do not press for what belongs to others, because *the thought respecting his own piece is with each.*

"Now do not you be displeased with him without a cause, for his arrangement will tend to make matters clear."

To Wiremu Kingi Whiti, Wiremu Nga Waka, Patukakariki,
and to all the men of Waitara.

5. Was the principle thus enunciated by the Government, intended to apply to all the Native Tribes throughout the Island, or to the *Ngatiawa* Tribe only (31)? The earliest statement, by the Governor himself, of what was supposed to be the rule as to the alienation of Maori land, is to be found in the Despatch of 29th March, 1859: "The right to sell land belonging to themselves, without interference on the part of the Chiefs (not having a claim to share in it) is fully admitted *by Maori custom.*" In the Governor's view then, the supposed rule did not rest on any special circumstances connected with Taranaki or the *Ngatiawa* Tribe, but *on Maori custom in general.* And as a general principle it was understood by the colonists at the time. No one can have forgotten how the "new policy" was vaunted in the newspapers. It was a great step in advance, that abrogation of the tribal right. It was noble and chivalrous—a deliverance of the oppressed—the suppression of a sort of feudal tyranny. Moreover it was profitable (32). Large tracts of land were to be obtained by means of it. That the same view of the meaning of the "new policy," was taken at New Plymouth, appears from the following passage in a Memorial presented to the Governor by the Provincial Government and Settlers of Taranaki. 25th April, 1860. (E. No. 3. p. 43.)

"The opposition of Wiremu Kingi to the sale of Teira's land has been uniformly based by him, not on any unsatisfied claim on the said land of his own, or of any other member of the tribe, but *on his pretensions, as Chief, to control the sale of all lands belonging to his tribe.* The exercise of such an authority, with the consequences necessarily flowing from it, is incompatible with Her Majesty's Sovereignty in this colony, and most fatal to the interests of both races.

"The present war has been undertaken by your Excellency, in consequence of your determination to uphold Her Majesty's Supremacy, in opposition to *the aforesaid rights claimed by the Chiefs of tribes;* and the conclusion of any peace with Wiremu Kingi, *or any other native Chief,* by which

the aforesaid pretensions are not finally annulled, would therefore, in the opinion of your Memorialists be tantamount to a declaration that Her Majesty's supremacy cannot be maintained in these Islands." '

Thus the Government policy was understood by the Provincial Government and the Settlers of Taranaki, at the time and on the spot, witnessing all that was said and done, and deeply interested therein.

The Memorial is referred to only to show the persuasion of those who signed it. It is unnecessary to discuss the arguments used by the Memorialists. Yet, if it was land "belonging to the tribe," how was the tribe to act in respect of its land, but through some mouth-piece or representative? and who could that be, except the Chief (33)? As to the alleged incompatibility of the Claim with the Queen's Sovereignty the Queen's Governors for 20 years had not discovered it; but, on the contrary, had recognised that claim in all their dealings(34). In fact, the right is a simple right of property which concerns the enjoyment and alienation of land, and that only, and has nothing whatever to do with Government or Administration. It is just as much, and just as little, incompatible with the Queen's Sovereignty as is the ownership of land in England by Corporations, Companies, or Partnerships.

Nor did the Government at that time disavow the intention of applying their principle to other parts of the country (35), though a fair opportunity for disavowing it was offered. The Provincial Council of Hawke's Bay passed a Resolution, 20th March, 1860, "thanking His Excellency for his equitable and open declaration of policy," and, expressing "the hope that such policy will be for the future *everywhere alike steadily and zealously adhered to.*" The Governor, in answer, after thanking the Council for their expressions of confidence, simply said, "It may be satisfactory to the Council to know that the policy in question has been approved by Her Majesty's Government." (E. No. 3. p. 39.)

The Natives, also, have understood the Government policy as one of universal application (36), and much irritation has been the consequence. A short time ago, one of the leading men of Waikato was asked, why certain Chiefs, who had been invited by the Governor, did not come to the Meeting at Kohimarama. He answered, "one reason was that the Governor had caused the word of the individual to prevail against that of the Tribe." (*Ta Kawana whakamananga i te kupu a te tangata kotahi.*) Other Tribes apprehend, that they, in their turn, will have to go through the same struggle as the *Ngatiawa* are now passing through. They regard the Governor's words as involving a declaration of war (sooner or later) against all the Chiefs and all the Tribes who may not be willing to submit to this sudden and sweeping revolution in their social state. The disquieting effect of such a belief as this on the minds of the natives is exceedingly great.

In a recent letter, dated 5th September, 1860; Mr. Stafford, Colonial Secretary, conveys to the Bishop of New Zealand, "*the assurance that the Government does recognize (to the fullest extent) all lawful rights of the Chief and Tribe which have been recognized by former Governments or have ever been understood to exist.*" Whether any similar assurance has been conveyed to the leading Native Chiefs, does not appear.

To those who concur in Mr. Richmond's opinion concerning the Waikato Cession, it is still extremely difficult to discern on what ground the tribal right of *Ngatiawa* is denied, whilst the like right in other Tribes is admitted. And it must be deplored, that the enunciation of the Government principle was not so clear and definite in the beginning as to preclude the possibility of misunderstanding.

6. We now proceed to gather (as well as we can) the Native view of the case.

The official document records only two statements as having been made by William King, one in the presence of the Governor, on the 8th of March, 1859, and the other on the day when the first instalment was paid. The former has been cited above, in page 4. In the latter, William King admitted that Teira and his party were owners of some land in the block, but claimed the right of preventing their alienation of it. The words used, as reported by Mr. Parris were, "The land is theirs, but I will not let them sell it." (E. No. 3. p. 21.) The former was made before the inquiry began: the latter after the inquiry was closed. What came out during that inquiry is even now very imperfectly known to the public.

Some light is thrown on William King's view of the case by the following letters;—

WIREMU KINGI TO THE GOVERNOR.

(*Pap.* E. No. 3. p. 6.)

Waitara, 25th April, 1859.

Friend,

Salutations to you. Your letter has reached me about Te Teira's and Te Retimana's thoughts. *I will not agree to our bedroom being sold,* (I mean Waitara here), *for this bed belongs to the whole of us;* and do not you be in haste to give the money. Do you hearken to my word. If you give the money secretly, you will get no land for it. You may insist, but I will never agree to it. Do not suppose that this is nonsense on my part; no, it is true, for it is an old word; and now I have no new proposal to make, either as regards selling or anything else. All I have to say to you, O Governor, is that none of this land will be given to you, never, never, not till I die.

I have heard it said that I am to be imprisoned because of this land. I am very sad because of this word. Why is it? You should remember that the Maories and Pakehas are living quietly upon their pieces of land, and therefore do not you disturb them. Do not say also that there is no one so bad as myself.

This is another word to you, O Governor. The land will never, never be given to you, not till death. Do not be anxious for men's thoughts. This is all I have to say to you.

From your loving friend,

WIREMU KINGI WHITI.

Any doubt as to the meaning of this letter will be removed by comparing it with the language of the official letter, 2nd of April, (cited above, page 6,) to which it was an answer. That

letter recognised the rights of the individual tribesmen, and refused to recognise any other rights. The answer asserted the tribal right (37).

WIREMU KINGI TO ARCHDEACON HADFIELD. (*a*)

Waitara, July 2, 1859.

Mr. Hadfield,

Greeting to you, the eye of my fathers who are dead. Great is my love to you from the midst of the sayings of the Pakeha, for the wrong sayings of the Pakeha are continually uttered to me, therefore my thoughts of love go forth to you, that you may speak a word to the Governor and McLean concerning the course of proceeding about Waitara here, because they two are continually urging forward the purpose of the man who is disposing of Waitara. Do you listen, my purpose is no new purpose as you know: it is this, concerning Waitara. I am not willing that this land should be disposed of. You must bear in mind the word of Rere, (William King's father) which he spoke to you and Mr. Williams when you two came to Waikanae. You know that word about Waitara; I will not dispose of it to the Governor and McLean. Moreover you heard my word to you when you came to see us. I said to you "The trouble after you go will be the land." You answered "The matter rests with Parris." He has now lifted up his heel against me. This is his word to me: "It was through me that you escaped." The word of him and Halse has now been uttered to me that I should be apprehended for my holding back the land, because it is a very bad thing in their opinion to hold back the land. On this account the word of all the Pakehas has been uttered that I am the very worst man. I do not indeed know my fault. If I had taken land from the Pakeha, it would be right to call me bad: or again, if I had beaten a Pakeha, it would be right to blame me. But now it is they who are bringing trouble upon me, therefore I think that you should concern yourself with the Governor and McLean and Parris. Speak a word to that Pakeha Parris. His importunity with McLean is great, for I have heard that the price for Waitara here has been agreed upon by him. Another thing he says is that they, the Pakehas, *will not listen to my words. What they say now is, that although it be only one man who gives up the land, the Pakehas will be perfectly willing.* Do you listen. *Now this will be wrong, very wrong, very wrong.* What I say is that the boundary for the Pakeha is settled, (namely) Waitaha. That is all, let them remain there. Let your word to the Governor and McLean be strong, that they may cease their importunity for Waitara here, that we and the Pakeha may live in peace. Do you write to me that I may hear. That is all I have to say.

From WIREMU KINGI WHITI.

WIREMU KINGI TO ARCHDEACON HADFIELD.

Waitara, December 5, 1859.

Friend Hadfield,

Greeting to you, the eye of my fathers and my younger brothers who are dead. Here am I living in the great mercy of our Lord Jesus Christ.

My father, do you hearken. I ask you this question, that you should explain to me the new plans of the Governor which I heard from Parris when I went to the town to stop the Governor's money intended as payment for Waitara, namely, one hundred pounds (£100). I said to that Pakeha, "Friend, keep back your money." That Pakeha answered, "No." I said, "There is no land for your money to light on." Parris then said to me "It is a bad business. If the Governor comes, it will be a very bad business." I said "Very well, you may bring the evil, I shall content myself with the land." I also said to Parris, "*In the case of land about which there is a difficulty, the Governor will not consent.*" That Pakeha said, "*Formerly it was so, but now this is a new plan of the Governor's.*" According to my suspicion, the Governor is seeking ground for a quarrel, because death has been clearly set before me Therefore the question is put to you, that it may be made plain by you. You have perhaps heard of the present new arrangements of the Governor, with a view to groundless anger and continual pressing for land about which there is a difficulty, and unwarrantably paying for land about which there is a difficulty, and which has not been surveyed. Do you listen to me. I will not give up the land. The Governor may strike me without cause and I shall die; in that case there will be no help for it, because it is an old saying "The man first, and then the land;" therefore my word has been spoken. Listen carefully to my fault, and the fault of all the Pakehas, of Parris, of Whiteley, and of the Governor. *They say that Teira's piece of land belongs to him alone. No, that piece of land belongs to us all; it belongs to the orphan, it belongs to the widow.* If the Governor should come to where you are, do you say a word to him. If he will not listen, it is well: because I have clearly heard their manner of talk about death. Parris and Whiteley declared it to me. That is all.

From me, your loving friend,

WIREMU KINGI WHITI.

In these letters of William King (38), both in the statement which he did actually and directly make to the Governor, and in the statement which he sought to convey through Archdeacon Hadfield, there is a clear and unambiguous claim *on behalf of his whole tribe.* He maintains that the land cannot be alienated without the consent of the whole tribe. As the whole tribe has not consented, he, as their Chief, expresses their dissent.

It cannot be inferred from this that William King did not assert also some individual claim to land within the block (39); but, as a Chief, he put prominently forward the right of his tribe. According to Native law, their dissent was a sufficient answer, and precluded all minor questions.

7. We have seen that in the official statement it is assumed that all the members of the tribe who had an interest in the land had concurred in the sale of it to the Government (40). This is not admitted on the part of the Natives. The existence of such dissentients is indicated by Teira's own letter to the Governor, of the 20th March, 1859, (*Papers* E. No. 3. p. 4.) in which he says, "Your word advising them to mark off their own pieces of land within our line (boundary of the block offered by Teira) they have received, but they do not consent. I consent, because it is correct." The following documents shew distinctly that there are divers persons who aver that they are interested in the land, and that they never agreed to the sale.

RITATONA TE IWA, a Native Teacher of Waitara, to the Rev. RIWAI TE AHU, Deacon of the Church of England, at Waikanae.

Waitara, December 5th, 1859.

RIWAI,—Greeting to you, friend, and your fathers and your children. Greeting to you and our father, Hadfield, the father of the mercies of God, who dragged out this people from the evils which you now hear of. Well, the nose

(*a*.) When this and the following documents in the Native language came into my hands, Archdeacon Maunsell and Rev. L. Williams were in Auckland, engaged in revising the Maori version of the Old Testament. At my request, they kindly undertook the task of translation. The great knowledge and painstaking accuracy of those gentlemen, afforded the highest possible security for the correctness of the rendering. The original text will be found in the Appendix.

has scarcely come out into the daylight, when it is plunged again by evil into death. Now this is the matter about which we, your fathers and the people, are troubled. Listen, Waitara has been bought from Teira by the Governor, that is by Parris, for £100. The land was not surveyed, the payment was given without anything being done. We objected and objected, but that Pakeha did not listen. We said, "That is wrong." He said, "How can I help it? The word is the Governor's." We said, "*The former word of the Governor said, that he would have nothing to do with disputed land.*" That Pakeha replied, "*but that was his word formerly; now, there is no rule.* It is well, if you bring evil." We answered, "*All we intend is, that the land shall not be given to you and the Governor.*" He said, "That is death." That is the end of these words. Now, friend, listen. This is wrong, therefore I seek a course of action from you and our Pakeha Hadfield, a word to me that it may be light. This is my word for you to tell him. Will it not be well that the Governor's money should be repaid? We will carefully repay it to the Governor. If Hadfield should consent when you tell him, make haste and write that my thoughts may be at rest. The reason why I write thus to you two is, that I feel a concern for the Pakehas who are living in peace, and for the Maories also who are living in peace, lest they be dragged by his evil deeds and get into trouble; because I am certain they will get into trouble. It is for this cause I write to you that you may tell Hadfield, and that he may tell the Governor when he comes your way. If you two can arrange it, write; if not, also write; I mean this one point, whether he is not willing that his money should be repaid. If he is willing, it will be well. Nevertheless, let our friendly efforts be put forth. If you send word that it is right, you will receive another letter.

That is all, from your loving father,

RITATONA TE IWA.

### RITATONA TE IWA to Rev. RIWAI TE AHU.

Waitara, February 11th, 1860.

RIWAI,—Greeting to you, my son, and to our father Hadfield. Greeting to you and to your fathers and the people. Friends, companions, mothers, farewell, and abide where you are with the people of your friends and your fathers. Listen, Riwai, and your fathers, and the people, and our father Hadfield. Here is death. I mean Waitara. The Pakeha is now taking it. On this account it was that I wrote to you and Hadfield, that you two should speak to the Governor. This it is which has now come upon the knees of us and your fathers. But we and Wiremu (Kingi) are waiting for the fulfilment of your word, that Mr. Hadfield should write to the Governor. Nevertheless do you two speak to the Pakehas of Port Nicholson, *because we consider that this trouble has no just ground, because the whole tribe do not consent that Waitara should be sold.* But now, do you and Hadfield listen. Parris and the Major of the soldiers at Waitoki are very importunate. On the 13th day of the present month of February, the surveying chain will come to Waitara. When it comes it will be sent back again. After this it will come back and be sent back again. After this the soldiers will come. Presently, after this letter is gone, there will be a quarrel. But do you listen: all that the people will concern themselves with will be the chain. If the soldiers do not resist, the tents will be returned. If the soldiers do not fire, they will be sent back forthwith; they will not be allowed to alight upon it. But this is all mere talk, because we know that the soldiers go nowhere without an object. When soldiers go on such a business as that, it is to fight. In this case, there will be a quarrel. Do you and your fathers be attentive. Do you tell your fathers, Kiripata, Hohepa, Wiremu Tamihana, and Apakuku. Listen. It is the man first, and afterwards the land. Do you also tell Mr. Hadfield if you should see him. You, Enoka, may tell him that he may hear. This is all I have to say to you.

RITATONA TE IWA (41).

### STATEMENT RESPECTING THE PROCEEDINGS AT WAITARA, BY TIPENE NGARUNA.

In the course of September, 1858, I arrived at Waitara. I stayed there during 3 months of 1858, and 3 months of 1859. Teira commenced the sale of Waitara. I did not see Tamati Raru joining in what Teira was doing. The only word of his that I observed, was to keep possession of the land. In the year 1859, our meeting assembled at Te Kaikui, concerning Teira's proceedings. Wiremu Kingi stood up and spoke for retaining possession of Waitara. Wiremu Patukakariki (Ngawaka) stood up and spoke for retaining possession of Waitara. Tamati Raru stood up and spoke for retaining possession of Waitara. In the same strain spoke the many. Teira stood up, and had no supporter: he was alone.

The second meeting was at Werohia. Wiremu Kingi stood up and spoke for retaining possession of Waitara. Wiremu Patukakariki (Ngawaka) stood up and spoke for retaining possession of Waitara. Tamati Raru stood up and spoke for retaining possession of Waitara; and in the same strain spoke the many. Teira stood up: he had no supporter: he was alone.

The third was the great meeting at Waitoki, in the town. Teira stood up and spoke for disposing of Waitara. He had no supporter; he was alone. Wiremu Patukakariki (Ngawaka) stood up and said (42): "Governor, Waitara shall not be yielded up to you. *It will not be good that you should take the pillow from under my head, because my pillow is a pillow that belonged to my ancestors.*" Paora Karewa stood up and said, "Listen, Governor, I will not give Waitara to you. *It will not be good that you should drag from under me the bed-matting of my ancestor.* If I were to drag the bed from under you, you would be angry." Teira gave his *parawai* to the Governor as a pledge for the sale of Waitara. Wiremu Kingi stood up and said: "Listen, Governor. I will never give my land at Waitara to you—never. That is all I have to say."

On the occasion of our talk at Hurirapa, *Teira spoke, and said, that his lands outside the boundary should be given in exchange for the lands of the many, which were within the block that was being sold by him. The many said; "Your lands outside the boundary will not be an equivalent for ours, because our lands, which are within the land which is being sold by you, Teira, are far greater."*

When the chain was laid (upon the land), Tamati Raru did not join in laying down the chain, nor did he consent.

TIPENE NGARUNA.

### Rev. RIWAI TE AHU TO THE SUPERINTENDENT OF WELLINGTON.

Otaki, June 23, 1860.

MR. SUPERINTENDENT,—

Greeting to you. This is my speech, listen to it: it is very long; it will perhaps tire you to read it. The reason of my writing at length is because I am perpetually hearing incorrect statements with reference to that land, at Waitara, and with reference to Wiremu Kingi. And do not you suppose that it is through anger at Teira that I have written so fully, or that Teira is not connected with me, and that Wiremu Kingi, on the contrary is a relative of mine. It is not so. My object is to trace out the rights of the case with reference to that land, and the tribes and the owners of the land, that you may know them; because the disturbance has grown serious. It is Teira who is my near relative, but Wiremu Kingi is not a near relative of mine.

Now, we thought that the intentions of this Governor would not be different from those of the other Governors who preceded him. They made attempts to get that piece of land. Now we are perplexed (and say) Well! These are new regulations from our Queen: but we suppose that the Governor has perhaps been deceived by Teira, and his companions, and by his land purchasers at Taranaki; and therefore he has so hastily sent his soldiers to Waitara to frighten all the men and the women who drove off his surveyors from the land which was their property and ours, and to take it without paying us. As you may judge from a statement made by C. W. Richmond, Taranaki, March 1

1860, which everybody has heard: "Teira's title to that piece of land has been fully investigated. It is quite correct. No one can invalidate his title." True. He has a title, that is to say, to his own cultivations within that block—two or three subdivisions. So also have we a title, as well as those who were driven off that block of land, each man having two subdivisions, or one, or three, or four, within the block.

This also is Wiremu Kingi's expression which the Land Commissioner of Taranaki perverted: "Wiremu Kingi admitted that that land belonged to Teira only." It was his strong desire to get hold of the land, and his ignorance of the Maori language, that made him pervert that expression of Wiremu Kingi's. Our opinion of this statement of Mr. C. W. Richmond's is, that the side of Teira and his party only was investigated, and what they had to say listened to by those land purchasers of Taranaki, who crossed over to Arapawa to prosecute the inquiry. The side of Wiremu Kingi's party was not investigated, nor were their statements listened to. As we learn from Wiremu Kingi's letter, which says: "One thing that he said was, that they (the Pakehas) will not listen to my words." This was said to him by the Land Commissioner of Taranaki (I have that letter by me.) However, I did not believe all that he wrote to us in that year, for I thought that the Government would not go so far as that.

Moreover, they never came to us to inquire. If they had inquired of all parties; if they had heard their statements, continuing the inquiry till they came to us, they would have found out the fault in the statement of Teira's party. Why! their pieces of land lie dotted about among the pieces of all those persons who dissented from the sale, and among ours also who live here. This is what Wiremu Kingi says in his letter: "The error of all the Pakehas, of Parris, of Whiteley, of the Governor. They say that to Teira alone belongs his piece of land. No, it belongs to us all. That piece of land belongs to the orphan, it belongs to the widow." (His letter is here with us.) If they had done so, the Governor's Land Commissioners at Taranaki would not have falsely told him that they had inquired, and that it was quite correct that that land belonged to Teira only.

We have heard that there are full 600 acres of the land which belongs to Teira and his companions. We concluded that it could not be that land at Waitara, but that it must have been a piece of land lately discovered by Teira and his companions, it was so very large. The reason why Wiremu Kingi and his party made so much objection when Teira began to propose that that place should be sold to the Governor, was the fear lest their land and ours should be all taken together as belonging to Teira. And it happened just as they feared. We have heard by letter from Wiremu Kingi of what the Land Commissioner of Taranaki said, which was as follows: "Their rule now is, that though it be but one man who offers the land, the Pakehas will be quite willing to buy." (His letter lies here.)

Now we do not admit the correctness of these words which we have heard, that the land belonged to Teira, that that land belonged to his *hapus*, namely, *Ngatihinga* and *Ngatituaho*, and that they gave Wiremu Kingi leave to settle on that piece of land when he came from Waikanae, and that he then for the first time settled there, "that Wiremu Kingi's interference was unwarranted, and that the land did not belong to him, and that he had no right to say what he did." Listen. The Pakehas only and Maories of other tribes of this island will consider this assertion as correct. But as for us of the *Ngatiawa* tribe, who live here at Waikanae, and as far as Wellington, and across the Straits to some who live at Arapawa and as far as Taitapu, we will never admit its truth, nor will we condemn Wiremu Kingi as interfering unwarrantably. The only persons of *Ngatiawa* who will justify Teira and condemn Wiremu Kingi, are those who are deceiving the Governor and the Pakehas.

Perhaps the Land Commissioners of Taranaki consider that Teira and his party constitute the whole of *Ngatihinga* and *Ngatituaho*, and that the following men do not belong to those *hapus*, namely, Wiremu Te Patukakariki (the chief of those *hapus*) Nopera Te Kaoma and others, who dissented from the sale. So their words were listened to by the Land Commissioners of Taranaki. Listen. It was the wife of Wiremu Patukakariki, and their own two daughters, and some other women of those *hapus*, who drove off the Governor's surveyors from their own pieces of land.

Now that land was not so divided formerly that there should be a distinct property for *Ngati hinga* and *Ngati tuaho* by themselves, and that there should be a distinct property for other *hapus* as *Ngati kura* and *Ngati uenuku*, each *hapu* separately within that block of land which the Governor has got possession of. No. They were all mixed up together. The cultivations were separated by the boundary marks which were placed by our ancestors. These *hapus* do not form a distinct body from them. They all belong to one tribe.

All these cultivations have names which our ancestors gave them. The name of Wiremu Kingi's cultivation is Te Parepare. The cultivations of his two children which belonged to their mothers are at Hurirapa, the pa which was burnt by the soldiers: and another at Orapa on the south of their old pas. All these cultivations are within the block which is said to belong to Teira only, and the Governor has possession of them all.

All the cultivations which belong to us and to those who dissented from the sale, namely, the people of *Ngati kura* and *Ngati uenuku* and some of *Ngati hinga* and *Ngati tuaho*, to whatever *hapu* they belong: the Land Commissioner at Taranaki has treated all these cultivations as belonging to Teira alone. How then can it be said that "they gave Wiremu Kingi leave to settle on that block, when he came from Waikanae"? A fine saying, indeed! No. Each man knew the cultivation of his own ancestor. Was it they who gave Wiremu Kingi leave to cultivate Te Parepare, when he went from Waikanae? Was it they who gave his children leave to cultivate at Te Hurirapa, when they went from Waikanae; which cultivations have been taken by the soldiers? Was it they who gave our ancestors all their cultivations, which I have already mentioned, when they went from Waikanae; which cultivations the soldiers have taken with the edge of the sword? In my opinion this saying is like poison. According to the Land Commissioner of Taranaki, Teira's offer of that land was perfectly just, and Wiremu Kingi was altogether in the wrong. We say that Teira is far more in the wrong, and there is nothing that can hide his fault.

I say in conclusion that I cannot find any words to pacify my tribe, that they may no longer be irritated about our land. They are very sore that the land of our ancestors should be taken without their consent. If that land should be permanently taken, it will be a permanent saying, down to future generations, that that land was violently taken by the Queen of England's Governor.

There are also other sayings of the Pakehas about Wiremu Kingi which I have heard. They say he is a bad man, a drunkard, and a murderer. My reply to this. He must only just now have taken to drinking at Waitara. When he lived with us at Waikanae, I never saw him purchase a keg of spirits, nor did I see him drunk,—never. Nor have I ever heard that he was a murderer before I was born; and even up to the time of my being a full grown man, I never knew of any man being murdered by him, even up to the time of his going to Waitara.——————His father, Reretawhangawhanga, was cursed by Ngatimaru at Whareroa in 1837. Then a great war party of Ngatiawa went from Waikanae to Whareroa, to the number of 400. It was owing to the moderation of this old chief that the people of Whareroa were not killed; their potato crops merely were pulled up. I went with that expedition. Was it from Wiremu Kingi's being a drunkard or a murderer that the Land Commissioners of Taranaki concluded that that land at Waitara belonged only to Teira and his party? Or was that the reason of their taking it? Now there is another murderer in the very presence of those Land Commissioners of Taranaki; but they do not call him murderer. On the contrary, they call him "Friend." Why do not they take his land also? Wiremu Kingi and his party did not wish to fight, when Teira received the money in payment for Waitara: hence one of them wrote to me to ask if it would not be a good thing for them to collect money to pay back the money which Teira had received from the Governor, lest our lands should be taken for that money, and, when they hasten forward to retain possession, it should become an occasion for the Governor to quarrel with them (We have this man's letter lying here.)

I myself heard formerly the strong injunctions of Wiremu Kingi's father, Reretawhangawhanga, at our pa at Waikanae in 1840, that Waitara should not be sold to the Pakeha. Now, that was his continued injunction up to the time of his death at Waikanae in 1844, when he left the same injunction for Wiremu Kingi to observe after him. When Rere and the old men of Waikanae heard that Niutone Te Pakaru, chief of *Ngatimaniapoto*, was

come to clear land for cultivation on the other side of Waitara, (the name of the cultivation was Wharenui,) the old chief said that he should return to his own place. and that Waitara should be let alone for our own use. (I myself heard these words in 1842–43.) None of the Waikato and *Ngatimaniapoto* had settled there before the Pakehas came to New Plymouth. Nuitone Te Pakaru was the first. Therefore one of those old chiefs, Ngaraurekau, went from Waikanae to keep possession of Waitara, lest *Ngatimaniapoto* should come back, and *Ngatimaniapoto* altogether gave up Waitara, even up to the time of Wiremu Kingi's migration thither. (I except Peketahi, who went there on the ground of his wife's title.)

Further, Wiremu Kingi was a friend to the Pakehas of Wellington. In December, 1843, we went from Waikanae, (having Archdeacon Hadfield with us,) and found Haerewaho being tried by Mr Halswell in the Court House at Wellington. He was found guilty, and was taken to prison. Then all the Maories of Wellington rose up in arms against the Pakehas of the town, but Wiremu Kingi hastened to quiet them, and there was an end of it.

Again, in 1846, there came a message from Governor Grey to Wiremu Kingi, to go to him to Kapiti on board the man-of-war called the "Castor" We went, and then Governor Grey asked Wiremu Kingi to go to Te Paripari to deter his enemy Rangihaeata. Wiremu Kingi immediately consented. His regard for Rangihaeata did not prevent him. The next day, we came across to Waikanae, and Wiremu Kingi immediately urged his people to go to Te Paripari. They slept at Whareroa, and the next day reached Te Paripari. I also went with him. His party numbered 140. From thence I returned to Waikanae. He and his party caught eight men from Whanganui who had joined Rangihaeata. When these men were caught, they cried out, "Stop a bit; who knows that you will not be treated in this way in time to come?" Wiremu Kingi bears this saying in mind. After this they were taken to Waikanae, and put on board Governor Grey's steamer. Some of the Pakehas have probably seen these men who were caught by Wiremu Kingi. And where is the help now with which the Governor requites Wiremu Kingi? Wiremu Kingi was always one who upheld the Government. He never in any way recognised the Maori King, up to the time of the fighting about Waitara.

This is all I have to say.

From your loving friend,
RIWAI TE AHU (43).

In these documents the grounds of the opposition to the Government are clearly disclosed (44). The right of the whole Tribe and the rights of individual owners are both maintained. It is averred that the whole Tribe did not consent:—an averment which is not even contradicted by the Government, for the Government has contented itself with ignoring the tribal right.

If anything be plain in the case it is this, that the whole Tribe never have consented to part with the Waitara land (45). Upon this fact William King stands; and but for this fact, we should in all probability, never have encountered any opposition. In the case of the Bell Block, where every one interested in the Block agreed to the sale, William King's opposition was withdrawn (46). In that case he ceased to oppose, when his people assented. In this, he opposes steadfastly, because his people steadfastly dissent.

8. These adverse claims reach us also through other channels.

Dr. Featherston, the Superintendent of the Province of Wellington, after the outbreak of the troubles at the Waitara, visited some chiefs of the *Ngatiawa* who still live in the valley of the Hutt. What took place on that occasion, was thus stated by Dr. Featherston, in his place in the House of Representatives, on the 7th of August last:—

"'What,' (said Dr. Featherston,) 'did you not mean to admit that William King had no title to the land, no right to forbid the sale?' The words were scarcely out of my mouth before Wi Tako, Te Puni, and other chiefs present, cried out, '*Kahore, kahore.* The Governor is in the wrong. Wi Kingi has land in the block, his wife has land, his son also: Te Puni and others (mentioning a great number of names) all own portions of the land sold by Teira.' Wi Tako and Te Puni then explained that the land was divided into small allotments; that those allotments were marked out by stones; that many of them (the allotments) had names, and said if we would accompany them to Waitara they would point out the allotments of each individual. Wi Tako added, 'Teira had no more right to sell the 600 acres, than a man owning one acre in Wellington would have a right to sell the whole town.'"

Mr. Fitzherbert, Member for the Hutt district, also stated in the House,—"These (Te Puni and others) are all loyal men; and these statements have been made not only to me, but to others. They have drawn the plan of Waitara on the sand and on paper, and they have pointed out the owners of the several allotments, and they say that William King was right, and that Teira had no title to sell the land."

9. The foregoing documents and statements are not set forth here as if the averments therein were necessarily true. They are only set forth as shewing what is in effect averred by the adverse claimants. That some of these averments are honestly made, I cannot doubt. I have known Riwai Te Ahu for years. At one time I was in the habit of talking with him daily, for months together. He is a very intelligent, and, I believe, a thoroughly honest man.

We are not at liberty to assert these claims to be true, without investigation; neither are we at liberty to assert them to be false, without investigation. They raise plain issues, on which depends the justice or injustice of the course taken by the Government (47). To ascertain whether they were true or untrue, was the very business and duty of the Government.

How did the Government discharge its duty?

## IV.—*The Investigaion..*

1. The Governor had accepted the offer of Teira, subject to an investigation of the title. If the seller could make a good title, the Governor would buy the land. We have seen that the matters in dispute involved numerous and weighty points, both of law and of fact. Among others, the following questions arose:—"What is the Community, and what the Chief, whose consent is needed? or, if their consent is to be dispensed with, can the Governor lawfully dispense with it? What was the effect of Potatau's cession? Who are the other claimants, besides Teira and his party? Do they consent? What are their claims? Are those claims valid?"

Considering the nature and number of these questions, and the practical consequences that might flow from a conflict between the Government and the Natives,—consequences affecting not only the Settlement of New Plymouth, but the whole Colony: considering also the peculiar relation which the Crown of England has assumed to the Native race, as their guardian and instructor in law and in the arts of peace: it is quite manifest that the occasion demanded the most full and complete inquiry,—an inquiry which should be so large in its compass, so accurate and careful in its several steps, as to leave no room for any reasonable man to question the soundness of the decision. Nothing short of that, could be either just or wise in such a case as this.

2. The persons claiming an interest in the land were numerous. Some only were on the spot: others were at Waikanae, Queen Charlotte's Sound, or elsewhere.

These persons too were all British subjects, and entitled to "all the rights and privileges of British subjects," by the Treaty of Waitangi. The assurance thereby given in the Queen's name, has been solemnly repeated many times from that day to this. The last time was only a few weeks ago.

"It is your adoption by Her Majesty as her subjects, which makes it *impossible that the Maori people should be unjustly dispossessed of their lands or property. Every Maori is a member of the British Nation; he is protected by the* SAME LAW *as his English fellow-subject; and it is because you are regarded by the Queen as a part of her own especial people, that you have heard from the lips of each successive Governor the same words of peace and goodwill.*" [Speech of Governor Browne, at Kohimarama, 10th July, 1860.]

No right of a British subject is more clear or more precious than this: that the Executive Government shall not use the force at its command to oust any man from his land or deprive him of any right which he claims, until the question between the Crown and the subject has been heard and determined by some competent tribunal; some tribunal perfectly independent of the Government, wielding the full powers of a Court of Justice, and subject to the same checks and safeguards. Two things are needed: 1st, that such a Tribunal shall exist; 2nd, that it shall not determine the question without giving due notice of the proceedings to the opposite party: so that they may be able to make their answer to the claim, and produce evidence in support of their case.

This is a fundamental principle of our English Government; not only of our English Constitution, but, of necessity, a fundamental rule of all free and constitutional Governments everywhere. For without it, the subject has no security against the aggressions of the Government. If the Government can decide the matter in its own way, and through its own dependent agents, and then take what it claims, the subject is at the mercy of the Government.

How, then, were these our fellow-subjects dealt with in this case? In what precise mode the inquiry was conducted, is at present unknown: but thus much is apparent, that no such inquiry as was due from the Government to the subject, was ever made.

3. Whatever inquiry has taken place on the subject, was carried on by the Land Purchase Department. It now appears that the main part of the business was transacted by Mr. Parris, the local Commissioner at New Plymouth. What degree of supervision Mr. Parris was subject to, does not appear. It now appears that no inquiry was conducted by Mr. McLean, at New Plymouth, except the preliminary inquiry made by him early in 1859. The regular investigation of the title was left to Mr. Parris.

It becomes, therefore, necessary to ask what were the qualifications and powers of these officers in respect to this business. Both of these officers are agents of the Executive Government; employed by the Government for the purpose of purchasing land. Both of them were not only general agents for that purpose, but had also been concerned in that very transaction, in negotiating the purchase. One of them, Mr. Parris, as a settler at New Plymouth, had an interest, in common with the rest of the Taranaki settlers, in the opening of the Waitara land. How could these officers, being agents for the purchaser, be fit persons to decide on the validity of all the objections made to the purchase? (48).

Was William King likely to accept a decision, made upon the authority of persons who now denied his right, after having often practically affirmed it, by using all endeavours to obtain his consent?

Moreover, these officers possessed none of the powers requisite for the purpose of conducting such an inquiry. They had no judicial power or authority whatever: nor was their inquiry (whatever it was) accompanied by the safeguards and checks which would attend a public and regular judicial investigation. So far as appears, a man who would have been properly challenged as a juryman, has been allowed to act as Pleader, Jury, and Judge; or, to speak more correctly, an irregular and insufficient inquiry before an agent of the Government, disqualified in all the ways abovementioned, has been put in the place of that regular, open, and fair trial which every subject of the Crown is entitled to before his property is taken from him.

4. We have spoken of the unfitness of the agents in the inquiry. We now ask, what was the mode in which the inquiry was made? What was the extent to which it was carried? We are not in possession of any Minutes of Mr. Parris' proceedings. The only published Report is dated July 16th, 1860, seven or eight months after the inquiry terminated. [*Further Papers* E 3 A. p. 2.] It does not furnish any very clear or full answer to our present question. It is plain that he did not investigate the main question between the Government and William King, viz.,—*whether there was any tribal right affecting the land, and whether the tribe or community had consented or not.* His statement extends only to the individual rights of the sellers on the spot, Teira and the others. If, as appears, the Government had determined to recognise nothing but the individual right, we cannot be surprised if nothing more was inquired into by the agent of the Government (49.) Still, it is much to be regretted that the Government assumed these matters rather than investigated them; especially

as the Government assumption on the point was contrary to what was certified by the Board of Inquiry above-mentioned, (p. 2.) and by Mr. McLean, to be the general rule of Native Tenure.

It is also to be remarked that Mr. Parris' inquiry, even as to individual claims, did not extend beyond the sellers on the spot. It was well known that there were other members of the Tribe at Waikanae, as well as at Wellington, Queen Charlotte's Sound, &c. Mr. McLean, the Chief Commissioner, had expressly instructed Mr. Parris personally to visit absentee claimants.

The following is an extract from "Instructions to District Land Purchase Commissioner, relative to Purchase of Land from the Natives at Taranaki," dated Auckland, August 26th, 1857. [*Pap.* E. p. 1.]

"In pursuing your enquiries amongst the resident Natives, you should not appear to attach much weight to the claims of absentees, as it may be assumed that they have acquired a vested interest in land elsewhere, and should not now be considered as having an equal claim with their relatives who remain in actual possession of the soil.

"At the same time, I am desired to state that it is His Excellency's wish to have a separate investigation of the claims of absentees, *instituted at the places where they reside;* when they will be settled with, in proportion to the relative merits of their claims, on a basis which will fully preserve the distinction which should be made between resident and non-resident proprietors."

Yet neither Mr. McLean nor Mr. Parris instituted any investigation at Waikanae.

So far as appears, all the notice taken by Mr. Parris of absent claimants, was this:—At the time of paying the first instalment to Teira (29th November, 1859,) a declaration was read to the Natives there assembled, that if any man could prove his claim to any piece of land within the block, such claim would be respected. (*Pap.* E. No. 3. p. 21.) That declaration does not appear to have been conveyed to any, except those who were then on the ground (50). Nor could it have any legal effect in any case. There was no legal summons, nor any power to take evidence on oath. In short, there was no tribunal.

The following statement has been made by some of the adverse claimants:—

FROM CERTAIN MEMBERS OF THE NGATIAWA TRIBE TO THE SUPERINTENDENT OF THE PROVINCE OF WELLINGTON.

Waikanae, July 29, 1860.

Mr. Superintendent,

Greeting to you. These are our words; hear them, that you may declare them openly in the presence of the Governor.

We have portions of land also at Waitara within the piece of land which was wrongly sold by Teira to the Governor; we, as well as those who have been driven off that piece of land. It belonged to all our ancestors. We never heard from the old men who have lately died, that that land belonged only to *Ngatituaho* and *Ngatihinga*, or to the ancestors of Teira and his companions, whose pedigree has been lately set forth, or to his father, and that by them it was given to our ancestors and to our fathers as to dependents who should raise food for the ancestors of Teira and his companions, or for his father and the fathers of his companions.

Nor is it land that has lately been discovered by Teira, or by his father or by his companions, that we should be mistaken in what we say about it, or that it should be right to make strong assertions with reference to that land in order to justify their making no account of us and those who have been forcibly driven off it. No. It is old land that belonged to our ancestors.

Now we have heard the defence of Mr. Parris' wrong doing with reference to our portions of land there, which says "A long time was allowed to elapse, and nothing was said about the land; Parris, the Land Commissioner of Taranaki, carefully inquired that he might find out who were the owners of the land which was offered him. Parris searched, and at length he found them out."

These words were intended to excite everybody's admiration, that it might be thought that he really had searched. Listen. We were all the time living at Waikanae; one of us at Otaki. Now Parris never came to make inquiries of us as to whether we had land there or not; nor did any assistant of his in that work come to inquire; nor did he write any letter of inquiry; nor did he, in the course of that year, print in the Newspaper his inquiries as to the owners of that land. None, none at all.

Off goes one of the land purchasers to make inquiries of some people of Arapawa, passing over us without inquiry.

We did not hear of it until the time when Teira received the money. Still we felt no apprehension of losing our lands, because we were continually hearing of the strong declaration of Wiremu Kingi, that he would keep our lands for us. For he is our Chief, a protecting shade for our lands.

The second time was when they went to survey it.

The third time was when the soldiers were sent to take it. How could we get a word in? When the trouble had become serious, then Parris goes and prints in the Newspaper that he has made inquiry.

We ask this question. What are we, peaceable persons who are not joining in the fighting, to do when our lands are wrongly taken away by the Governor? Where shall we seek a way by which we may get our lands restored to us? Shall we seek it from the Queen, or from whom? We imagined that it was for the Law to rectify wrongs. Up to this time our hearts keep anxiously inquiring. We will say no more.

From us, members of *Ngatiawa*, and owners of that land at Waitara.

HOHEPA NGAPAKI.
KIRIPATA PAKE.
PATIHANA TIKARA.
EPIHA PAIKAU TUPOKI.
PINAREPE TE NEKE.
HENARE TE MARAU.
PAORA MATUA AWAKA.
HUTANA AWATEA.
WIPERAHAMA PUTIKI.
TERETIU TAMAKA.
RIWAI TE AHU.

It is now admitted that the complaint made in the foregoing letter is well founded; that no one authorised by the Government ever did inquire into the claims at Waikanae. Mr. McLean himself visited Queen Charlotte's Sound and Wellington. As to his proceedings at those places, especially at the latter, our information is scanty. But whatever inquiry there might be elsewhere, there was none at Waikanae (51).

5. The result of the whole inquiry is thus stated by Mr. Richmond, in a Memorandum dated 27th April, 1860, nearly two months after the commencement of military operations at the Waitara. (*Pap.* E No. 3. p. 34.)

"The Native Secretary, Mr. McLean, who in addition to his general experience, has a special acquaintance with the Taranaki Land Question, dating back to 1844, denies King's right to interfere. The Rev. John Whiteley, Wesleyan Missionary at New Plymouth, and Mr. Parris, the District Land Purchase Commissioner, both of whom have had a long acquaintance with the subject, agree with the Native Secretary. A very valuable testimony to the same effect, is furnished by a letter recently addressed to various Chiefs of Waikato and Mokau, by Wi Tako, a *Ngatiawa* Chief, a translation of which is appended to this Memorandum.

"Wi Tako's evidence carries great weight, as his prepossessions are adverse to the British Government. For some time he has been strenuously advocating the cause of the Maori King; and the letter in question was actually written by him whilst on his return to Wellington from Ngaruawahia, where he had been attending the deliberations of the Maori Council. It is said that he was specially deputed by Potatau to inquire into the merits of the Waitara question."

Mr. Richmond relies in the first place, on the opinion of Mr. McLean, the Chief Land Purchase Commissioner. It does not appear whether that opinion was expressed before or after the resort to force, nor whether it was expressed orally or in writing. As Mr. McLean did not himself investigate the title, beyond making a preliminary inquiry early in 1859, his opinion, whensoever and howsoever expressed, must have been founded on Mr. Parris' statements. The only recorded statement of Mr. McLean's opinion, in the papers laid before the General Assembly, bears date 23rd July, 1860. A memorandum had been made by the Governor, on the 20th July, in the following words:

"In order to complete the documents about to be printed for both Houses of Assembly, the Governor requests the Chief Land Purchase Commissioner to answer the following questions:—

"First,—Had Tamati Raru, Rawiri, Rauponga, and their people, such a title to the block of land recently purchased at the Waitara, as justified them in selling it to the Queen?"

"Second,—Had William King any right to interfere to prevent the sale of the above block of land at the Waitara to the Queen?"

Mr. McLean answered as follows:—Sir,—In reply to your Excellency's memorandum of the 20th inst., I have the honor to state with reference to the first-mentioned question, as to whether Tamati Raru, Rawiri, Rauponga, and their people, had such a title to the block of land recently purchased at the Waitara, as justified them in selling it to the Queen;

"I believe that the above chiefs, conjointly with others at the South, associated with them in the sale, had an undoubted right of disposal to the land in question.

"With reference to the second inquiry, 'Had William King any right to interfere to prevent the sale of the above block of land at the Waitara to the Queen?' The question of title has been carefully investigated. All the evidence that has come before me, including W. King's own testimony that the land belonged to the above parties, goes to prove that he had no right to interfere; the interference assumed by him has been obviously based upon opposition to land sales in the Taranaki Province generally, as a prominent member of an anti-land selling league." (E. No. 3A, p p. 4 & 5.)

As to Mr. McLean's answer to the first question, it is sufficient to refer to the evidence collected in the preceding chapter, which shews that the right of disposal, claimed by the persons named, is open to the gravest doubt. Nothing is stated by Mr. McLean as to the grounds of his opinion.

As to the second question, Mr. McLean naturally upholds his subordinate officer. Beyond that, he expresses a very guarded opinion as to William King's right to interfere; throwing out, in reference to that interference, a suggestion which contradicts the following statement in Mr. Richmond's own memorandum: "that King's stand is really taken upon his position as a Chief;" and that possibly, under different circumstances, "his birth might have given him *the command over the Tribe which he pretends to exercise.*" (*Ib.* p. 34.) The subject of the land league, to which Mr. McLean's suggestion refers, will be considered in a subsequent chapter.

Next comes the alleged opinion of the Rev. John Whiteley. We have no information as to that gentleman's authority to inquire, or as to the extent of an inquiry made by him. The only qualification mentioned, namely, residence at New Plymouth, is a questionable one in this case. Mr. Parris' inquiry has been considered above.

Last comes the letter of Wi Tako. The passage on which Mr. Richmond relies, is evidently that which, in the translation appended to his memorandum, is rendered thus: "you requested me to investigate the subject and send you the truth, which is this. Friends, this wrong is William King's. Another wrong has been committed by Taranaki, greater than all the evils that have been done in the land."

The Native word *he*, here rendered "wrong," is an exceedingly ambiguous word, expressing anything whatever that goes wrong; any trouble, error, or disaster (52). These same words "*tenei he*," rendered in this instance by "this wrong," occur three times in this letter. In the other two instances, they are rendered in the translation appended to the memorandum, "this war." If Wi Tako had intended to say that the Governor was in the right, and Wm. King in the wrong, he must have said, "*No Wiremu Kingi te he:*" the form invariably used by the Natives in such case. But in fact he was not contrasting William King with the Governor. There is no reference to the Governor in the letter. His business was to ascertain whether the King party was interested in the quarrel, whether it was necessary or expedient for them to join in it or not. To that point the whole letter refers. He tells

his friends that the quarrel at the Waitara was W. King's affair, not theirs; it was a question about land only, and did not concern the Maori king. The following is a correct version of the letter:—

Waitoki, Taranaki, April 10, 1860.

This is a message from me to Waikato, that you may have a clear understanding about this foolish work of the people of Taranaki. I have come here and have ascertained the grounds of this trouble. It is as follows:—

This is another word. Go, my messenger, to Tikaokao at Tongaporutu, to Wetini at Tarariki, to Takerei at Te Kauri, to Aikaka at Papatea, to Reihana at Whataroa, to Wetini at Hangitiki, to Eruera at Mohoaonui, to Paetai at Huiterangiora, to Te Heuheu at Taupo, to Paerata at Te Papa, to Te Ati at Arohena, to Epiha at Kihikihi, to Ihaia at Hairini, to Hoani, to Hori te Waru, to Tamahere, and to Tamihana at Rangiaohia; to Rewi at Ngaruawahia, and indeed to all of you who requested me to give you a correct account. It is this:

My friends, this trouble belongs to Wiremu Kingi. Another trouble belongs to the Taranaki people, greater than all the evils of the world. Let your thoughts be consistent with your promises to me, which we have seen. Friends, your business is to do only that which is right. Do not look in this direction towards the foolish things of the world. Friends, do you listen. Formerly was the wrong; afterwards came the right. The only thing about which you have to concern yourselves, is the word of the great Father in Heaven. I mean, one end of the cord is above, one end reaches down to earth. Let that be our warfare. Let this word of yours to me prove true.

Friends, do you listen. The ground of this trouble concerns the land only. It does not concern the King. Do not you be led astray by the evil spirit.

From your faithful friend in the Lord,
WI TAKO NGATATA.

The interpretation adopted by Mr. Richmond was expressly repudiated by Wi Tako himself in the presence of Dr. Featherston, as we have seen above. (p. 11.)

It is to be observed, that Mr. Richmond's remarks are confined to the question of *William King's* right to interfere. He treats that as being the only question. The rights of other claimants are not noticed.

On such evidence as the above, the Government was prepared to assert a title to the block (53.)

6. It may be asked "What was the especial need in this case of a public and judicial enquiry?" "Had not nearly the whole of the Southern Island, and large tracts in the Northern, been acquired, through the Land Purchase Department alone, and without recourse to any judicial tribunal?" Certainly. But the difference in the cases is this. In former years the officers of the Land Purchase Department were employed for their proper business to buy land wherever the owners were willing to sell—to arrange the boundaries, payment, &c. They acted as administrative officers. If some of the owners were unwilling to sell, or if the title was in dispute, the payment stood over till the dispute was settled, and the Natives were agreed among themselves. Then the transaction was completed.

The Government, by standing aloof in this way, induced the Natives to come to a settlement. It was found that the interference of the Pakeha only aggravated the difficulty. The Government carefully avoided any appearance of being eager to obtain land. It also avoided the unsatisfactory course of employing its own agents, the Land Purchase Commissioners, to decide on objections to the purchases, which they had themselves negociated (54). The Government could not lightly abandon its position as the impartial Protector of both races, in order to put itself in a position, where it must be regarded as the oppressor and enemy of some of its own people. Therefore the Government shrank from making itself a party to a land quarrel; and force was not employed against adverse claimants.

*At the Waitara, for the first time, a new plan was adopted. The Governor in his capacity of land buyer, was now to use against subjects of the Crown the force which is at his disposal as Governor and Commander-in-Chief. If this new principle was to be adopted a new practice also became necessary. Those subjects of the Queen against whom force was to be used, had a right to the protection of the Queen's Courts before force was resorted to* (55.) It is not lawful for the Executive Government to use force in a purely civil question, without the authority of a competent judicial tribunal. In this case no such authority has been obtained: no such tribunal has been resorted to.

If there was no existing tribunal, the duty of the Government was to establish one. It could not justly neglect to provide a proper tribunal, and then make its own neglect a reason for refusing to the subjects of the Crown, the protection they were entitled to. To acquire the Waitara land immediately was not a necessity: to do justice to the Queen's subjects was a necessity.

The matters in issue in this case were of the same kind precisely as those which have been in issue before the various Courts of Land Claims' Commissioners which have been from time to time constituted by the Legislature of this Colony. All these Courts have acted on one plan: they have travelled from spot to spot, giving fair opportunities to all parties concerned of bringing forward their claims, taking evidence on oath, exercising the same powers and protected by the same safeguards as ordinary Courts of Law. There never was any difficulty in obtaining the attendance of the leading Chiefs before those Courts. Why was not the same thing done in this case? If it be necessary, before a Crown Grant can issue to a Land Claimant, that is to say, before a subject receives the bounty of the Queen, why is it not necessary before a subject is ousted of that which belongs to him?

I know that this notion of resorting to a Court in the present case has been called unreasonable and even ludicrous. Yet to my mind no assumption appears more unreasonable or dangerous than that which is made by the Government on this point, namely, that the Government is excused from doing its duty towards the subject by a belief or surmise that the subject will not do his duty towards the Government. It is said that William King would not have obeyed the summons. Our surmise or opinion, for it could be nothing more, was no reason why he should not be summoned. If he had not come, we should have lost nothing; on the contrary, we should have gained much. Every indication on our part of a disposition to act fairly and openly would have enlisted on our side the natural sense of justice of a large portion of the Native people.

On this point too, as on many others, it is overlooked that William King was one of many. Many there were on the spot claiming ownership: many others were at Waikanae and elsewhere.

To shut out all these claimants from a fair trial because William King was contumacious, would be to exalt the position of the Chief, as representing his tribe, much higher than has ever yet been attempted; still more, if they were to be shut out from a fair trial, not because he was contumacious, but only because it was taken for granted that he would be so.

7. The principle here contended for is that which we inherit from our fathers. The least infringement of it would be denounced and resented in our own case. Why are we so indifferent, when our fellow-subjects are concerned? Let no man think that this is the pedantry of a lawyer insisting on old maxims ill suited to our circumstances. This principle comes to us from the wisest and ablest of our fathers. It is no theory of bookmen. On the contrary, it is the practical wisdom of the men who built up our English Commonwealth. Those men knew that justice was the life and health of every human society: that peace and growth could not be where justice was not: they knew that there was no security for the power of the state being wielded justly, where that power was not wielded according to rules more clear, and methods more patient, than those of political expediency. They, therefore, forbad the Executive Government to use its power against any man, the meanest in the State, without due sanction of Law. By this principle, England has grown and thriven. Without this principle, New Zealand will not grow or thrive.

The Government, in protecting the Native owners, would have protected itself and the Colony. That which was the right of the Native in common with ourselves was also the interest of the English settler and of the Government itself. The possible consequences to the settlers generally, especially to the scattered out-settlers, were serious enough to entitle them to an inquiry which should exclude (as far as man can exclude) every possible doubt as to the soundness and justice of our proceedings, and should shew that it was absolutely necessary to take the course contemplated.

8. This then is the result. The points in dispute are many and difficult. No decision has yet been pronounced upon them by any competent or trustworthy tribunal. Mr. Parris' inquiry is wholly insufficient to shew that the adverse claims are not sound and well founded, both on behalf of the tribe at large and of the individual claimants. The Colony is imperilled upon an issue which has never been properly tried.

## V. *The Resort to Force.*

1. On Wednesday, the 25th of January, 1860, a Meeting of the Executive Council, was held at Auckland. The following is an extract from the Minutes of the Meeting.

PRESENT.

| | |
|---|---|
| His Excellency the Governor. | The Honorable the Attorney General. |
| The Honorable the Officer commanding the Troops. | The Honorable the Colonial Treasurer. |
| The Honorable the Colonial Secretary. | The Honorable Mr. Tancred. |

"The Governor submits to the Council the question of the completion of the purchase from the Native Chief Te Teira of a certain block of land, situated in the Province of Taranaki, at the mouth of Waitara, on its South and left bank; as a preliminary to which, a survey of the land is necessary.

"*The Council*, after a full consideration of the circumstances of the case, *advise:*

"1st. That Mr. Parris be instructed to have the said land surveyed in the ordinary manner, and to take care that the Native Chief, William King, be indirectly, but not officially, made aware of the day on which the survey will be commenced.

"2nd. Should William King or any other Native endeavour to prevent the survey, or in any way interfere with the prosecution of the work, in that case that the surveying party be protected during the whole performance of their work by an adequate Military force under command of the Senior Military Officer; with which view power to call out the Taranaki Militia and Volunteers, and to proclaim Martial Law, be transmitted to the Commanding Officer at New Plymouth.

"3rd. That when the survey shall have been completed, the Officer commanding at New Plymouth shall, until further instructed, keep possession, by force if necessary, of the said land, so as to prevent the occupation of, or any act of trespass upon it, by any Natives.

"4th. That the Civil Authorities at New Plymouth be instructed to assist and co-operate, by every means in their power, with the Military Authorities in carrying out these instructions.

"And the Honorable Colonel Gold and the Honorable C. W. Richmond, are to give the necessary directions accordingly." (*Pap.* E, p. 11.)

The Governor acted on this advice of the Executive Council. A Proclamation of Martial Law was accordingly signed by the Governor, and countersigned by the Colonial Secretary. It was in the following form:—

"WHEREAS Active Military operations are about to be undertaken by the Queen's Forces against Natives in the Province of Taranaki, in arms against Her Majesty's Sovereign Authority, Now, I, the Governor, do hereby PROCLAIM and DECLARE that MARTIAL LAW will be exercised throughout the said Province, from publication hereof, within the Province of Taranaki until the relief of the said district from Martial Law by public Proclamation.

The Colonial Secretary wrote on the same day to Lieut. Col. Murray, commanding the detachment at New Plymouth, as follows:—"

"I have the honor to forward herewith to you a Proclamation by His Excellency the Governor, proclaiming that Martial Law will be exercised throughout the Province of Taranaki from the date of the publication in that Province of the said Proclamation.

"I also transmit an Instrument appointing you to be the Governor's Deputy for the purpose of directing the Officer commanding the Militia in the District of Taranaki to draw out for actual service the Taranaki Militia, or such number thereof as you may judge necessary.

"It will be obvious to you that the Proclamation should only be published by you, and operative effect given to the other instrument, *under such circumstances as in your opinion render it impossible* to carry out the wishes of the Government without resorting to the powers conferred by these documents."* (*Pap.* E. No. 3. p. 12.)

2. In pursuance of instructions, an attempt was now made to survey the land. The proceeding is thus stated in the Taranaki News, Feb. 23rd, 1860:—

"On Monday, (20th Feb.) Mr. Parris, with Mr. Carrington, and Mr. W. Hursthouse, of the Survey Department, and one of the armed police force, proceeded to Waitara. The party was met at various points of the road by parties of Natives, but no obstruction was offered to their progress.

"Arrived at the land to be surveyed, a large number of Natives, of men and women, were found assembled, and a party, apparently appointed for the purpose, attempted to obstruct unpacking the instruments without success; but when the chain was thrown out, and taken by Messrs. Parris and Carrington, they effectually prevented their making any use of it. *The obstruction was managed in the least objectionable way possible; there was no noisy language, and no more violence was used than was necessary to prevent the extension of the chain;* they laid hold of the middle of the chain, and so disturbed the measuring; and the surveying party, finding it vain to persist further, forthwith returned to town.

"Subsequently a communication from the authorities was made, giving the Waitara Chief twenty-four hours to apologize for the obstruction offered by his people, and to notify his relinquishment of his opposition to the survey. To this an answer was received, to the purport that he, Wiremu Kingi, did not desire war; that he loved the white people very much, but that he would keep the land, and that they (that is, he and the Government) might be very good friends, if the survey were relinquished."

On the 22nd day of February, 1860, the Proclamation of Martial Law was published by Col. Murray. The Proclamation, though published on this day, bore date 25th January, 1860, that is, the day on which it was signed by the Governor at Auckland. It is to be observed, that the Proclamation extended over the whole of the Province of Taranaki, not only over the territory of the *Ngatiawa* tribe, but also over the whole territory of the tribes to the South of New Plymouth, that is to say, the *Taranaki* tribe, and the *Ngati rua nui.* The Proclamation was published both in the English and the Maori languages. The Governor then proceeded to Taranaki with additional troops, where he arrived on the 1st of March. He immediately despatched to William King a message requesting, that "*to prevent misunderstanding, he would come into the town and learn the Governor's intentions,*" and offering a safe conduct. (*Pap.* E. No. 3, p. 21.)

After a long conference with the Governor's messengers, William King said he would either come, or send his final decision to the Governor, the next day. Accordingly the next day he sent a letter, declining to come. (*Pap.* E. No. 3, p. 15.) The letter has not been printed amongst the papers laid before the Houses of Assembly.

3. Very much has been said lately about this refusal of William King to accept the Governor's safe conduct (56). It becomes necessary therefore to consider it more particularly.

It is to be remarked in the first place that the proposed conference with the Governor could not be a substitute for that which William King and all the other claimants were entitled to, namely, an inquiry before a competent and independent tribunal. If even at that time the Governor had offered to leave the question to some fair arbitration, there might have been some show of reason; but no such thing was offered then or at any time. The Governor offered nothing. No re-opening of the subject was contemplated. He required submission, and he gave a final opportunity for making it. This appears from the language of the message itself, as well as from the other official documents. The Governor had written on the 27th February to His Grace the Duke of Newcastle: "I do not anticipate any real opposition when the Chief, William King, sees *that I am determined not to permit him* to defy Her Majesty's Government." (*Pap.* E. No 3. p. 12.)

On the 25th of January, Mr. Richmond wrote thus to Mr. Parris: "You are to take care that the intended commencement of the survey is publicly known; and in particular, that Wiremu Kingi and his party are made fully aware of it, and *of the firm determination of His Excellency* to complete the purchase."

A year before the time at which we are now speaking, there had been no unwillingness on the part of William King and his people to confer with the Governor. On the 29th March, 1859, the Governor reported to the Secretary of State his recent visit to the Province of Taranaki. (*Pap.* E. No. 3, p. 3.) In that despatch, he says, "I had also an interview with the Chief, William King, and a large part of his tribe, who came to see me." The Governor took advantage of this opportunity to make the declaration cited above, in page 4.

If the lapse of twelve months had diminished the willingness of William King to visit the Governor, may we not discern some reason for it? The course taken by the Government in that interval, could hardly appear to him fair or reasonable. His claim on behalf of his tribe had been simply set aside, never investigated The opposition of his tribesmen was disregarded; part of the money had been paid; the survey of the land had been begun, and was to be carried out by force. He was asked to go and "learn the Governor's intentions." Were not the Governor's intentions plain enough? By the proclamation of Martial Law, a week before, notice had been given that "Active Military operations were about to be undertaken by the Queen's Forces," and the Governor had now brought troops with him.

* I do not here enter upon the questions which have been raised concerning this proclamation and the delegation to Col. Murray. Those questions are of the gravest importance, but cannot be conveniently discussed in this place.

Even if he accepted it, how was he to go? The safe conduct itself required him to appear "unarmed." (*Pap.* E. No. 3*a*, p. 4.) Yet, was he safe without arms? On a like occasion, formerly, William King had dreaded Te Rauparaha's fate, (Dr. Thomson, vol. 2, p. 226,) whose capture has become a proverb among the Natives. But a far greater risk was apparent. Ihaia, his deadly enemy, was now amongst the allies of the Government. It was Ihaia that laid the plot, which issued in the murder of Katatore, William King's ally. Those persons who find in this conduct of William King a justification for resorting to force, appear to overlook the fact that the resort to force had been already determined on, and that that determination had been publicly notified.

I do not desire to travel further into the questions that have been raised about this matter. William King has been blamed for speaking roughly or insolently. Again, he has been blamed for not taking away from the Governor's feet the mat which Teira laid there. Had he taken it away, he would probably have been blamed still more. There has been a noting of tone and demeanour, complaints of abruptness and incivility, to a length, which appears to me unworthy and un-English. It is needless to attempt a nice measurement of such things. If our case be good in itself, we do not need the aid of such considerations: if otherwise, the want of right on our part cannot be supplied by foolishness or lack of temper on the other side?

Moreover, William King was not the only person interested. There were many adverse claimants who had nothing to do with the Governor's message: some were not even on the ground. Was their land to be taken because William King was uncivil?

4. On the 5th March the troops were moved down to the Waitara, and occupied a position on the disputed block. The Officer commanding the troops was instructed to confine the operations of the force at Waitara within the bounds of the block. It is stated in the Official document (*Pap.* E. No. 3, p. 23) that "on the 13th and 14th March, the sellers pointed out the *boundaries of the block, which were duly surveyed* and the lines cut; the sellers aiding in the work." It now appears that only the southern boundary of the block was then cut, and that the inland or eastern limit of the block is still undefined. The Government thus undertook to obtain possession of the disputed land by force; to awe the opponents into submission by a display of military force. We, the English subjects of the Queen, dislike nothing so much as being intimidated into the relinquishment of a right. Why should a Maori dislike it less? On the contrary, the pride and passion of the race, the patriotism of each clan, has always centred on this point. To fight for their land, to resist encroachment even to the death, this has been their point of honour. A Chief who should yield to intimidation in such a case would be degraded in the eyes of his people.

On the night of the 15th March, a *pa* was built by some of William King's people, within the bounds of the block. The next day they pulled up the survey stakes and burnt them. On the 17th March, the conflict began.

5. Let us now review the relative position of the Government and the Natives. There had been a quiet and peaceable prohibition by them of an entrance on their land. So far they were right, but this involves no censure of the attempt made by the Government to survey the land. A sort of usage had existed from the beginning of our land purchasing, that the outside boundaries should be laid down before the money was paid. Latterly it had become customary to pay the first instalment before the survey. The survey then was not taken as an assertion that all parties had consented, but rather that all known claimants had consented. The survey itself would probably bring out those claimants who were as yet unknown. If they came forward, an endeavour was made to satisfy them. If the endeavour failed, the transaction stood over. The entrance on the land with this view, to lay out the outside boundary, was not to be blamed. But when the preliminary survey, or attempt at a survey, had served its proper purpose, and brought out a large number of adverse claimants, it then became the duty of the Government to take one of two courses: either to stay its hand for a time (57), after the manner of former Governments, until the adverse claimants agreed to the sale; or, if it was thought wise and necessary to proceed, notwithstanding the adverse claimants, in that case to disprove their claims and establish its own right before some competent tribunal. The Government was bound to do in this case, that which, in the case of one of ourselves being the adverse claimant, it must have done. The course of the Colonial Government was to be guided by one consideration only, namely, what was lawful and just. The one question to be asked was this:—was it lawful for the Government, under the circumstances, to take possession of the land by armed force? There could be only one answer. It was not lawful.

6. It is unnecessary to point out the practical difficulties in the way of the Native claimants, supposing they desired to protect themselves by legal means against this invasion of their land, or to consider the circumstances which disable men without knowledge of our language and our customs, and with little money, from applying to a remote Court. Nor is it necessary to inquire whether they could have proceeded effectually against officers who would have justified their acts under the authority of the Governor; the Governor himself not being liable to an action in the Colony for any act done in his public capacity: nor whether any proceedings at all could practically be carried on under Martial Law. But it is necessary to notice the view which has been lately taken of the jurisdiction of the Supreme Court of this Colony.

In December, 1859, the opinion of the Law officers of the Crown in England was obtained upon the question, whether the Aboriginal Natives of New Zealand are entitled to the Electoral Franchise under the Constitution Act. In their opinion the following passage occurs: "Could he (one Native) bring an action of Ejectment or Trespass in the Queen's Court in New Zealand? Does the Queen's Court ever exercise any jurisdiction over real property in a Native District? We presume, these

questions must be answered in the negative." It appears, then, that the Law officers hold that the Colonial Courts have no cognizance of questions of Native title or occupancy in any case.

If this view be correct, it follows that William King and his people had no legal and peaceable means of redress through any tribunal capable of entertaining their suit. Nor was any mode of settling the question by arbitration ever proposed by the Government.

7. It is not meant by this that the Government had proceeded regularly and lawfully up to this point, and that now it became the duty of the opponents to appeal to the Law to protect them; and that, therefore, the first wrong was done on the part of the Natives in not seeking redress by Law. The first wrong was not on the part of the Natives; it was on the part of the Colonial Government. What is maintained is this: that it was not their business to appeal to the Law in the first instance, but the business of the Government. The party which sought to disturb the existing order of things, was the party which needed to justify itself by some legal warrant for so doing (58). It was bound to establish its right first in some legal way, due opportunity being afforded to the opponents of defending their counter claims. The Government had already put itself in the wrong by taking forcible possession without lawful authority.

This is the point which was forgotten throughout, that the Governor, in his capacity of land buyer, is as much bound by law as other land buyers. The rights of William King and his people, in respect of that piece of land, were not altered by the fact of the Governor being the purchaser. They were the same as if Teira had sold to any private person. The Governor has no more right to seize land upon the decision of his own agent than any other land buyer would have. He has no right to take possession, except where a private buyer would have such right: no more right in the case where he is buying land from a Maori, than where he is buying from a Pakeha. The Government, however, did not stay to obtain legal sanction for its act. It proceeded to take possession by an armed force, and, without any legal authority, to oust subjects of the Crown from their lands (59). As we have said, the Government had not protected the Native claimants as it was bound to do. It had not submitted their case to a proper inquiry. In failing to protect them, the Government had failed to protect itself. As there was no legal decision upon the Native rights, so there was no legal warrant for the Government to take the land.

8. It is not meant to be suggested here that William King and the other claimants knew or thought much of Constitutional rights or English Law. They had sufficient natural sense of fairness to know that they had not been treated fairly. The tribal claim, put forward by their Chief, had been simply disallowed by the Government, never investigated. There were claimants, even on the ground, who did not consent; yet possession of the land was taken without their consent. So far as there had been any investigation at all, it had been left to Mr. Parris; who, under the circumstances, could not be regarded by them as a fit person for that office. As was to be expected, William King and his people did not appeal to the Queen for protection against those who wielded her power. They met force by force.

9. What was the character and degree of their criminality in so doing? Their resistance was highly criminal, for blood was unlawfully shed, and that as the natural and foreseen consequence of that resistance. Does their offence amount, as is often assumed, to the very highest of all criminal offences—the offence of treason—to open rebellion against the sovereign authority of the Queen of England? To constitute such an offence, it is essential that those who resort to unlawful force shall propose to themselves some unlawful object of a *general nature*.

"All risings in order to effect innovations of a public and general concern by an armed force are, in construction of law, high treason within the clause [of the Statute of Treasons] of *levying war*. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the king, or for the reformation of real or imaginary evils of a *public nature, and in which the insurgents have no special interest*—risings to effect these ends by force and numbers are by construction of law within the clause of levying war, for they are levelled at the King's Crown and Royal dignity." So says Mr. Justice Foster.

"Tumults," said Lord Ellenborough in Watson's Case, "the object of which is the *peculiar private and individual interest of the parties engaged in them*, are distinguished, by the Statute of Treasons itself, from attacks upon the Regal authority of the Realm."

In *Brandreth's* case, Lord Tenterden thus stated the law:—

"Insurrections and risings for the purpose of effecting by force and numbers, however ill-arranged, provided or organised, any innovation of a public nature, or redress of supposed public grievances, *in which the parties had no special or particular interest or concern*, have been deemed instances of the actual levying of war."

In *Frost's* case, the facts were these. Frost had combined with the other prisoners to lead from the hills, at the dead of night, to the town of Newport, some thousands of men; of whom many were armed with deadly weapons. These men arrived at the town by daylight, and after firing upon the civil authorities and upon the Queen's troops, were defeated and dispersed. Chief Justice Tindal, in summing up the evidence, refrained from expressing any opinion of his own, whether or not the insurrection aimed at objects of a general or a particular nature. He introduced the following passage from Sir Matthew Hale's *Pleas of the Crown*: "if men levy war to break prisons to deliver one or more particular persons out of prison, wherein they are lawfully imprisoned (unless such as are imprisoned for treason,) this, upon advice of the Judges upon a special verdict found at the Old Bailey, was ruled not to be high treason, but only a great riot; but if it were to break prisons or deliver persons *generally* out of prison, this is treason." In conclu-

sion, he stated the exact question the Jury had to determine, namely, "whether it was Frost's object, by the terror which bodies of armed men would inspire, to seize and keep possession of the town of Newport, making this a beginning of an extensive rebellion;—which would be high treason: or whether he had no more in view than to effect, by the display of physical force, the amelioration of the condition of Vincent and his companions in Monmouth Gaol, if not their liberation;—which would be a dangerous misdemeanour only. The Jury were to look at the evidence with all possible candour and fairness, and see if the Crown had *conclusively disproved this limited object and design.*"

It is plain that, where the persons who resort to armed force have for their object to assert and maintain their own rights in a particular piece of land, the offence, whatever it be, does not amount to Treason, or Rebellion, according to the Law of England. These men being subjects of the Crown of England, the nature of their crimes and the penal consequences thereof must be measured by the Law of England. We are not at liberty to deal with these our own fellow-subjects, as if we were waging war against aliens.

10. What, then, on the whole, is the position of the Colonial Government at this time as to the disputed block? The Government has taken possession of it without proper inquiry and without lawful authority. It has been assumed, that no tribal right exists as to the land at the Waitara. If such right does exist, then we have no right to be on the land at all, not even on Teira's land. As to individual claims, the case is even worse. There are absentee claimants whose claims are not to be arbitrarily denied. For all we yet know, they may be sound and just (60). For all we know as yet, the *pa*, built within the block on the night of the 15th March, may have stood on ground belonging to the very persons who built it. Nor can we get rid of the difficulty in the manner proposed by Mr. Richmond. As to the claims of absentees, "they are entitled, if real, to compensation, and no more." (Speech in the House of Representatives, August 7th, 1860.) The doctrine thus laid down amounts to this, that a man's land may be taken, whether he agree or not, and without any law or lawful authority for taking it (61): that he may be compelled to surrender his land by a decree of the Native Department. So easily is it forgotten that these men are subjects of the Queen; and that, even within these few weeks, we have assured them again that they are entitled to the protection of the same laws with ourselves. Fortunately the Governor of the Colony has not forgotten what is due to subjects of the Crown of England. On the payment of the first instalment to Teira, 4th December, 1859, a declaration was read on behalf of the Governor, "that if any man could prove his claim to any piece of land within the boundary described, such claim would be respected, and the claimant *might hold or sell,* as he thought fit." But even this declaration does not wholly remove the difficulty. Where is a man to "prove his claim"? For there is no competent or lawful Court. Are the Natives to keep or lose their lands according to the decision of a subordinate and dependent agent of the Executive Government? If this be so, what is the value of the Treaty of Waitangi? If this be so, how can they be called subjects of the Crown of England? Is the Government to be at liberty to take land indiscriminately, and then to require the dissentients to prove their claims? The Government should rather have ascertained from the sellers, what they had to sell. What can be less fitting than that the Government should proceed to take possession, without even knowing what it is entitled to possess?

11. The result is, that it is still quite uncertain whether the Government be in the right, as to the substance of its claim: whilst it is quite certain that the Government is in the wrong, as to the mode in which it has asserted its claim.

### 6. *The Consequences.*

It were an unworthy and inadequate mode of estimating the importance of the Taranaki question if we were to confine our view to the more immediate and palpable consequences of the proceedings at the Waitara; such as the present condition of the Province of Taranaki, the heavy burden entailed on the Colony, and the like. These are weighty matters indeed, but our judgment of the Government policy is not to be determined by a consideration of these nearer consequences only. Every policy must be estimated by reference to the whole object in view, the whole of the work which is proposed to be done.

1. Here in New Zealand our nation has engaged in an enterprise most difficult, yet also most noble and worthy of England. We have undertaken to acquire these islands for the Crown and for our race, without violence and without fraud, and so that the Native people, instead of being destroyed, should be protected and civilized. We have covenanted with these people, and assured to them the full privileges of subjects of the Crown. To this undertaking the faith of the nation is pledged. By these means we secured a peaceable entrance for the Queen's authority into the country, and have in consequence gradually gained a firm hold upon it. The compact is binding irrevocably (62). We cannot repudiate it so long as we retain the benefit which we obtained by it.

It is the clear duty of every officer of the Crown, and of every loyal citizen, to do his utmost, by deed and word, to fulfil this national undertaking. Our individual opinions, about the policy or wisdom of the undertaking, have nothing to do with our duty in this matter. Our individual opinions, about the capacity or character of the Natives, have nothing to do with it. To sustain the pledged faith of our Queen and our nation, this is our duty. Much has been said lately about loyalty. Here is the test of it. The recent measures of the Government must be judged of by this standard; they must be approved or condemned according to their tendency to accomplish or to defeat the national undertaking, to increase or to remove the intrinsic difficulties of the enterprise.

2. What are these difficulties ? The difficulties are doubtless many; but they resolve themselves ultimately into one, which is the source of all: that one is the lack of confidence on the part of the natives in our honesty and good intentions. They listen quietly to our words and approve them, but they watch and scrutinize our acts. This is the one original difficulty, ever reappearing: capable of being lulled and quieted, capable of being overcome and removed entirely, but capable also of being aggravated to the ruin of all concerned.

Just before Samuel Marsden left the waters of New South Wales on his first voyage to New Zealand, this difficulty showed itself. The ship was ready to sail, and all persons were on board, when the Native Chiefs, who up to that time had strongly encouraged the enterprise, became on a sudden gloomy and reserved. Their suspicions had been awakened by a gentleman at Sydney, who told them that the Missionaries would be followed by many others of their countrymen, who would in time become so powerful as either to destroy the Natives or reduce them to slavery. In proof of this assertion, he bade them look at the conduct of our countrymen in New South Wales. Mr. Marsden met this difficulty promptly. He offered to order the vessel to return to Sydney, there to land the Missionaries and their families, and to abandon the thought of holding any intercourse with New Zealand. This sufficed, and the good work proceeded. [Nicholas, *Voyage to New Zealand*, vol. 1. p. 41.] The same suspicion was expressed at Waitangi. Rewa, while addressing Captain Hobson, turned to the Chiefs and said, "Send the man away—do not sign the paper: if you do, you will be reduced to the condition of slaves, and be obliged to break stones for the roads. Your land will be taken from you, and your dignity as Chiefs will be destroyed." The same feeling prompted the Northern war under Heke. It has re-appeared from time to time in various forms. The letter which will be found at the end of this chapter, shows how strongly these suspicions were entertained five years ago by the tribes immediately to the Southward of New Plymouth (63.)

3. Hitherto, the endeavours which have been made to overcome these difficulties, have been attended by a remarkable degree of success. The Natives have voluntarily transferred to the Crown nearly all the Southern Island and very large tracts in the Northern. They have gradually abandoned old usages, adopted our dress and our modes of cultivating the ground. A very large portion of the corn and other produce raised in this Island has been grown by them. By co-operative labour, sustained for great lengths of time, they have raised large sums of money; which have been expended in the building of mills, and in the purchase of small vessels for trading.

Nor has the moral growth of the race been less apparent. They have readily given land for schools. In the central district of this Island, boarding schools for children, offshoots of the schools aided by the Government, have been established by the Natives themselves, and are now conducted and supported by them. One hundred and seventy children are at this time boarded in such schools. In every part of the country, efforts have been made by them to establish some mode of settling their disputes by law, and to frame and enforce regulations for repressing drunkenness and immorality, and for securing good order amongst themselves.

The success of this great undertaking, as to both its branches, has been such as no man in the Colony anticipated twenty years back.

4. It is a remarkable fact that the same period of time forms the turning point of the political history of both races. The earliest working of the system of Parliamentary Government amongst the Colonists, was concurrent with a wide spread movement amongst the Natives towards some regular system of law and organisation for themselves.

The preparation for this general movement had been long going on. In fact the Maories, even in their old heathen state, were not without law. Notwithstanding the crimes and outrages of that state of things, the ceaseless wars of tribe against tribe, a strong authority was exercised within each tribe. On all occasions the life of the Maori man, in peace and even more in war, was fenced round with forms and ceremonies, with minute and rigid rules. War was not entered upon without extreme deliberation and caution. The movements of the warriors were controlled by the priest (*tohunga*). All the tribesmen consulted together on all matters affecting the tribe. The old system of government fell with the fall of heathenism. The authority of the Chief and of the heathen priest sank gradually, as the old belief and the heathen usages, which supported that authority, were undermined by the teaching of the Missionaries. For years the people experienced the mischiefs which flowed from the decline and the failure of the power which formerly restrained and governed their tribes (64). Yet the usage of public deliberation remained. Our new forms soon commended themselves to their old habits. One of the first words of civilization which they borrowed from us was "Committee," which, under the form of *Komiti*, is now received and current in all parts of the country. After the colonization of the country commenced, they watched carefully and habitually our public proceedings, and came gradually to the conviction that our obedience to law was one main source of our superiority to themselves. They were continually taught and exhorted by their teachers, and especially by the Government itself, through the *Maori Messenger*, to substitute arbitration and peaceful modes of settling disputes, for their old mode of appealing to force. Nor was practical aid wanting on the part of the Government. Native Assessors were appointed in all parts of the country: who were to act under the instruction and guidance of English Magistrates. But it was not easy to find a sufficient number of English Magistrates, or to provide those who were appointed with the means requisite for carrying out completely the plan of the Government. The Native Assessors were left to themselves. Accordingly they set themselves to supply the need in their own way. They strove to establish for themselves, a system, rudely resembling ours, and so to procure for themselves a benefit which our system did not confer, except in the immediate neighbourhood of our own settlements. The result has been, that at present, through most of the Native districts, a sort of lawless law is vigorously

administered by Native Magistrates, supported or controlled by Native Councils or *Runangas*. Even this rude system, with all its defects and all its extravagances, has wrought much good. The Maories have been schooled, somewhat roughly, into obedience to law or authority. Nor has the practical benefit been confined to them. Native debtors in the Bay of Plenty and on the East coast were formerly beyond the reach of their English creditors. Within the last few years, debts have been recovered in those districts, through the agency of Native Magistrates, to a very considerable amount.

5. The movement of which we have spoken was general. About the year 1856, a peculiar movement began to manifest itself in the Waikato District The men of the Waikato aspired to a higher degree of organisation. They sought not only to administer justice amongst themselves, but also to establish for themselves a central legislature and government. No doubt the first promoters of this movement were stimulated by the example of the numerous Councils, which they saw established amongst the English under the new Constitution. But the foundation of the whole was a sense which had gradually gathered strength, that they needed some government and that the Pakeha could not or would not supply it. Accordingly a scheme which had been proposed several years before, was now carried out. They proceeded to elect for themselves a King. The strength of this movement lay, and still lies, in the Waikato district. Until lately it scarcely extended beyond. The authors of this movement "expressed no disaffection towards the Government, but urged the necessity of maintaining peace, order, and good government in the country: which they argued the Governor was unable to do. 'I want order and laws;' Thompson said, 'a King could give these better than the Governor. *The Governor never does anything, except when a Pakeha is killed* (65). *We are allowed to fight and kill each other as we please. A King would end these evils.*'

"*Paora* said, 'God is good: Israel was his people. They had a king. I see no reason why any nation should not have a king if it likes. The Gospel does not say, we are not to have a king. It says, 'Honor the king, love the brotherhood.' Why should the Queen be angry? We shall be in alliance with her, and friendship will be preserved. *The Governor does not stop murders and fights among us. A king will be able to do that. Let us have order; so that we may grow as the Pakeha grows. Why should we disappear from the country? New Zealand is ours, I love it.*'" (Buddle. *King Movement*, p. 9.)

This King party includes men of every shade of opinion and feeling; very many who honestly desire order and law, under the guidance and protection of the Pakeha; others, who are deliberately organising and preparing themselves for the purpose of resisting that aggression which they anticipate from us. Some reckless and violent men have joined it; but they have effectually been kept in check, until lately, by the large majority of well-disposed men. An instance, very characteristic in all ways of the Native people, occurred at Taupo, in December, 1856.

"At one of the evening meetings, which was held in a large house lighted up for the occasion, one of the advocates for a general clearing out (of all the Pakehas, Governor, Missionaries, and Settlers) was very eloquently pressing his views upon his audience, when Tarahawaiki, of Ngaruawahia, walked quietly round, and one after the other put out the lights, till the place was in total darkness, and the speaker in possession of the house was brought to a full stop. 'Don't you think you had better light up the candles again?' he said. 'Most certainly,' replied Tarahawaiki, 'it was very foolish to extinguish them!' The meeting at once apprehended the meaning of this symbolical act, and the orator sat down amid roars of laughter enjoyed at his expense" (Buddle. p. 8.)

6. This King movement has a further object, viz., to prevent the land within the district from being alienated to Europeans, without the consent of the King. This restriction of land sales is no doubt intended partly as a means of sustaining their own nationality against the Pakeha, and of securing a fair field for the operation of their new system. But it has been greatly strengthened, if not originally prompted, by their observation of the effects of the Government system of land purchasing. They perceive that as the territory of the tribe is gradually narrowed, the position of the chief is lowered, and that little or no permanent benefit accrues to the tribe, to compensate them for the permanent loss of their land. They are irritated and annoyed in a variety of ways by the working of the system, and endeavour in this way to protect themselves against it. The unpopularity of our system of land purchasing has been the strength of this land league.

"When any dispute arose, a party of king's men were sent to tender their kind offices as mediators; and having effected a reconciliation between the contending parties, they generally wound up their mission by proposing an union with their league. They said: 'Disputes will never end under the present system of holding our land, nor can there be any security against *clandestine* sales (*hoko tahae*), until all the land is placed under the control of one *runanga*. We never have been able to manage these things, and never shall be on the old system, therefore join us and hand over your land to the league; then the cause of your quarrels will be removed, your land will be secured for your children, and peace will reign among the tribes.' This view of the subject took with many parties, and drew many into the scheme." (Buddle. p. 27.)

Accordingly leagues of this kind have not been confined to the Waikato district, but have been formed in all parts of the country. The earliest of these leagues was formed in 1854, at Manawapou, between the two tribes immediately to the South of New Plymouth.* They endeavoured to obtain the co-operation of other tribes to the South of them; but failed to do so.

* In the statement made by Mr. McLean before the House of Representatives, on the 14th of August last, it is asserted that "it was *resolved* at this meeting of the Natives, that they should entirely repossess themselves of lands already alienated by them, and drive the European settlers into the sea." In a statement of the proceedings at Manawapou, furnished to me by Tamihana Te Rauparaha, a strong supporter of the Government, who was present at the meeting and opposed the proposals there made, I find no mention of any such resolution as Mr. McLean speaks of.

7. What was the position of the *Ngatiawa* tribe and of the chief William King, in respect of these movements, particularly in respect of the Waikato King movement and the Taranaki land league? There has been some degree of variation in the allegations which have been made on the part of the Government as to this matter. The first suggestion, that William King was directly connected with the Waikato King party, was soon abandoned. It was next asserted that, though not actually a member of that party and league. yet he favoured them and counted upon their support. The fact is, that William King strenuously resisted the King movement, even until force was actually employed against him at the Waitara (66). This we learn from Mr. Parris himself.

"In December last, Waitere, from Hangatiki, an active agent in the King movement, called at Waitara on his way to the South, and left secretly a King's flag with a native called Erueti, the miscreant that proposed the plot to murder me; who has done a great deal of mischief in this district. As soon as Wm. King found out that this flag had been left there, he accused those who sanctioned it of acting treacherously by him; and finding some of his own people favourable to it, he threatened to leave the district. This matter caused a division among the party. William King left his pa at Waitara, and went to live with Teito, near the Waiongona; while the other party still carried on the flag question, and commenced to prepare a flagstaff." (*Further Papers* E. No. 3A. p 3.)

We have already seen (above, p. 15) how Wi Tako, the emissary of the King party, certified to his friends in April last, that the quarrel at the Waitara had no connection with the King question. His words are, "Friends, do you listen. The ground of this trouble concerns the land only. *It does not concern the King.*"

Again, it has been repeatedly asserted that William King was a leading member of the Taranaki land league. No proof has yet been given of this assertion. William King is really connected with a land league, but one quite distinct from the Taranaki league to the South of New Plymouth. As to the fact of his connection with a land league, and as to the nature of the league itself, all our knowledge is derived from a letter written by himself to the Governor, 11th February, 1859. (*Papers* E. No. 3A. p. 5.)

The letter shows that a league or compact exists between the owners of the district, extending from Waitaha, about four miles South of the Waitara river, to the Mokau river, and that a Council is elected yearly by them. William King informs the Governor that the new Council, elected for the year 1859, had decided that the old prohibition of the sale of land within that district should still continue, (*kia purutia ano te whenua*). We have no sufficient means for determining the precise nature of this compact. Nor is it necessary to inquire; for there is no doubt that the Waitara land lies entirely within the territory of the *Ngatiawa* themselves, William King's own tribe. We have seen "that the opposition of Wiremu Kingi to the sale of Teira's land, has been uniformly based by him *on his pretensions as chief to control the sale of all lands belonging to his tribe.*" Such is the statement of the Provincial Government and the settlers of Taranaki, cited above (p. 6). Mr. Richmond has also stated in the Memorandum cited above, (p. 14,) that "*King's stand is really taken upon his position as a chief;*" and that possibly under other circumstances, "his birth might have given him *the command over the tribe which he pretends to exercise.*" This last statement bears date 27th April, 1860, nearly two months after the commencement of military operations at the Waitara. It is plain then that those operations were commenced in the belief and on the ground that William King was claiming as chief of a tribe, and not in any other capacity (67).

It should be remembered, that the resistance of the *Ngatiawa* to the sale of the Waitara land was no new thing. Before William King returned to the Waitara, the *Ngatiawa* steadily refused to part with the land. (See above p. 4.) That unwillingness began before any land league was thought of, and has continued unvaried and uninterrupted to the present time. Why do we seek a new cause for an old and unchanged fact?

The proceedings at the Waitara (68) were not resorted to on the ground that William King was disloyal, or his people disaffected or engaged in resistance to the law; but simply because it was desirable to open the Waitara land. The purpose was good and laudable in itself, but it had no connection with the Queen's sovereignty. The real object of the Governor is distinctly stated by himself in the Despatch of 29th March, 1859:—

"Since then, progress has been made in ascertaining Teira's right to dispose of the land, (of which there seems to be little doubt); and, if proved, the purchase will be completed. Should this be the case, *it will probably lead to the acquisition of all the land South of the Waitara river*; *which is essentially necessary for the consolidation of the Province; as well as for the use of the settlers.* It is also most important to vindicate our right to purchase from those who have both the right and the desire to sell.

"If the land now under negotiation can be obtained legitimately, and without breach of Maori ideas of right, *I have little doubt that other tracts of land of considerable extent will be offered for sale; and I shall thus be able to satisfy the demands of all moderate men among the settlers.*" (*Papers* E. No. 3. p. 3.)

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Within the last few weeks a letter has been published by the Rev. Samuel Williams, in which he comments on Mr. McLean's statement, as follows:—"This most startling assertion is positively contradicted by one of the principal chiefs, who was present: the only one who has since been within my reach. I never heard such an idea breathed before. Having seen a number of Natives on their return from the meeting, I feel convinced that such a scheme would most certainly have come to my ears, had it ever been entertained. If such a resolution had been passed, why was it not acted upon? Nearly seven years have elapsed without the least interference with the Europeans." It is probable that the report which Mr. McLean has adopted, had its origin in some violent *proposal*, akin to that which was extinguished at Taupo by Tarahawaiki.

That there is now a connection between William King and the Waikato party is not to be denied: but that connection began after our employment of military force, and in consequence of that employment. (69) It is the result of our own acts. We have driven him into an alliance which he did not seek or desire.

8. The movements of which we have been speaking (70) furnished a noble opening for the establishment of law and Government throughout the Native population. No doubt much care was required in dealing with them, so as quietly to obviate and remove that distrust of the Government, out of which they sprang. These movements were dangerous, because they tended towards a separation of the races. Yet even that tendency to separation had its favourable side. A complete fusion of the two races into one legislative and judicial system was impracticable. By the institution of a separate system for the Maories, the risk of collision in political matters with the settlers was avoided; whilst the Government had it in their power, by wise management, to obtain the control and guidance of the whole movement. Before this period there had been no mode of governing the Natives, except by means of personal influence applied to individual cases. They had now become in a great degree receptive of laws and of institutions. Not that personal influence was now needed less than before; it was needed even more: but it was now required for a larger and more beneficial purpose, to restrain and guide the new movement, to mould its results into some permanent form for the good of both races. Personal influence was still indispensable, in order to effect in a peaceable way the transition to something more fixed and enduring than itself. The nature of the movement, as it showed itself in the Waikato district, and the main principles to be adopted in dealing with it, were clearly stated by Mr. Fenton, Resident Magistrate, in a Report dated March, 1857.

"It being admitted that the Maories are theoretically entitled, but are actually not qualified to exercise these privileges, the inference follows that for the present they should be induced to forego the exercise of them; and that in the mean time they should be suffered to exercise political privileges of a more primary character; that is, that they should be encouraged to undertake the institution of law in their own villages, *assisted to make such byelaws as their peculiar wants require, allowed to nominate men to carry these laws into execution, and permitted to assemble periodically* for the purpose of discussing the actions of the past and providing for the needs of the future. Thus will a continued progress be made in their political education; their thoughts will be occupied, their minds elevated, and their ambition satisfied." (*Pap.* E. No. 1c. p. 7.)

"There exists a void, and this void, the persons principally interested are most anxious to fill. The English power, having failed to induce the adoption of law in a direct manner, through the means of English Magistrates, is now offered the opportunity of thoroughly instituting all the ordinary laws, as far as they can be made applicable, by the simple and constitutional plan of initiating them through the intervention of the people themselves. For in fact *the movement will, if properly guided, result in nothing more than the permanent establishment of a powerful machine, the motive power and the direction of which will remain with the Government.* When the Maories express their anxiety to make laws, they also pray that the Governor will cause them to be instructed as to what laws they are to make. In fact, their views, divested of Maoriisms of thought and expression, are simply that the law of England may be introduced amongst them, with such modifications as their circumstances require (71)." (*Ib.* p. 8.)

Shortly afterwards the Governor visited the Waikato district, and conferred with many of the Chiefs on the subject. On his return to Auckland, the Governor laid before his Ministers a Memorandum stating the course which he thought proper to be taken. On the 6th of May, 1857, the Ministers presented to the Governor a Memorandum in answer thereto, indicating their views; which coincided generally with those taken by His Excellency. The following are extracts from their Memorandum:—

"That an important crisis in the relations of the Native race with the British Government is now occurring, is a fact recognized by all who have any acquaintance with Native affairs.

"The peculiar feature of the time is the tendency to self-organization, now being exhibited by a large section of the Maori people. The numerous meetings in course of being held throughout the country, the recent attempts at legislation which have taken place at the villages of the Waikato tribes, and the agitation for the appointment of a Native King, are the signs of this movement.

"With some amongst the Natives there is reason to think that social organization is sought chiefly, if not wholly, as a means to the ulterior end of counteracting the growing predominance of the European, preventing the further alienation of territory, and maintaining the national independence. Another class appears purely to desire the establishment of law and order, and to be at the same time sensible that this benefit is only to be attained by the co-operation of the British Government. Between these extremes there are probably many shades of opinion.

"There is, however, little reason to doubt that, should the British Government wisely and timely afford its countenance to the establishment amongst the Maories of civil institutions suited to their wants, the more loyal and intelligent opinion will speedily become prevalent.

"As to the ultimate end to which the British Government in these Islands is bound to shape its Native policy, there can be no difference of opinion. Successive Governors have promised, in the name of the British Crown, that the Colonists and the Maories should form but one people, under one equal law; and no effort must be spared to redeem this pledge."——

"But it is not reasonable to expect that a barbarous race should be able to adopt *per saltum* the complex institutions of a free British Colony. A transition state must occur, requiring special treatment; and the civilization which is expected to lead to the adoption of British Law, can itself only be attained through the medium of fitting institutions; institutions which, taking theactual condition

of the Aboriginal population as the point of departure, provide for its present necessities and for its transition state, and are capable of expanding, in their ultimate development, into the full measure of British liberty. Nor should the letter of promises made to the Natives be pleaded in bar of measures conceived in the spirit of those promises, and directed towards their practical fulfilment. Actual progress towards a real identity of laws is essentially more just, as well as more expedient, than the maintenance of the fiction of an identity, which it is notorious does not exist.

"In the preceding observations there is no intention to reflect upon the past conduct of Native affairs, as a whole. A certain amount of trust has been inspired in the friendliness and fidelity of the British Government, which alone is much. The Natives would have been apt to look with suspicion on measures which they had not themselves suggested. *It is a new and remarkable feature of the present time, that the wish for better government has originated with the Natives: they are tiring of anarchy.* No such opportunity for an advance, as now seems to be opened, has been presented to any former administration.

"There is great reason to believe that the Maories are fully capable of institutions of the character above described; of institutions, that is, containing the germs of British freedom. They are to an extent surprising in an uncivilized people, habitually influenced by reason rather than by passion; are naturally venerators of law, and uneasy when contravening recognised obligations; are without the spirit of caste, there being no sharp line of demarcation between Chiefs and people; and have at all times been used to the free discussion of their affairs in public assemblies of the Tribes. To these essential qualities are joined an enterprising spirit, a strong passion for gain, and a growing taste for European comforts and luxuries. *Such a people, impossible to govern by any external force, promises to become readily amenable to laws enacted with their own consent.*

"The foregoing considerations induce us to recommend it as expedient, that measures should be taken as early as possible for giving the support of the Crown, and the sanction of law, to the efforts now making by the Maori people towards the establishment of law and order amongst themselves. In dealing with a question so difficult and delicate, we are, however, fully sensible of the necessity of proceeding with the utmost caution, and desire to see the measures of Government moulded, as far as possible, by actual progressive experience of the wishes and wants of the Native people; and it fortunately happens that their habit of public discussion will greatly facilitate such a policy." (*Memorandum of Ministers to Governor Gore Browne. Pap.* E. No. 5, pp. 8-9.)

9. We now proceed to inquire what was practically done towards guiding and controlling this movement in the interval between 1857 and 1860. During the year 1857, and part of the year 1858, Mr. Fenton acted as Resident Magistrate in the Waikato district. In that capacity he gave much aid and guidance to the people. A large portion of the population of the Lower Waikato accepted the plans which he propounded. The general sentiment of the people was aptly expressed by Karaka Tomo, the old Chief of Ngatipo, who said:—

"What is the meaning of the ark, that God said, let Noah make. The white men are cautious and knowing, the offspring of the youngest son of Noah. Noah was saved when all the world was drowned, because he had an ark. The white men will be saved, even if the Maories drown, because they have an ark. The law and order is their ark. Therefore let us turn to the white man and get into his ark, that we may be saved,—the law, the council, the magistrate. On this day we begin." (*Pap.* E. No. 1c. p. 38.)

No similar effort has been made in any other part of the Island. Early in 1858 a book was put forth by the direction of the Governor, entitled "The Laws of England compiled and translated into the Maori language;" and the book was widely circulated amongst the Natives. This book no doubt had a considerable effect in stimulating the movement, but it failed to indicate to the Maories the course which it was necessary for them to pursue. Some main principles of English Law were clearly explained, but too much of the artificial structure and technical language of our Law was retained. Taken as a whole, the book was far too multifarious and complicated. Much of it was occupied with matters which must always be confined to the English Courts. There was little or nothing adapted to the very peculiar needs and difficulties of the Maories at the time. In the Session of 1858, several laws were passed relative to Native affairs: the "Native Districts Regulation Act" empowered the Governor in Council, to make and put in force, within Native districts, Regulations respecting divers matters enumerated in the Act. It provided that all such Regulations should be made, as far as possible, with the general assent of the Native population affected thereby; leaving it to the Governor to ascertain the fact of that assent in such manner as he might deem fitting. The "Native Circuits Court Act" provided that within every Native district a Resident Magistrate, assisted by at least one Native Assessor, should hold a Court periodically. Such Courts were to exercise both civil and criminal jurisdiction, as limited and defined by the Act. Also all offences against any Regulation made under the former Act, were to be cognizable by these Courts. The latter Act has been brought into operation at the Bay of Islands, and in the district to the West and North of the Bay, but not elsewhere. Under the former nothing has been done.

During the whole interval then of which we are now speaking very little was done anywhere by the Government to guide the Native mind towards law and order. Various causes conspired to produce this result. The consolidation of our new constitutional system gave abundant employment to our public men. The unfortunate arrangement, under which the offices of Native Secretary and of Chief Land Purchase Commissioner were combined in the same person, issued in the services of that officer being employed chiefly in the latter capacity. The Natives complained of the lack of help and guidance from the Native Department, the head of that Department being otherwise employed. Personal influence was gradually diminishing, whilst the internal activity and excitement of the people

went on increasing. Some important and well-considered plans for the future arrangement of Native affairs were framed by the Governor, and sent home; but in the meanwhile, from one cause or another, but especially from the absorption of the Native Secretary into the Land Purchase Department, the government of the Natives was gradually slipping out of our hands. In the district where guidance was most needed, that of the Waikato river, one practical and visible proof has remained of the interest taken by the Government in the advancement of the Native population: I mean the yearly aid given by the Government to the schools conducted by the Missionaries. That has tended strongly to produce confidence, where so many influences have been tending the other way.

Whilst the proper functions of the Colonial Government have been slightly or not at all exercised, one accidental function has been ever active; and that a function naturally tending to produce disputes and jealousies amongst the Natives themselves, and irritation against the Government. Acting Governor Shortland truly represented to Lord Stanley, in 1843, that "the Government, by becoming a purchaser of land, is placed in a position which tends to weaken its influence and lower its dignity in the eyes of the Natives generally: and the high situation of Her Majesty's Representative is classed in their minds with that of any other buyer of land; a most disadvantageous association, but one nevertheless which actually exists, as can be gathered from the remarks they frequently make on the subject." (*Report, New Zealand*, 1844, App 340). During the interval of which we are speaking, there was little to countervail this disadvantage. In many parts of the country, there was no indication of the Queen's Sovereignty; the Natives scarcely knew the Government, except as a purchaser of land.

10. Over and above these more obvious causes of distrust, fresh causes have arisen of late years, smaller in themselves yet scarcely less powerful. Immigrants arriving in great numbers have been led to believe that the only source of difficulty in this Colony, the only barrier between them and wealth, is the Native population. Hence has arisen in a section of our town populations a very unfriendly feeling towards the Natives. If the language, which has been occasionally used, were translated and generally circulated amongst the Natives, any cordiality, or even friendliness, on their part would be scarcely possible. They have more reason to fear us, than we to fear them. They mingle with us on every side, and are very quick to discern the signs of such a feeling. Rumours of our evil intentions are carried from village to village throughout the country. Thus a chronic disquiet and suspicion have been widely spread.

Can we wonder, if the Natives, finding that our system has conferred on them so little good, and threatens them with so much evil, have taken it into their serious consideration, whether they cannot do better for themselves than we have done for them? Can we wonder that, under all these circumstances, the King movement and other forms of jealous and unfriendly combination have arisen and gained strength?

11. Moreover, it has unfortunately happened that the inability of the Government to discharge its own proper function and duty, the protection of life and property by the enforcement of law, has been most conspicuous in the very district where the present disturbances have taken place. The difficulties besetting the Government have been no doubt exceedingly great. What is here said is not stated with any intent of blaming the Colonial Government or any member of it. The only object is to shew that the Natives could not, under the circumstances, acquire any clear or true apprehension of the nature and benefits of the Queen's Sovereignty, or any confidence in the Colonial Government as a protecting power. The long series of atrocities, committed of late years in the New Plymouth district, commenced with the murder of Rawiri Waiaua, in August, 1854. The circumstances of that murder are stated in the following Report to the Government from the then Native Secretary, Col. Nugent:—

"From inquiry, I found that the first affray, in which Rawiri, the Native Assessor, one of the most respected Natives of the Puketapu tribe, and six others [were killed] by Katatore, partly arose from Rawiri attempting to cut the boundary of a piece of land which he had offered for sale to Mr. G. Cooper, the Land Commissioner of the Taranaki district. It appears that Katatore had long ago stated his intention of retaining this land, and had threatened to oppose any one who should offer to sell it; Rawiri, however, on account of some quarrel with Katatore, proposed selling the land, and was desired by Mr pCooer to cut the boundary.

"Rawiri proceeded accordingly with twenty two others, on the morning of the 3rd August last, and had succeeded in cutting some part of the boundary line, when Katatore and party rushed down from his pah, and, after warning Rawiri twice without effect to desist, fired and killed him and six others; four were severely wounded and four slightly wounded."———

"I fear that further bloodshed may be expected: and, as *unfortunately it has arisen about a land question*, Katatore will have all the sympathy of those who are opposed to the sale of land. The relations and friends of the deceased Chief Rawiri, who are principally resident within the settlement, *and who are called the friendly Natives, as being in favour of the sale of land*, are determined to have revenge for the death of their people."

At the end of more than three years, the murder of Rawiri was avenged by Ihaia in the manner stated in the following letter from Mr. Halse, Assistant Native Secretary to the Native Secretary, dated Jan. 11th, 1858:—

"I have to report to you that Katatore was killed last Saturday, under very atrocious circumstances. On his return from town towards sundown, with three Natives, named in the margin, all on horseback, he was waylaid by Tamati Tiraurau and a party of five Natives, on one of the main roads of the Bell district, and shot. His relative Rawiri Karira, fell at the first volley, and was literally hacked to pieces.

"Tamihana pushed on; but Katatore dismounted and, whilst leading his horse away up the cross road towards the Huira, was overtaken and pierced with several bullets, then beaten about the head

with the discharged guns (three of which were broken over him), and finally mangled with tomahawks.————

"The plans laid for Katatore's death were Ihaia's, as he has admitted to Mr. Parris; but they were so well kept by the Natives concerned, that nothing was known of them until they were effected. Even Katatore, who received a warning on the road from Mr. Hollis, who had observed armed Natives remaining in one spot, had no thought of being attacked. Ihaia was observed watching him about town during the day under an assumed desire for a reconciliation, and he followed him out of town. I am of opinion that the attack must have been meditated for some time, as on the first occasion of his moving out unarmed he has been killed. It may be attributed partly to revenge for Rawiri Waiaua's death, and jealousy that Katatore, after all their efforts to punish him for it, should be in a position to offer land for sale when Ihaia's offer was rejected." (*Pap* E. No. 2. p. 27).

Nor did these atrocious crimes stand alone. From the time of the murder of Rawiri Waiaua in August, 1854, a series of deadly feuds went on, till July, 1859: and it was not till Sept., 1859, that peace was finally concluded. It is unnecessary to enter into the details of these feuds: many of which are to be found in the "Petition of the Provincial Council of New Plymouth, to the House of Representatives, May 19th, 1858." (*Pap.* E. No. 2. p. 29).

The effect of these continued troubles upon the Native interests was most disastrous. The *Ngatiawa* tribe had been one of the most industrious and thriving in New Zealand. "In 1854, Wm. King's tribe possessed 150 horses, 300 head of cattle, 40 carts, 35 ploughs, 20 pairs of harrows, 3 winnowing machines, and 10 wooden houses." (*Dr. Thomson. New Zealand,* vol. 2. p. 224.) I learn from a friend, who visited the district in 1858, that most of these indications of prosperity had then passed away. To one who had seen the former state of things, the contrast was most striking and painful. Fragments of thrashing machines were seen lying among the ashes of a burnt pa; oxen lying dead between the hostile encampments; cultivations abandoned and fences broken down. The Native population was divided against itself, and embittered by long continued hostility.

There was no place in New Zealand into which it was more evidently inexpedient to introduce any new element of discord (72).

12. Such was the state of the Native mind generally, and at New Plymouth in particular, when Teira's offer was accepted by the Government. The principle asserted by the Government was most obnoxious to the Natives, and necessarily secured to William King active support in his own tribe and a strong and wide-spread sympathy beyond it. Nor did the mode of investigation pursued by Mr. Parris contrast favourably with the mode of proceeding in like cases formerly, as described by Mr. Hursthouse:

"The Government officers were scrupulous in obtaining the consent of every individual interested; title deeds in the Maori tongue, showing boundaries and reserves, were duly signed by men, women, and even children; and the whole business, conducted with the greatest fairness and publicity, was concluded to the satisfaction of both Native and European." (p. 48.) In all these important points, as has been already shown, Mr. Parris' inquiry was defective. Everything tended to strengthen the notion, already generally entertained amongst the Natives, that the Government cared for nothing so much as to get land. Can we be surprised, that the old feeling of distrust acquired at once a new strength, and spread rapidly through the widely scattered settlements of the *Ngatiawa* tribe? Nor could it be confined even to that tribe. The sense of a common interest, a common peril, carried it onward through the country; and when at last force was resorted to, the feeling of alarm and irritation reached its height. A number of persons saw that which they could not doubt to be their own land taken from them by force. That which the best disposed amongst the Natives had refused to believe possible, that which the worst disposed had foretold and made a subject of agitation, had now taken place. Was it possible that such a state of things should exist without producing the worst effect on the minds of such a people as this? The inevitable result of the course pursued in this matter was to weaken indefinitely every influence for good which was at work amongst the Natives, and to strengthen indefinitely every influence for evil. An immense impetus in the wrong direction was given to the schemes of Maori agitators, an impetus which they could not have acquired in any other way. We professed to be guarding against designing persons, yet we took (and are continuing to take) the course best suited for their purposes. There is reason to believe that the King movement has gained more strength, more adherents, since the beginning of this year, than in the whole previous period. That whole movement took its origin from our non-government. It has derived its strength from our mis-government.

13. The peculiarity of the present irritation is that it is not, as former ones have been, strongest amongst the restless and more exciteable part of the population. The deepest sense of wrong is not in the men who are the most quick to denounce and resent it, but rather in men of a more considerate nature,—men who can estimate the largeness of the peril, and calculate the consequences both ways. Many such men are to be found amongst the Native population. These men desire peace and union; they heartily seek our aid in reclaiming and raising their people, and welcome every proof of our good disposition towards them; they know the blessings of peace, and they know what Maori warfare may become; they have seen horrors which we can hardly conceive. These men chafe under the sense of what they believe to be a great wrong. They are bitterly disappointed. They ask why a Government, which had been constantly urging them to settle their own disputes by peaceable means, should itself resort at once to armed force? Why such force is employed, not to punish crime, but to seize land? They ask why is William King, our old ally, now treated as an enemy? Why does the Pakeha denounce without measure the slaughter of the five men at Omata, committed after hostilities had commenced, whilst Ihaia, the contriver of a most foul and treacherous murder, is received by us as a friend and ally? Such men unwillingly accept the answers which

are too readily suggested (73):—William King will not part with the Waitara; Ihaia is willing to sell land.

Of all the evil consequences of the doings at the Waitara, the most formidable is this—the estrangement of the most thoughtful of the Native people, the destruction or grievous diminution of their confidence in the Government.

14. The actual degree of irritation and distrust is serious enough. It needs not to be magnified. All exaggerations on this subject tend to a great practical evil. They encourage a most unfounded belief that the time for rational and peaceable measures is past, and that nothing remains for the two races but a deadly struggle for the mastery. I see with great regret that a statement of this kind has found its way into one of the Governor's Despatches, 27th April, 1860:—"There is a party on the Waikato who are decidedly inimical to the Europeans as a race, and desire war with or without cause. I am, however, inclined to believe that they are in a minority, and will be restrained by those who are wiser."—(*Pap.* E., No. 3, p. 38.)

On what testimony the Governor accepted this view of the case, I know not; but I am satisfied that the facts were not correctly represented to him. I have witnessed the astonishment of persons intimately acquainted with the district, on reading that statement. There is no antipathy of race amongst the Maories. The Polynesian man, from our first contact with him, has always shown himself disposed to look up to the Pakeha. He does not, like some wild races, sit apart in sullen indifference. He imitates us and adopts our ways. In everything but fighting, he regards the Pakeha as his superior. He is not unwilling to believe in our honesty, and in our desire to do him good. He will believe it still, if we do not so govern the country as to make that belief impossible. He offers friendship, he asks for guidance; but he insists on his rights, and he refuses to yield to intimidation. This has been his character from the beginning of our dealings with him, and such it is still.

That war is not desired with or without cause is shown by the facts of the case itself. During seven months from the time when the present disturbances began, not more than 200 men of Waikato joined William King. It is reasonable to expect that if the present state of things continues, many more will be drawn in. During a considerable part of this time, most of the English Settlements have been at the mercy of the Natives, but no attack or hostile movement has taken place.

A recent and imperfect Christianity and a commencing civilization have been suddenly assailed by that very power which is the professed protector of both. With few exceptions, these half-reclaimed men control themselves and remain quiet. This remarkable result is due partly, perhaps, to their belief that they will be able to protect themselves if the danger should actually reach them, but in a great measure to the fact that the leaders of the Maories are not what they are often supposed to be. They have been without books, but not without education. The feuds and alliances between the tribes furnished a practical training. The Chiefs of those turbulent and conflicting communities necessarily became wary and circumspect and apt to calculate consequences. These men understand their present position. They know that they cannot stand against foreign invaders without the protection of the Queen. They desire trade and peace. They do not desire a war by which they can gain nothing, and may lose much. Lastly, they have learned to distinguish between the Government of the Colony and the Government of England. They look to the Queen for protection and justice.

I know it has been asserted that a large portion of the Native population is hostile to the Queen's sovereignty. I am persuaded that such is not the case. My firm belief is that, if what is called disaffection were carefully sifted and examined, it would be found almost universally to be at bottom directed against particular persons or particular grievances, not really against the authority of the Crown. If, indeed, any considerable portion of a people so ready and willing in former times to invite our presence and accept our guidance, and so able to estimate the advantages and disadvantages of the connection, had now become determined to cast off our government, that fact would be the heaviest condemnation of our rule. But we may safely and thankfully reject such assertions.

15. A month after the last-mentioned Despatch was written, the following statement as to the disposition of the men of Waikato was published by a gentleman who has been depended on by the Government, throughout these proceedings, as one of their best and safest authorities:—

"That some of the ultra-kingites may have contemplated extreme measures against the Pakehas is not improbable; various things have transpired in the progress of events calculated to lead to this conclusion; but this party is very small. Its ultra measures meet with no support from the great body of the Waikato tribes. The speeches of the principal Chiefs may be referred to in proof of this. Nor can there be any doubt about the sincerity of those speeches. The Waikatos, as a body, are evidently anxious to be in a position to defend themselves against aggression, but they are not disposed to become the aggressors, nor to involve themselves in a general war."—(*Buddle*, p. 26.)

16. After the present disturbances had continued for some months, an effort was made to allay the irritation of the Native mind. A number of Native Chiefs were invited by the Governor to confer with him. Accordingly about 120 persons assembled at Kohimarama, near Auckland. The persons invited were, with few exceptions, such as were known to be friendly to the Government. Many of the most influential of them were unable to attend. The meeting had no claim whatever to represent the Native population: it was rather a counter demonstration to the Native Meeting at Waikato. The Chiefs who could have best disclosed the causes of discontent, and pointed out the way to a better state of relations between the races, were for the most part absent. Various subjects of moment were brought before this Conference. Among these were plans for the administration of justice in their own villages,—for the establishment of mixed juries in certain cases,—for the defining of rights to

land, and for the issue of Crown Grants to individuals. Even in this carefully selected body, dissatisfaction at the continuance of the contest at Taranaki was strongly expressed by various speakers: but the mode of terminating it was not brought under the consideration of the Conference. A statement in justification of the proceedings of the Government was made by the Native Secretary, to which the assent of the meeting was invited and obtained. This was an unfortunate use to make of such an assembly (74). The statement of the Native Secretary was not complete, nor on all points accurate. Of the persons assenting some were old enemies of the *Ngatiawa*; and the greater number had no means of testing the sufficiency of the statement. An assent so given was not likely to influence the minds of men better informed and more independent. Yet the Conference did much good at the time, as a visible beginning, however imperfect, of a better system; as the first opportunity for public and mutual explanation for stating grievances, and for devising, by common consent, proper remedies for them. The satisfaction of the Natives on this point was keen and lively. They prayed the Governor that the Native Conference should be made a permanent institution. The Native Secretary supported their prayer, and stated it to be "abundantly manifest that, in the present state of the Colony, the Natives can only be governed through themselves." The House of Representatives thereupon voted money for the expenses of another Conference, to be held in 1861: which, if it be a really representative body, will probably do much good.

17. On the 11th of August, the Conference was dissolved by the Governor. The Session of the General Assembly had commenced a few days earlier. On the 7th of August, Mr. Richmond obtained leave to bring in the "Native Offenders Bill." The Preamble of the Bill was as follows: "Whereas Aboriginal Natives, after committing offences against the law, occasionally escape to remote districts, and are there harboured by Chiefs and Tribes who refuse to deliver them up to justice: And whereas also combinations are occasionally formed amongst Aboriginal Natives for the purpose of resisting the execution of the law *and for other unlawful purposes:* And whereas it is expedient, in order to enforce obedience to the law in the cases aforesaid without the employment of military interference, that the Governor should be enabled to prevent dealings and communications with the Aboriginal Natives offending as aforesaid: Be it therefore enacted, &c."

The Bill provided that it should be lawful for the Governor, by Proclamation, to declare any district of the Colony subject to the provisions of the Act. When any district should have been so proclaimed, every person who, without the written permission of the Governor, should do any one of certain specified acts, should be deemed guilty of an offence. The acts were specified in Section 3, as follows:—

(1.) Who shall wilfully visit any part of such district, either by land or water, or, not being a resident thereof, shall remain therein after having become cognizant that the same is subject to the provisions of this Act.

(2.) Or who shall knowingly purchase, or carry by land or water, or receive, any goods or chattels whatever the produce of such district, or the property of any Aboriginal Inhabitant thereof.

(3.) Or who shall purchase or otherwise obtain any goods or chattels for the use or benefit of any Aboriginal Inhabitant of any such district.

(4.) Or who shall knowingly sell any goods or chattels whatever to any Aboriginal Inhabitant of any such district, or to any person with intent that the same may be applied or disposed of for the use or benefit of the Aboriginal Inhabitants of such district, or any of them, or who shall otherwise carry on trade or commerce with such Inhabitants or any of them.

(5.) Or who shall knowingly and wilfully hold any communication or correspondence whatever, directly or indirectly, with any Aboriginal Inhabitant of any such district.

(6.) Or who shall by counsel or otherwise assist, invite, or encourage the Inhabitants of any such district to offer or continue to offer resistance to the execution of the law, or shall publish or utter in writing or by word of mouth any language calculated to invite or encourage such resistance with intent to produce that effect.

(7.) Or who shall refuse or wilfully neglect to depart from or leave any such district within a time to be fixed by the Governor by any writing under his hand, after having been personally served with a copy of such writing, or otherwise made aware of the contents thereof.

(8.) Or who shall aid, assist, or abet any person in the commission of the above-named acts, or any of them, or shall knowingly excite, encourage, solicit, ask, require, or induce any person or persons to commit, or aid, assist, abet, or join in the commission of any of the above-named acts.

The Governor was also empowered to declare by Proclamation, that any Tribe of Natives should be subject to the provisions of the Act. The punishments for offences under the Act were, for a first offence a penalty not exceeding £100, upon conviction in a summary way before two Justices; for a second offence imprisonment with hard labour for not more than twelve calendar months, or less than six, upon a similar conviction; in case of any subsequent offence, the offender was to be deemed guilty of felony, and being convicted thereof before a Court of competent jurisdiction, to be punished by penal servitude for not less than three years nor more than six. All goods and chattels of any Native inhabitants of a proclaimed district might be seized by any person authorized by the Governor.

No check or safeguard was provided against the misuse of these enormous powers. No provision was made for any investigation, before any trustworthy and independent tribunal, into the truth of the matters of fact alleged in the Governor's Proclamation, or into the legal character of the facts. We know well how imperfect the Governor's own means of ascertaining the facts would be in most cases. He would be wholly dependent on the accuracy and sound judgment of subordinate officers. These vast powers, nominally entrusted to the Governor, would be really wielded by some unseen and perhaps untrustworthy individual. Yet the Governor's facts and the Governor's law, once proclaimed, were to be accepted as conclusive and infallible. To the persons who were to be visited with heavy penalties for disobeying the Governor's Proclamation no opportunity was given of contesting either the facts or the law.

No proof was offered of the Preamble. Few or no instances of the kind there mentioned had occurred recently.

18 The Natives generally believed, not without reason, that the King movement, or the Waikato land league, would be the first object to which coercion would be applied; that the Waikato district

would be the first to be proclaimed under the Act. Let us now consider how such a measure would necessarily be regarded by a large portion of the population of that district. They have long been employed in establishing some sort of law and order among themselves. They have helped themselves, because we failed to help them ; but they have been throughout following our teaching and imitating us. Again, they have been endeavouring to protect themselves against a system of land purchasing which they know to be injurious to their interests, and under which land does not become to them, as to the Pakeha, a source of permanent wealth and comfort. All these things they have done openly and publicly. All this effort to be like us, all this substantial good, is converted into a crime by one foolish title. Suppose then these proceedings denounced by Proclamation as treasonable or unlawful practices, in what position would they find themselves ? They would be required to make an unconditional surrender to a power which has failed to win their confidence, a power which has done little or nothing for them, and which by the Proclamation defeats their efforts to do something for themselves. There would be little motive to submit, if submission were possible ; but in fact the submission required would be an impossibility. Institutions erected by a people from a strong sense of their necessity, and valued by them accordingly, are not easily suppressed, especially where nothing better is offered in their place. To suppress a name is harder still. Even the British Government has warred against names and titles without success.

The Chiefs of the Native Communities possess only influeuce, no authority. Even if authority existed, how could offenders be given up who formed half of the population ? The alternatives then would be, either an attempt to comply with the Governor's mandate at the cost of civil war amongst themselves, or noncompliance, followed by the most severe penalty; that penalty being no less than the destruction of their trade, the withdrawal, as far as possible, of all the benefits which for twenty years we have been teaching them to prize, of all the comforts and appliances of civilization, possibly of all guidance and instruction for themselves and their children. For the Bill contained no exception in favour even of the missionaries. Everything was left to the discretion of the Governor.

This punishment would necessarily fall on innocent and guilty alike. For twenty years we have been teaching the Natives to abandon the old barbarous rule, that a whole tribe may be punished for the crimes of individuals, and to adopt the rule of civilization that the evil-doer alone shall suffer. All this was now to be undone. The Government was deliberately to sanction barbarism by adopting the old Maori rule.

One opening was left for escape, and one which the circumstances of the country would greatly favour. Their neighbours might, and doubtless would, supply what they could not obtain directly for themselves. By so aiding them, those neighbours would become offenders against the Act, and of course be brought within its direct operation. Thus the net of this evil law would gradually overspread the land, the population being everywhere converted into smugglers, carrying on their operations in defiance of a Government wholly unable to check them. Thus the population would be forced into lawlessness and disaffection, by a Government which had professed to civilize and elevate them ; and all this for no other offence than for endeavouring to do that which the Government ought to have done and did not ; or for endeavouring to protect themselves, by mutual compact, against a system of land purchase, of which many even of ourselves do not approve. These were the alternatives to be proposed to a high-spirited people, irritated by a sense of wrong done, and apprehensive of peril to come. This was to be the commentary on our professions at Kohimarama.

19. Nor was this measure less notable, if regarded from the English point of view. It was strange and painful to see the Colonial Legislature moved by the Government to deal in this way with persons not represented in the Assembly, to deprive them of the rights of English subjects, and that by an Act to be at once assented to by the Governor without reference Home ; to undo in short all that England had been doing for so many years ; to render impossible the accomplishment of the national undertaking ; and, on the plea of upholding the Queen's lawful authority, to falsify the Queen's most solemn promise.

Strange also it was to hear that constitutional rights and the fundamental maxims of English law were to be simply dismissed, as having no bearing upon the question ; and that by persons who had professed emphatically and repeatedly that the Native people should be subjected in all things to one equal law with ourselves. As though those principles and maxims were merely local and conventional rules, accidentally applicable to one time or one state of society, and not to all times and all states, so long as human nature shall remain the same. As if subjects of the Queen were to be punished, and that most severely, upon allegations not proved nor even properly investigated, and for acts pronounced unlawful by no better authority than a Governor's Proclamation. It was strange that men, who by the bounty of the Home Legislature have been allowed to wield powers so large, should so soon forget the spirit of that Legislature from which they derive everything. Nor less remarkable was it, that a Government which had strongly asserted the principle that the Natives must be governed by and through themselves, and the necessity of providing special institutions for the Maori people, should seek to inflict upon them this terrible pressure without having previously constructed any organization or proper authority, by means of which the Act might be carried into operation. The Government, with the professed aim of establishing law and of putting down unlawful practices, had provided no lawful way for fulfilling its own behests. If the Governor's Proclamation were carried out at all, it must be by unlawful means, by force unlawfully used by the Natives against one another. Strange indeed it was to see coercive laws, of the utmost severity, resorted to in a land where less than a year ago an unarmed traveller might have passed safely from one end of the island to the other, and where all the disturbance, that has since arisen, is the result of our own acts. It was singular too that legislators, complaining of their want of force to carry out the ordinary law, should propose an extraordi-

nary law which would require still more force ;—that, whilst they complained that offenders against the existing law could escape with impunity, they should expect to apprehend more easily offenders against the proposed law ;—that they should propose to render a population more open to our influence by a process which could only isolate and barbarize them:—that they should wholly disregard the effect of such a law upon our own people, very many of whom likewise would be led to become smugglers by such a law.

During the discussion of this Bill in the House of Assembly, great excitement prevailed in Waikato. But happily the Assembly was unwilling to sanction such a measure. The Ministers succeeded in carrying the second reading, but it was found impossible to proceed further. This result has done much good.

Yet the alarming fact remains, that we have been already brought near to that stage of misgovernment, at which a wrong, done in haste or in ignorance, is deliberately followed up by further and worse wrong ; at which a Government, having by its own negligence and mismanagement created or greatly strengthened distrust, then makes that distrust an excuse for extreme and ruinous severity; and punishes the people, committed to its charge, for that which is less their fault than its own.

20. The evils and miseries of our present condition have not been unproductive of some good. Our legislators have come to a better understanding of the relations between the two races,—have become aware of the largeness and importance of the problem to be solved, and of the need of some sustained and systematic effort to solve it. The "Native Council Act," however imperfect, is an evidence of this. It is also an encouraging fact that, at the end of a protracted Session, the Waikato Committee investigated, with the greatest care and patience, the causes and history of the King movement ; and recognised its true character "as an effort to obtain law and order." In their Report they expressed emphatically their opinion, "that what is wanted is to prosecute vigorously and effectually the education and instruction of the Natives, so as to fit and accustom them under European guidance, to take part in the administration of law, with a view to incorporate them into our own system of Civil Institutions, *giving them the utmost possible share in the work of their own government.*"

Of the extent and nature of the work to be done, this is not the fitting place to speak. Long and patient efforts will be needed, but by such efforts the work may yet be accomplished. There is no obstacle which honest and persevering effort and hearty co-operation may not overcome.

The essential condition is that *confidence* be re-established. The restoration of peace will not suffice, unless peace be so made as to produce confidence, to create an assurance that injustice is not intended, to leave no suspicion or rankling doubt behind.

21. If the great object of our endeavour is to be attained, we must abandon all thoughts of a policy of intimidation or repression. We must adopt the only rational policy. We must set ourselves patiently and heartily to discover the causes of the existing irritation, and to remove them. We must satisfy the people that our government yields to them direct and permanent benefit, which they cannot procure for themselves. There still remain, amongst our politicians, men who hold that the Natives are to be governed by demonstrations of physical force, that we can depend upon nothing else. They appear to hold that justice does not concern human nature in general, that it is a refinement very good and useful for civilized people, but that in Native matters it may be dispensed with. They have not seen enough of the Natives to know, that men may live in poor houses and be ill-clad, and yet have as keen a perception of fairness or unfairness as ourselves. They are not aware that, throughout the past history of the Colony, our strength in dealing with the Natives has been in proportion to their belief in our honesty and justice ;—nay, that at this moment our chief strength, that which saves the Colony from evils greater than those we have yet seen, is the belief still entertained that injustice will not be persevered in. Even the wild and vengeful practices of the Maori grew, not from a lack of the sense of justice, but from a misdirection and abuse of that sense. Be just, and you may easily govern the Maori. Be just, and a moderate force will suffice. Be unjust, and a force far larger than England can spare will not suffice. Force is good, if subordinate to justice, but is a sorry substitute for it. The Maori is not to be intimidated ; but like all other human creatures, he is to be influenced through his sense of fair dealing and of benefit received: he is governed by the same motives, and led by the same inducements, as other men.

What is needed for the government of the New Zealanders is neither terrorism nor sentimentalism, but simple justice:—that plain promises be plainly kept ; that our policy be perfectly open and friendly and straightforward; that we deal with the Natives as our fellow-subjects and fellow-men. If we really desire to benefit them, we shall have little difficulty in governing them. But men will never govern well those whom they despise. If we are ourselves sufficiently civilized and christianized to act in this spirit, the great work may still be accomplished. Our success in civilizing this people will be the truest test, the most correct measure, of the civilization to which we have ourselves attained.

APPENDIX A.

*Extract from a letter of Rev. J. T. Riemenschneider, (of the Lutheran Church,) dated Warea, Taranaki, 24th September, 1855, to Donald McLean, Esq., Native Secretary.*

"In the first instance, the *Taranaki* Tribe state that the Government has no just grounds for interfering at all in the Puke-tapu* quarrels, nor for taking any steps whatever against either or both of the two Chiefs Katatore and Wiremu Kingi, as regards their life, liberty, estate, or right, &c., &c.

"In support of this argument, they give the following reason: First, because the dispute and disturbances have originated within and among that tribe, and always been kept confined to the Maori themselves, without interfering at all with the Pakeha and their rights and properties. Secondly, because though Rawiri Waiaua was an officer of the British Government, that still for all that he was a Maori and a member of his own tribe, and that his position in the service of Government did not entitle him to alienate, at his own pleasure, *lands which, though owned by himself, still were in some degree property of the tribe, and could therefore only be disposed of by common consent of the latter.*

"Thirdly, because Katatore can no longer be proceeded against or punished for having killed Rawiri, as not only he has been left so long a time to be his own and at liberty, but he has also made payment, according to the Government demand, for Rawiri's death, by having given up to the Queen the land on which Rawiri died.

"Fourthly, as to Wiremu Kingi, because he can be accused of no crime; he is on his own land, being the real and true Chief of Waitara.

"In the second instance, they (the *Taranaki* tribe) express their desire for the continued maintenance of peace between the Europeans and the Aborigines; however, they add at the same time, in a decided tone, that, according to the views the Natives take of Government interference, peace will at once be interrupted so soon as an interference on the part of the military be attempted.

"In reference to these two last named points, these *Taranaki* Natives declare that the sentiments and proposals, as contained in Colonel Wynyard's letters, have their entire approbation, in as far as it is their own *(Taranaki)* wish that the Puke-tapu should be left to themselves with their own quarrels, and that the military should simply remain what those letters stated that they had been sent to be, a protective force for the safety of the European settlement: as long as this policy shall be adhered to, say they, mutual peace and good-will will be upheld and continued between themselves *(Taranaki)* and the settlers and soldiers. But if the new Governor should set Colonel Wynyard's words and plans aside, and, contrary to it, adopt any hostile or coercive steps against either one or both of the two Chiefs, Katatore or Wiremu Kingi, as seemed to be had in contemplation by some Pakeha here, then the first step of such a kind on the part of the Government, would most certainly, on the part of the Natives, be viewed and received as being the signal and commencement of a general war and life and death struggle between the Pakeha and the Maori: because under present circumstances, and as matters were standing at present, any such step against either Katatore or Wiremu Kingi, or both, would be generally viewed by the Aborigines as a *pokanoa* (aggression) on the part of the soldiers upon the Maori race, and as a first step in a general and grand expropriation movement on the part of the Government (Pakeha) to dispossess the Natives by physical force of their inherited soil; which if once permitted by the latter to be successfully entered upon by the former (Pakeha) would most certainly be proceeded with, and be carried out through the whole length and breadth of the Island, until every inch of land would have passed away from the Native owners into the hands of the Europeans, and the Aboriginal inhabitants of the country themselves would have been totally exterminated.

"For the simple reason alone of preventing such a dread calamity (these *Taranaki* say) they feel themselves under the necessity of protecting both Katatore and Wiremu Kingi against being in any way touched or proceeded against by the Pakeha and the military. Hence, they declared, as soon as ever any attempt shall be made by the latter to get any of those two Chiefs into their power, all *Taranaki* and *Ngatiruanui*, as far as Whanganui will rise instantly to a man in arms and hasten to Katatore's and Wiremu Kingi's rescue and support, and they will not relinquish the struggle until they shall either have conquered or have lost their last man in the attempt; because (say they) it is not only for those two individuals the war will be waged, but it will be for the principle which the Natives recognise as bound up in those two men, as soon as they are placed between the two different races, the Pakeha and the Aborigines. If (they urge) Hone Heke had fallen into the hands of the Europeans, all the *Nga puhi* lands would have been taken too in consequence, and all that tribe would have been gradually exterminated; and again, if Te Rangihaeata had fallen into the hands of the Pakeha, all the lands in the South would have been taken too as conquest, and all the Maori there would have been cut off after him.

"The escape of the two last named Chiefs from falling into the hands of the English, had saved both them and their people, their existence and possessions; so it would be here. If Katatore or W. Kingi, or both, should be taken by the Pakeha, all the Maori along this coast, including *Taranaki, Ngatiruanui*, &c., would next be subjugated and cut off by the soldiers, and their lands be taken away as a possession by the Europeans. In the present case (they say) it is even more clearly to be foreseen, than in the case of Hone Heke and Te Rangihaeata, that such would be the result, in as far as here the Pakeha have no just cause to go to fight about with the Maori, and can therefore, if still they do so, have no other object for so doing than to make themselves master of both the Maori and their lands. Whereas in Hone Heke and Te Rangihaeata's case they had the advantage of being able to show that those parties had been the aggressors; owing to which also Te

* See above, pages 26–27.

Ruaparaha's capture and detention by the British authorities, had created but little excitement among the Natives generally. Here neither W. Kingi nor Katatore had interfered with the Pakeha or their lands, &c.; nay, the latter and his party had even given up to the Queen the lands asked of him by the Governor as *utu* for Rawiri's death. Hence there was no sufficient reason left why the Pakeha should at all interfere with the Maori and their quarrel.

"Thus fully the whole case has repeatedly been argued before me, during the last fortnight, by the Natives in the Taranaki District, and there can be no doubt that they are in earnest about it. The most sober and quietly disposed amongst them declare, in a manner not to be mistaken, that they will rise because they feel convinced (*mohio rawa*) that it will be necessary for the defence and preservation of their life, liberty, and possessions, against a system of violence and oppression threatening them and theirs.

## Appendix B.

*Extract from the Report of the Waikato Committee, presented to the House of Representatives, 31st Oct.*, 1860.

"Your Committee have not been able minutely to analyze the valuable mass of evidence thus collected, but they have unanimously arrived at the following conclusions:—

"They recognize as an undeniable fact, that of recent years, a great movement (attributable to a variety of causes) has been going on amongst the Native people, having for its main object the establishment of some settled authority amongst themselves. This movement is not, in the opinion of your Committee, a mere transitory agitation. It proceeds from sources deeply-seated, and is likely to be of a permanent and growing character. Upon the proper direction of this movement, the peace and progress of the Colony for years to come will greatly depend. Though it does not appear to be absolutely identical with what is termed the King movement, it has become, and is now so closely connected with it, that the two cannot be made the subject of separate political treatment. The objects of a large section of the Natives were distinctly expressed at the great meeting at Paetai, on the 23rd April, 1857, at which the Governor was present, and at which it was understood by them that His Excellency promised to introduce amongst them Institutions of law founded on the principle of self-government, analogous to British Institutions, and presided over by the British Government. "I was present," says the Rev. Mr. Ashwell, referring to that Meeting, "when Te Wharepu, Paehia, with Potatau, asked the Governor for a Magistrate, Laws, and *Runangas*, which he assented to; and some of the Natives took off their hats and cried 'Hurrah.'"

"Such a movement need not have been the subject of alarm. One of its principal aims undoubtedly was, to assert the distinct nationality of the Maori race; and another, to establish, by their own efforts, some organization on which to base a system of law and order. These objects are not necessarily inconsistent with the recognition of the Queen's supreme authority, or antagonistic to the European race or the progress of colonization. Accidental circumstances, it is true, might give, and probably have given, to it a new and more dangerous character: such, at present, appears to be its tendency: *but it would have been from the first, and still would be, unwise on that account to attempt to counteract it by positive resistance*, and unsafe to leave it, by neglect and indifference, to follow its own course without attempting to guide it.

"For these reasons, your Committee beg to declare their entire concurrence in the views expressed by the Governor in his Despatch to the Duke of Newcastle of the 9th May, 1857, and in the Memorandum accompanying the same.

"In his Despatch, His Excellency writes thus with reference to the King movement and its true character:—It was, however, clear that they (the Natives) did not understand the term 'King' in the sense in which we use it; but, although they certainly professed loyalty to the Queen, attachment to myself, and a desire for the amalgamation of the races, they did mean to maintain separate nationality, and desired to have a Chief of their own election, who should protect them from every possible encroachment on their rights, and uphold such of their customs as they were disinclined to relinquish. This was impressed upon me everywhere; but only on one occasion, at Waipa, did any one presume to speak of their intended King as a Sovereign having similar rank and power with Her Majesty: and this speaker I cut short, leaving him in the midst of his oration."

## Appendix C.

*Original Text of Maori letters of which translations have been given in the foregoing pages.*

### 1. Wiremu Kingi to Archdeacon Hadfield.

(Above, p. 8.)

Waitara, Hurae 2, 1859.

E Wira, tena koe, te kanohi o aku matua i te mate, ka nui toku aroha atu ki a koe i roto i nga korero a te Pakeha, no te mea e puta tonu mai ana nga korero he a te Paheka, no konei i puta ake ai te whakaaro aroha oku ki a koe kia puta atu he kupu mau ki a te Kawana, ki a te Makarini, mo te tikanga mo Waitara nei, ta te mea e tohe tonu mai ana raua ki te whakaaro o te tangata e tuku ana i Waitara nei. Kia rongo mai koe, ehara ianei taku whakaaro i te whakaaro hou, e mohio ana koe, koia tenei ko Waitara, kaore au e pai kia tukua atu tenei oneone. Me whakaaro e koe te kupu a Rere i ki atu ki a korua ko te Wiremu i to korua taenga mai ki Waikanae. E mohio ana koe ki

taua kupu mo Waitara, ekore e tukua atu e au ki a te Kawana raua ko te Makarini. Otira kua rongo koe ki taku kupu ki a koe i to taenga mai kia kite i a matou. Ka ki atu au ki a koe—ko te he i muri i a koe ko te oneone, ka ki mai koe kei a Parete te tikanga. Inaianei kua hapainga mai tona rekereke ki a au. Ko tana kupu mai tenei ki a au, naku koe i ora ai. Inaianei kua puta mai ta raua kupu ko Hare kia hopukia au mo taku purutanga i te whenua, no te mea he mea kino rawa ki a raua te pupuru i te oneone. No konei i puta mai te kupu a nga Pakeha katoa—ko au te tangata kino rawa, kaore ianei au i te mohio ki taku kino. Me he mea he whenua Pakeha i tango-hai mai e au, ka tika taku kino. Tetahi, me he pakinga naku i te Pakeha ka tika taku he. Ko tenei, ko ratou kei te kawe mai i te he ki a au. Koia au i mahara ai kei a koe te whakaaro ki a Kawana, ki a te Makarini, ki a Parete kia puta mai he kupu mau ki taua Pakeha, ki a Parete, ka nui tana tohe ki a Makarini, ta te mea kua rongo au, kua rite i a ia nga utu mo Waitara nei. Ko tetahi kupu hoki ana kaore ratou nga Pakeha e whakarongo mai ki aku kupu. Ko ta ratou inaianei, ahakoa tangata kotahi mana e hoatu te whenua, ka pai tonu mai nga Pakeha. Kia rongo mai koe ko tenei ka he, he rawa, he rawa. Ki taku, ka rite ano te rohe mo nga Pakeha, ko Waitaha. He oti ano, ka noho atu i reira. Kia kaha atu to kupu ki a te Kawana raua ko te Makarini kia whaka-mutua ta raua tohe mai ki Waitara nei kia noho pai ai matou (ko) nga Pakeha.

Mau e tuhi mai ki a au kia rongo au. He oti ano tena korero.

Na WIREMU KINGI WHITI.

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2. WIREMU KINGI TO ARCHDEACON HADFIELD.

(Above, p. 8.)

Waitara, Tihema 5, 1859.

E HOA E TE HARAWIRA,—

Tena koe te kanohi o aku matua o aku taina i te mate. Tenei te noho nei i roto i te atawhai nui o to tatou Ariki o Ihu Karaiti.

E pa, kia rongo mai koe. He patai atu tenei naku ki a koe, kia whakaaturia mai e koe nga tikanga hou a te Kawana. I rongo au ki a Parete i taku haerenga atu ki te taone ki te tutaki i nga moni a te Kawana, hei utu mo Waitara, kotahi rau pauna, £100: 0:0, ka ki atu au ki taua Pakeha, e hoa, waiho atu o moni, ka ki mai taua Pakeha, Kahore. Ka ki atu au : Kaore he whenua hei taunga mo o moni. Ka tahi ka ki mai a Parete ki a au, Ka he. Ki te tae mai a te Kawana ko te he rawa tenei. Ka ki atu au, e pai ana, mau e homai te he, kati ano maku ko te whenua. Ka ki atu ano au ki a Parete, ko te whenua pakeke e kore a te Kawana e pai. Ka ki mai taua Pakeha, i mua ia, inaianei, he tikanga hou tenei a te Kawana. Ki taku mohio e kimi whawhai ana a te Kawana mana, ina hoki kua whakaaturia rawatia mai te mate, no konei i uia atu ai ki a koe kia whakamaramatia mai e koe, tena pea kua rongo koe ki nga ritenga hou a te Kawana inaianei mo te riri noa, mo te tohe tonu ki te whenua pakeke, a poka noa iho te utu i te whenua pakeke kaore i tinitia. Kia rongo mai koe, e kore e hoatu e au te oneone, ma te Kawana ano e poka noa ki te patu, ka mate, kei reira kaore ona tikanga, no te mea he kupu tawhito—ko te tangata ki mua, muri iho ko te oneone. Koia i puta atu ai taku kupu kia ata rongo marire mai koe i taku he, ki te he hoki o nga Pakeha, o Parete, o Waitere, o te Kawana, e ki ana ratou no Te Teira anake tona pihi whe-nua. Kaore, no matou katoa, no te tamaiti pani no te wahine pouaru taua pihi whenua. Ki te tae atu a Kawana ki kona, mau tetahi kupu ki a ia ; ki te kore ia e whakarongo mai e pai ana, no te mea kua rongo tonu au ki te ritenga korero mo te mate. Na Parete raua ko Waitere i whakapuaki mai ki a au. Heoti ano.

Naku, na to hoa aroha,

Na WIREMU KINGI WHITI.

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3. RITATONA TE IWA TO REV. RIWAI TE AHU.

(Above, p. 8.)

Waitara, Tihema 5, 1859.

E RIWAI,—

Tena koe, e tama, koutou ko o matua ko o potiki: tena koe me to tatou matua me Te Harawira, te matua o nga mahi atawhai o te Atua. Nana i kukume ake tenei iwi i roto i nga he e rangona mai na e koutou. He oti, te puta ake te iho ki te ao, ka rumakina ano ki te mate e te he: koia ra tenei e raruraru atu nei matou, ko o matua, ko te iwi. Whakarongo mai, ko Waitara kua utua e te Kawana, ara, e Parete ki a Te Teira, £100. Kaore i tinitia te whenua, he mea homai noa nga utu, tohe noa, kaore hoki i rongo taua Pakeha. Ka ki atu matou, ka he tena. Ka ki mai ia, me aha, na te Kawana te kupu. Ka ki atu matou, e ki ana te kupu a te Kawana i mua, kaore ia e pai ki te whenua kurarurarau. Ka ki mai ano taua Pakeha, no mua ia tena kupu, inaianei, kahore he tikanga, e pai ana ma korua e homai te he. Ka ki atu ano matou, he oti ano ta matou, ko te oneone e kore e hoatu ki a korua ko te Kawana. Ka ki mai ano ia, ko te mate na tena. He oti ena kupu. Na, whakarongo mai, e tama, he he tenei koia au e kimi tikanga atu nei ki a korua ko ta taua Pakeha, ko Te Harawira. Ko tetahi kupu ki au, kia [nui ai] te marama, ko taku kupu ra tenei hei ki atu mau ki a ia, e kore ranei e pai kia utua nga moni a te Kawana? Ma matou ano e utu marire ki a te Kawana. Ki te whakaae mai a Te Harawirame ka kiia atu e koe, tuhia mai kia hohoro mai kia maaha ai taku whakaaro. I penei atu ai taku kupu ki a korua, he putanga aroha ake noku mo nga Pakeha e ata noho marire ana, mo nga Maori hoki e ata noho marire ana, kei kumea e ana mahi kino, ka he, no te mea ka mohio au ka he. No konei au i tuhi atu ai ki a koe, hei ki atu mau ki a

Te Harawira, mana hoki e ki atu ki a te Kawana, me ka tae atu ki kona. Ki te marama i a korua, tuhia mai, ki te kore, tuhia mai ano, ara, taua kupu kotahi nei, ekore ranei ia e pai kia utua ana moni. Mana e pai mai, e pai ana.

He aha koa ko te koha kia puta. Ki te tika mai i a korua, ka tae atu ano te reta ki a korua. Heoti ano.

Na tou matua aroha,

Na RITATONA TE IWA.

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4. RITATONA TE IWA TO REV. RIWAI TE AHU.

(Above, p. 9.)

Waitara, Pepuere 11, 1860.

E RIWAI,—

Tena ra koe, e tama, me to taua matua me Te Harawira. Tena ra koutou ko o matua, ko te iwi. Hei kona, e koro ma, e hoa ma, e kui ma, noho mai ai i nga iwi o koutou hoa, o koutou matua. Whakarongo mai, e Ri. Koutou ko o matua, ko te iwi, ko to taua matua ko Te Harawira. He mate tenei, ara, ko Waitara, he tango tenei na te Pakeha. Koia taku kupu i tuhia atu ra e au ki a korua ko Te Harawira kia puta atu ta korua kupu ki a te Kawana. Koia tenei kua eke nei ki runga ki o matou turi ko o matua. Otira kei te tatari tonu atu matou ko Wi, i to kupu i ki mai nei koe ma Te Harawira e tuhi atu ki a te Kawana. He aha koa kia puta atu ano he kupu ma korua ki nga Pakeha o Poneke, no te mea ki ta matou ki he he pokanoa tenei he, no te mea kaore te iwi katoa e pai kia hokona a Waitara. Ko tenei, kia rongo mai korua ko Te Harawira, ka nui te tohe o Parete raua ko te Meiha o nga hoia i Waitoki. Ko te 13 o nga ra o Pepuere nei tae mai ai te tini ki Waitara. Ka tae mai, ka whakahokia ano, muri atu ka hoki mai ano, ka whakahokia ano, muri atu ka tahi ano nga hoia. Inaianei kei muri ano i tenei reta ka hinga. Otira kia rongo mai koutou, ko te tini anake ta te iwi. Ka kore e riri nga hoia, ko nga tini ka whakahokia. Ka kore e pupuhi, ka whakahokia tonutia, kaore e tukua kia tau ki raro. Otira he kupu noa tera, no te mea e mohio ana matou e kore te hoia e haere kau. Ka haere te hoia ki tera hanga, he riri ano. Ko tenei ka hinga. Ma koutou ko o matua e whakarongo mai, mau e ki atu ki o matua ki a Kiripata, ki a Hohepa, ki a Wiremu Tamihana, ki a Apakuku. Kia rongo mai koutou, ko te tangata ki mua, muri atu ko te oneone. Mau e ki atu hoki ki a Te Harawira ki te kite koe i a ia.

Enoka, mau e ki atu ki a ia kia rongo ia. He oti ano aku kupu atu ki a koe.

Na RITATONA TE IWA.

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5. STATEMENT BY TIPENE NGARUNA.

(Above, p. 9.)

I nga ra o Hepetema, 1858, ka tae au ki Waitara. E toru nga marama o 1858, e toru nga marama o 1859 i noho ai au ki reira, ka timata te hoko o Te Teira i Waitara. Kaore au i kite i a Tamati Raru e uru tahi ana ki te mahi a Te Teira.

Heoti ano tana kupu i kite ai au he pupuru tonu i te whenua. I te tau 1859 ka tu ta matou runanga ki te Kuikui mo te tikanga a Te Teira. Ka tu ko Wiremu Kingi, mo te pupuru tonu i Waitara. Ka tu ko Wiremu Patukakariki (Ngawaka) mo te pupuru tonu i Waitara. Ka tu ko Tamati Raru, mo te pupuru tonu i Waitara, a pera tonu te korero a te tokomaha. Ka tu ko Te Teira, kaore ona hoa, ko ia anake. Te tuarua o nga runanga i Werohia, ka tu ko Wiremu Kingi mo te pupuru tonu i Waitara, ka tu ko Wiremu Patukakariki Ngawaka mo te pupuru tonu i Waitara, ka tu ko Tamati Raru mo te pupuru tonu i Waitara, a pera tonu te korero a te tokomaha. Ka tu ko Te Teira, kaore ona hoa, ko ia anake.

Te tuatoru ko te huihuinga nui ki te taone i Waitoki. Ka tu ko Te Teira mo te tuku tonu i Waitara, kaore ona hoa, ko ia anake. Ka tu ko Wiremu Patukakariki (Ngawaka), ka mea atu, e Kawana, ekore a Waitara e makere atu ki a koe, e kore e pai kia tangohia e koe te urunga i raro i toku upoko, no te mea ko toku urunga, he urunga no oku tupuna. Ka tu ko Paora Karewa. Whakarongo mai, e Kawana, e kore au e hoatu i Waitara ki a koe, e kore e pai te porera o toku tupuna kia kumea e koe i raro i au. Ki te mea ka kumea e au te peti i raro i a koe, ka riri koe.

Ka ho atu e Te Teira tona Parawai ki a te Kawana hei taunaha mo Waitara. Ka tu ko Wiremu Kingi. Whakarongo mai, e Kawana, ekore au e hoatu i taku oneone i Waitara ki a koe ake, ake. Ka mutu. I to matou korero i Te Hurirapa, ka mea te kupu a Te Teira, ko ona whenua i waho o te rohe, hei utu mo nga whenua o te tokomaha i roto i te wahi e hokona ana e ia. Ka mea te tokomaha, ekore o matou whenua e mana ki ou whenua i waho, no te mea he nui ke o matou whenua i roto i te whenua e tukua ana e koe, ara, e Te Teira. Ko te takotoranga o te tini, kaore a Tamati Raru i eke atu i te whakatakotoranga o te tini, kaore hoki ia i whakaae.

TIPENE NGARUNA.

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6. REV. RIWAI TE AHU TO THE SUPERINTENDENT OF WELLINGTON.

(Above, p. 36.)

Otaki, Hune 23rd, 1860.

E TE HUPERITENETE,—

Tena ra koe, tenei taku korero kia rongo koe, he roa noa atu, tena pea koe e hoha ki te korero, i tuhituhia ai e au kia roa, he rongo tonu noku i te rere ke o nga korero mo taua whenua i Waitara,

mo Wiremu Kingi, a, kei whakaaro iho koe, he whakatakariri noku ki a Te Teira i kumea ai aku korero kia roa, a he tangata ke ranei a Te Teira ki a au, ko Wiremu Kingi pea te mea i tata ki a au. Kao, he whakataki ano naku i nga tikanga o tera whenua, me nga hapu, me nga tangata nona taua whenua kia mohio ai koutou, no te mea kua nui haere te he. Ko Te Teira te mea i tata ki a au, ko Wiremu Kingi ia e matara atu ana i au.

Na, ki ta matou nei whakaaro, ekore e rere ke nga whakaaro o tenei Kawana i o era Kawana o mua i a ia. He muremurenga tera whenua na ratou. Katahi te whakaaro ka pohehe ake, E! he tikanga hou ano enei na to tatou Kuini. Otira, e whakaaro ana matou, na Te Teira pea ratou ko ona hoa me ana kai hoko whenua o Taranaki a te Kawana i tinihanga, na reira, ka hohoro tana unga atu i ana hoia ki Waitara hei whakawehiwehi i nga tangata katoa me nga wahine i pana atu ra i ana kai ruri i runga i o ratou whenua tupu me o matou, kia tangohia noatia atu. Ina hoki tetahi o nga kupu a C. W. Richmond, Taranaki, Maehe 1860, kua rangona nei e te katoa, "Kua ata kimihia mariretia to Te Teira take ekenga ki taua wahi, he tika tonu, kahore kau he tangata hei whakahe i tona take." Ae, e tika ana, ki ana mara ano tona ekenga i roto i taua whenua, e rua taupa, e toru he penei tahi ano hoki te tika o matou ko era kua pana atu ra i runga i taua whenua, e rua taupa, kotahi, e toru, e wha, a tena tangata, a tena tangata, i roto i taua whenua.

He penei ano hoki ta Wiremu Kingi kupu i kawea ketia ra e te kai hoko whenua o Taranaki, "I whakaae ano a Wiremu Kingi no Te Teira anake taua whenua." Na tona ngakau tohe ki te tango Maori i te whenua, me tona kuare ki te reo Maori, i kawe ke ai [ia] i te kupu a Wiremu Kingi. Ki ta matou nei whakaaro ki tenei kupu a te C. W. Richmond, ko te taha anake ki a Te Teira ma i kimihia, i whakarangona hoki nga korero e aua kai hoko whenua o Tarnaki, a whiti atu ki Arapawa e kimi ana. Ko te taha ki a Wiremu Kingi ma, kahore i kimihia, kahore hoki i whakarangona atu a ratou korero. Ina hoki te kupu o te reta a Wiremu Kingi e ki nei "Ko tetahi kupu hoki ana, kahore ratou nga Pakeha e whakarongo mai ki aku kupu." Na te kai hoko whenua o Taranaki taua kupu ki a ia (tenei ano tana reta te takoto nei. Otira, kihai au i whakapono ki ana kupu katoa i tuhi mai ai i tera tau. I mahara hoki au, ekore e pena rawa te mahi a te Kawanatanga.

Kahore hoki i tae mai te kimi ki a matou, mei kimihia tahitia, mei whakarangona atu a ratou korero, a tae noa mai ki a matou e kimi ana, na, kua kitea te he o ta Te Teira ma. E! e takoto kopurepure ana o ratou wahi whenua i waenga nui i nga wahi whenua a nga tangata katoa kahore i whakaae, i o matou hoki e noho nei. Tenei te kupu o te reta a Wiremu Kingi, "Ki te he hoki o nga Pakeha katoa, o Parete, o te Waitere, o te Kawana, e ki ana ratou, no Te Teira anake tona pihi whenua, kaore, no matou katoa, no te tamaiti pani, no te wahine pouaru taua pihi whenua." (Tenei ano tana reta te takoto nei). Penei, ekore e tito ki a te Kawana ana kai hoko whenua o Taranaki, kua kimihia e ratou, tika tonu, no Te Teira anake taua whenua.

Kua rongo matou, e ono rawa nga rau eka o te whenua o Te Teira ratou ko ona hoa. Ka whakaaro matou, ehara tera i taua whenua i Waitara, engari, he whenua kite hou tera na Te Teira ratou ko onahoa, ina hoki te nui rawa. Ko te take i kaha ai te pehi a Wiremu Kingi ma i te timatanga o ta Te Teira korerotanga i reira ki a hokona atu ki a te Kawana, he wehi no ratou kei huia katoatia atu o ratou, me o matou, no Te Teira anake, na, rite tonu ta ratou i wehi ai. Kua rongo matou ki ta Wiremu Kingi kupu i tuhi mai ai, na te kai hoko whenua o Taranaki te kupu, ko ia tenei, "Ko ta ratou inaianei, ahakoa tangata kotahi mana e ho atu te whenua, ka pai tonu mai nga Pakeha." (Tenei ano tana reta te takoto nei).

Na, ekore matou e whakatika iho ki enei kupu kua rangona nei, no Te Teira te whenua, no ona hapu ano tera whenua no Ngatihinga raua ko Ngatituaho, na ratou nei hoki i whakaae te nohoanga o Wiremu Kingi ki taua pihi i tona haerenga mai i Waikanae, katahi ia ka noho ki reira, "He peke pokanoa ta Wiremu Kingi, tena e hara i a ia taua whenua, a he pokanoa tana kupu." Whakarongo mai, ma nga Pakeha anake me nga tangata Maori o nga hapu ke o tenei motu e whakatika iho enei kupu. Tena, ma matou o Ngatiawa e noho nei i Waikanae, tae atu ki Poneke, whiti atu ki etahi o Arapawa, tae noa atu ki te Taitapu—kore rawa e whakatika iho, ekore ano hoki e whakahe iho ki a Wiremu Kingi, he peke pokanoa. Heoti anake nga tangata o Ngatiawa e whakatika ki a Te Teira, e whakahe ki a Wiremu Kingi, ko nga tangata e nukarau ana ki a te Kawana me nga Pakeha.

E hua ana pea nga kai hoko whenua o Taranaki, ko Te Teira anake ratou ko ona hoa nga tangata o Ngatihinga raua ko Ngatituaho, a, e hara pea enei tangata i aua hapu, a Wiremu Te Patukakariki (te rangatira o aua hapu) a Nopera Te Kaoma, me etahi atu o ratou kahore ra i whakaae atu, i whakarangona mai hoki a ratou kupu e aua kai hoko whenua o Taranaki? Whakarongo mai, na te wahine o Wiremu Te Patukakariki, me a raua tamahine ake tokorua, me etahi wahine ano o aua hapu, na ratou i pana atu nga kai ruri a te Kawana i runga i o ratou whenua ake.

Na, kahore i wehea iho inamata taua whenua kia motuhake mo Ngatihinga anake raua ko Ngatituaho, a kia motu ke mo etahi hapu mo Ngatikura, mo Ngatiuenuku, mo wai hapu, mo wai hapu, i roto i taua whenua, kua riro ra i a te Kawana. Kaore i whakauruurn noa iho, na nga pou paenga ano a nga tupuna i wehewehe nga mara, ehara hoki enei hapu i te wehenga ketanga i a ratou, no te iwi kotahi tonu.

He ingoa katoa o aua mara, na nga tupuna ano i tapa iho. Te ingoa o ta Wiremu Kingi mara, ko te Parepare. Ko nga mara ana tamariki ake, na o raua matua wahine ake, kei te pa kua tahuna ra e nga hoia ki te ahi, kei te Hurirapa, kei Orapa tetahi, i te tonga o ratou pa tawhito, kei roto katoa enei mara i te whenua e kiia ra, no Te Teira anake, kua riro katoa atu enei i a te Kawana.

Ko a matou mara katoa ko era kahore ra i whakaae, ara, o Ngatikura, o Ngatiuenuku, me etahi o Ngatihinga, o Ngatituaho, o tena hapu, o tena hapu, kua huia katoatia atu enei mara e te kai hoko whenua o Taranaki, no Te Teira anake. Ka pewhea ai te tikanga o tenei kupu? "Na

ratou nei hoki i whakaae te nohoanga o Wiremu Kingi ki taua pihi i tona haerenga mai i Waikanae."

Ha! na wai te ki? Hua atu, he mohio ano na ratou ki nga mara a tona tupuna, a tona tupuna: na ratou ranei i whakaae a te Parepare hei mara ma Wiremu Kingi i tona haerenga atu i Waikanae? Na ratou ranei i whakaae nga mara ana tamariki ake i te Hurirapa i te haerenga atu i Waikanae, kua riro atu na te tango e nga hoia? Na ratou ranei i whakaae nga mara katoa a o matou tupuna kua oti ake nei te tuhituhi e au, i to ratou haerenga atu i Waikanae kua riro atu ra te tango e nga hoia ki te mata o te hoari. Ki taku whakaaro, e rite ana tenei kupu ki te rongoa whakamate. Ki ta te kai hoko whenua o Taranaki, he tika rawa ta Te Teira hoatutanga i taua whenua, a he he rawa a Wiremu Kingi. Ki a matou he nui rawa atu te he o Te Teira, kahore he mea hei hunanga mo tona he kia ngaro ai.

Ko taku kupu whakamutunga tenei, kahore e kitea E au he kupu whakamarie maku ki toku iwi e pouri mai ra ki to matou whenua, kia mutu ai, e nui rawa ana to ratou mamae ki te tangohanga noatanga i te whenua o matou tupuna. Ki te mea ka rito tonu atu taua whenua, akuanei ka mau tonu tenei kupu, i tangohia maoritia atu taua whenua e te Kawana o te Kuini o Ingarani, a mau tonu iho ki nga whakatupuranga.

Tenei hoki etahi kupu whakahe a nga Pakeha mo Wiremu Kingi kua rongo au. E kiia ana, heta ngatakino, he tangata haurangi he tangata kohuru. Tenei taku kupu: Katahi na pea ia ka inu rama ki Waitara. I a matou e noho ana i Waikanae, kahore rawa au i kite i a ia e hoko kaho rama, e haurangi ana ranei, kore rawa; kahore ano hoki au i rongo, he tangata kohuru ia i mua atu o taku whanautanga—a kaumatua noa atu, kahore rawa au i kite i tetahi tangata e kohurutia ana e ia, haere noa atu ia ki Waitara.————————Na i kanga tona matua a Reretawhangawhanga e Ngatimaru i Whareroa (1837). Na, heke ana te ope nui a Ngatiawa, haere atu ana i Waikanae ki Whareroa, e whau nga rau. Na te pai o nga whakaaro o taua kaumatua, ka kore e patua nga tangata o Whareroa i hutihutia kautia nga taewa, i haere tahi ano au i taua ope. Na te haurangi ranei me te kohuru o Wiremu Kingi, te take i mohiotia ai e nga kai hoko whenua o Taranaki, no Te Teira anake ratou ko ona hoa taua whenua i Waitara, na reira ranei i tangohia ai? Na, tena ano tetahi tangata kohuru kei te aroaro o aua kai hoko whenua o Taranaki, na, kahore taua tangata i te karangatia e ratou ko te tangata kohuru, engari e karngatia ana e ratou, e to matou hoa, e he aha ra hoki te tango tahi ai i ona whenua? Kahore a Wiremu Kingi ma i pai ki te whawhai i te rironga mai o nga moni utu o Waitara i a Te Teira; na reira i tuhituhi mai ai tetahi o ratou ki a au, mehemea ekore e pai kia kohikohia e ratou he moni hei whakahoki mo nga moni a te Kawana i riro mai ra i a Te Teira, kei riro noa atu o matou whenua mo aua moni, ka rere atu ratou ki te pupuru mai, a ka waiho hei take riringa mo te Kawana ki a ratou. (Tenei ano tana reta e takoto nei).

I rongo tonu au i mua ki nga kupu pakeke o Reretawhangawhanga, matua o Wiremu Kingi, i to matou pa i Waikanae (1840), mo Waitara kia kaua e hokona ki te Pakeha, na mau tonu tana kupu a mate noa ki Waikanae (1844), waiho iho tana kupu ki a Wiremu Kingi hei pupuru i muri i a ia. I te rongonga o Rere me nga kaumatua i Waikanae, kua tae mai a Te Niutone Te Pakaru rangatira o Ngatimaniapoto, ki te tua waerenga i tera taha o Waitara, (ko Wharenui te ingoa o te mara), ka puta te kupu a aua kaumatua kia hoki atu ia ki tona kainga, kia waiho marire Waitara kia takoto ana mo matou ano (i rongo ano au ki enei kupu i te 1842-43). Kahore he tangata o Waikato, me Ngatimaniapoto, i noho i reira i mua atu o te taenga o nga Pakeha ki Ngamotu, katahi ano ki a Nuitone Te Pakaru. Na reira i haere atu ai tetahi o aua kaumatua, a Ngaraurekau, i Waikanae, hei tiaki kei hoki mai ano a Ngatimaniapoto ki Waitara, na, mahue tonu iho i a Ngatimaniapoto a Waitara, a tae noa atu te heke a Wiremu Kingi ki reira (haunga a Peketahi, na tana wahine i taki mai ki reira).

Tetahi, he tangata aroha a Wiremu Kingi ki nga Pakeha o Poneke. Tihema 1843 i haere atu matou i Waikanae (me te Ahirikona o Kapiti) ka kite matou i a Haerewaho e whakawakia ana e Te Haruera i roto i te whare whakawa i Poneke, ka kitea te tika o tona he, kawea ana ki te whare herehere, na, ka oho nga tangata Maori katoa o Poneke kia patua nga Pakeha o te taone, na, ka rere a Wiremu Kingi ki te pehi, na, kua mutu.

Te tuarua (1846, i puta mai te kupu a te Kawana Kerei ki a Wiremu Kingi kia haere atu ki a ia ki Kapiti ki runga i te manuao, ko Te Kata te ingoa. Haere atu ana matou, ka puaki mai te kupu a te Kawana Kerei ki a Wiremu Kingi, kia haere atu ki te Paripari hei whakawehiwehi atu i tona hoa ngangare i a Te Rangihaeata, na whakaae tonu atu a Wiremu Kingi (kahore ia i whakaaro ki a Te Rangihaeata). Ao ake, ka whiti mai matou ki Waikanae, whakahau tonu atu a Wiremu Kingi ki ona hapu kia haere atu ratou ki te Paripari, moe noa atu i Whareroa, ao ake, ka tae ki te Paripari, ko au ano tetahi i haere, hoko whitu topu tana ope (hoki mai ana au ki Waikanae). Ka hopuhopukia e ratou ko tana ope nga tangata o Whanganui i uru tahi ki a Te Rangihaeata, tokowaru aua tangata. (No te hopukanga o aua tangata ka karanga ake ratou, e noho, ko wai ka hua, ekore hoki koutou e peneitia a ona rangi. Kei te maharatia tenei kupu e Wiremu Kingi). Muri ka arahina mai ki Waikanae, utaina ana ki runga ki te tima o te Kawana Kerei. Kua kite pea etahi o nga Pakeha i enei tangata i hopuhopukia nei e Wiremu Kingi. Kei whea hoki ra ta te Kawana koha ki a Wiremu Kingi i enei rangi? Na, he tangata hapai tonu a Wiremu Kingi i nga tikanga o te Kawanatanga, kahore rawa i pai ki te Kingi Maori, a tae noa ki te whawhaitanga mo Waitara.

Heoti ano aku korero.

Na to hoa aroha,

NA RIWAI TE AHU.

7. CERTAIN MEMBERS OF THE NGATIAWA TRIBE TO THE SUPERINTENDENT OF THE PROVINCE OF WELLINGTON.

(Above, p. 13).

Waikanae, Hurae 29, 1860.

E TE HUPERITENETE,—

Tena koe, ko a matou kupu enei kia rongo koe, hei whakapuaki nui atu mau ki te aroaro o te Kawana.

He wahi whenua ano o matou kei Waitara, kei roto i te whenua i hokona hetia atu ra e Te Teira ki a te Kawana; o matou tahi ko era kua pana atu ra i runga i taua whenua, no matou tupuna katoa. Kahore matou i rongo ake ki nga kaumatua kua ngaro ake nei, no Ngatituaho anake raua ko Ngatihinga taua whenua, no nga tupuna ranei o Te Teira ratou ko ona hoa i whakapapa nei, no tona matua ranei, a tukua mai ana e ratou ki o matou tupuna me o matou matua hei hunga mahi kai atu ma nga tupuna o Te Teira ratou ka ona hoa, ma tona matua ranei ratou ko nga matua ona hoa.

Ehara hoki a reira i te whenua kite hou na Te Teira, na tona matua, na ona hoa ranei, e pohehe ai a matou korero, e tau ai te whakauaua i te korero mo taua whenua, kia tika ai te whakakorenga i a matou ko era kua oti ra te pana Maori atu. Kao, he whenua tawhito tera no nga tupuna.

Na, kua rongo matou i te kupu whakatikatika mo te mahi he a Te Parete ki o matou wahi whenua i reira, e ki nei, "Na, ka tukua ki roa noa te wa e pahemo, kahore he kupu mo te whenua kia puta, na, ka rapu marire a Te Parete kai whakarite whenua o Taranaki kia tino kitea ai nga tangata noua taua whenua i tukua mai ra, kimi ana, ka mutu, na, ka tino kitea e Te Parete."

Hei kupu whakamiharo enei ma nga tangata katoa kia kiia ai he pono tana kimihanga. Whakarongo mai, i Waikanae ano matou e noho ana, i Otaki tetahi, na, kahore a Te Parete i haere mai ki te kimikimi ki a matou mo matou whenua i reira, mo te korenga ranei (kahore hoki ona hoa mahi pera i haere mai ki te patai), kahore ana reta patai i tuhia mai, kahore i taia ki te nupepa ana korero kimi i nga tangata nona taua whenua i roto i taua tau. Kore, kore rawa.

Whaia ketia ana te kimi ki etahi o Arapawa o tetahi o nga kai hoko whenua, kapea iho te ui mai ki a matou.

Rongo rawa ake matou, ko te wa i riro ai nga moni i a Te Teira. (Heoti, kihai matou i mana-wapa ki o matou whenua kei riro, no te mea e rongo tonu ana matou ki te kaha o te kupu a Wiremu Kingi ki te pupuru mai i o matou whenua. Ko ia hoki to matou rangitira, hei maru mo matou whenua i reira.)

Te tuarua ko te haerenga o nga kai ruri.

Te tuatoru ko te tukunga atu i nga hoia ki te tango. Me pewhea e whai kupu ai? No te nuinga o te he, katahi ka ta kau a Te Parete i tana kimihanga ki te nupepa.

Tenei ta matou kupu patai, me pewhea ra matou nga tangata e ata noho ana, kahore nei e uru ana ki te whawhai, me ka tangohia hetia atu o matou whenua e te Kawana, me kimi ra e matou ki whea tetahi huarahi hei whakahokinga mai ki a matou i o matou whenua? Ki a te Kuini ranei, ki a wai ranei? Hua noa matou, ma te ture e whakatika nga he. Kei te rapurapu noa iho o matou ngakau e noho nei. Me mutu i konei.

Na matou, na etahi o Ngatiawa nona taua whenua i Waitara.

Na HOHEPA NGAPAKI,
KIRIPATA PAKE, x
PATIHANA TIKARA
EPIHA PAIKAU TUPOKI x
PINAREPE TE NEKE x
HENARE TE MARAU x
PAORA MATUAAWAKA,
HUTANA AWATEA,
WIPERAHAMA PUTIKI,
TERETIU TAMAKA,
RIWAI TE AHU.

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8. FROM WI TAKO NGATATA.

(Above, p. 15.)

Waitoki, Taranaki,
Aperira 10, 1860.

He karere tenei naku ki Waikato, kia noho marama mai ki tenei mahi kuare a Taranaki. Kua-tae mai nei au ki konei, kua mohiotia nei e au nga take o tenei he. Koia ra tenei, heoti.

He kupu ke tenei. Haere atu ra, e taku karere, ki Tongaporutu ki a Tikaokao, ki Tarariki kia a Te Wetini, ki te Kauri ki a Takerei, ki Papatea ki a Hikaka, ki Whataroa ki a Reihana, ki Hangatiki ki a Te Wetini, ki Mohoaonui ki a Eruera, ki Huiterangiora ki a Te Paetai, ki Taupo

a Te Heuheu, ki Te Papa, ki a Te Paerata, ki Arohena, ki a Te Ati, ki Kihikihi ki a Epiha, ki Hairini ki a Ihaia, ki a Hoani, ki Rangiaohia ki a Hori Te Waru, ki Tamahere ki a Tamihana, ki Ngaruawahia ki a Rewi, otira ki a koutou katoa i ki mai nei ki a au, maku e ki atu ki a koutou nga kupu tika, koia tenei na.

E hoa ma, no Wiremu Kingi tenei he. No Taranaki tetahi he, nui atu i nga kino katoa o te ao. Kia tika te whakaaro ki nga kupu ano i whakaaetia mai ai e koutou ki a au, kua kite ne matou. E hoa ma, ko te mahi ma koutou ko te tika anake. Kei titiro mai koutou ki nga mea kuare o te ao. E hoa ma, kia rongo mai koutou. No mua te he, no muri te tika ; heoti ano te mahi ma koutou, ko te kupu a te Matua nui i te Rangi, ara, kotahi te pito o te taura kei runga, kotahi kua tatu iho ki te whenua. Ko te hoa riri tena mo tatou, kia pono rawa tenei korero a koutou ki a au.

E hoa ma, kia rongo mai koutou, Ko te take o tenei he mo te whenua anake. Ehara mo te kingiKei whakawaia k outou e te Wairua kino.

Na to koutou hoa pono i roto i te Ariki,

Na Wi Tako Ngatata.

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## No. 2.

Copy of a Memorandum by Mr. Weld.

The following Notes, on Sir William Martin's Pamphlet, have been published by the General Government.

Fred. A. Weld.

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## NOTES ON SIR WILLIAM MARTIN'S PAMPHLET.

### Note 1.

"*The present is a land quarrel.*" (*Page* 1.)

This opening proposition has a tendency to mislead.

It is true that the dispute as to a piece of land at the Waitara has raised the present question. But it is only one of the many instances in which a matter, apparently small in itself, has unmasked important designs. It has proved what was before only suspected, that the Taranaki and Waikato Land Leagues are not combinations to obtain an object by peaceful means, but are armed coalitions to carry an object, when other means have failed, by rebellion itself.

The question raised in the original dispute with Wiremu Kingi was one of authority and jurisdiction, and not a question of the title to a particular piece of land. Since the intervention of the Waikato King-party it is past all controversy; that the contest is not whether that piece of land belongs to Wiremu Kingi or Teira, but whether the Governor has authority to decide between the two, and power to enforce his decision. It is the prevailing fallacy of Sir William Martin's argument, that he treats as a question of Title that which is in fact a question of Sovereignty, and is so regarded by the Natives themselves.

The practical issue now is, whether the Natives are peaceably to appeal to the justice of the British Government for the recognition of their rights, or whether, if they think those rights are infringed, they are to resort to force of arms.

It is impossible to arrive at a right understanding of the causes of the insurrection at Taranaki, without a reference to the Leagues which have been formed among certain tribes to prohibit the further cession of territory to the Crown.

In the year 1854, the Taranaki Land League was formed at Manawapou, in the Ngatiruanui country, south of Taranaki. "All the head chiefs from Wellington to Waitara, a distance of nearly "300 miles, assembled. Five hundred were present, and much bad spirit was displayed. The "result of it was, their determination to sell no more land to the Government, and to hinder any who "felt disposed from doing so." (*Rev. R. Taylor's New Zealand*, 1855, *p.* 278)—"A confederation "has been established for some years, which extends from Waitara at the north to Kaiiwi near "Wanganui, one of the laws of which is that any Native offering land, although his own, shall "suffer death." (*Commissioner Rogan, Evidence before Native Board*, 1856,—"It was not many "months after this meeting [at Manawapou] that a chief of New Plymouth did offer his land for "sale [Rawiri Waiaua]; and when he went out to mark the boundaries he was shot with several "of his tribe." (*Rev. R. Taylor, ut sup.*)—"This was the origin of the notorious Taranaki Land "League, which evidently contains the elements of the present King movement; which has proved "so fruitful a source of dissension among the tribes of that district, caused so much bloodshed, and "brought about the present collision between Wiremu Kingi and the Governor." (*Rev. T. Buddle, Origin of King Movement, p.* 6.)

The Taranaki Land League was closely followed by the establishment of a similar League at Waikato. "The present King movement has been initiated in the Waikato district.....In Decem-"ber, 1856, the first public meeting held to deliberate on the subject and to prepare some plan, was "held at Taupo, at which several influential Chiefs from various districts were present. Many pro-

"posals were made to adopt extreme measures: the most violent party advocated a clear sweep of all "the Pakehas—Governor, Missonaries, settlers—all.....It was decided that Tongariro should be "the centre of a district in which no land was to be sold to the Government, and Hauraki, Waikato, "Kawhia, Mokau, Taranaki, Wanganui, Rangitikei, and Titiokura the circumference: that no "prayers should be offered for the Queen, no roads made within the district, and that a King should "be elected to rule over the New Zealanders as the Queen and Governor do over the settlers." (*Rev. T. Buddle, Origin of King Movement, pp.* 6-8.)

The Waikato King party and Land League laid down a similar rule to that which had been established by the Taranaki League. "The land thus given over to the King is not to be alienated "without his consent. This might be all very well if the party stopped here. But they resolve "that no land shall be sold within their territory even though the owner may not have joined the "League. Any man therefore attempting to sell a block of land would subject himself to summary "proceedings at war. And any attempt to take possession of the purchased block by the Govern- "ment would be resisted by force of arms, *as in the case of the land at Waitara.*" (*Rev. T. Buddle, ibid, p.* 20.)

The insurrection at Taranaki is the direct result of these Leagues.

"The vital question with the Maori Kingites now is, whether the King or the Queen shall "possess the *mana* of New Zealand. *The Maori King Movement is the strength of the Taranaki* "*war.*" (*Rev. J. Morgan and Rev. J. Wilson, letters to Select Committee on Waikato affairs.*) —"You must understand this: the war is not a struggle of the Maori with the Pakeha; it is not a "war with the Missionary; it is not a war with the Magistrate; *it is a war of the King with the* "*Queen.*" (*Wiremu Nera Te Awaitaia, a head Waikato Chief, speech to the Rev. J. A. Wilson.*) —"Friend, all this fighting and plundering would not have occurred had we not made a King. "*This is the root of the strife.* It is Waikato who fight the cause of Taranaki; the men of the soil keep at a distance; they are but slaves; we fight their battles, we are the strength of the war." (*Te Waru, a Waikato Chief, speech, ibid.*)—"The war was not merely *a contention for the land* "*at New Plymouth, but for the Chieftainship of New Zealand.* Wherever the King's flag went "they would follow. (*Wetini Taiporutu, speech, ibid.*)—"I met one of the Waikato Natives and "had a long quiet conversation with him; from which it appeared evident that the *Waikatos in* "*reality are not interested in William King's quarrel, but have only used it as a pretext of* "*quarrel with the Government,* and to commence carrying out their plan, initiated nearly six years "ago (to which I referred in my work), which is the organisation of a Native polity independent of "ours, and if possible subversive of it: that for this purpose they have been quietly preparing, in- "creasing their stock of arms and ammunition by every means in their power. I have come to this "conclusion from long and close observation, which my constant visits amongst them have given "me every facility of making." (*Rev. R. Taylor, Letter to the Governor, 19th December,* 1860.) —"It is, however, a very great error to suppose that the war has assumed its present proportions "to support William King's title. *Waikato care nothing really about his title to the Waitara.* "*Their object is to assert and support the mana of the Maori King's flag. William King's* "*land brought matters to a crisis, nothing more.* The Auckland Province was all but the seat "of war, had Wiremu Nera [Te Awaitaia] persevered to sell, and the Government had purchased, "the last block offered by him between Raglan and the Waipa. The Kingites were prepared to "dispute the sale. The simple question with them is, not whether the parties who offered to sell are "really the only owners, but that the King flag should be respected, and no land sold within defined "Maori districts without the sanction of the King party: their policy being to prohibit sales." (*Rev. J. Morgan, Letter to the Governor, 26th December,* 1860.)

It will, however, be satisfactory to see what Wiremu Kingi himself says on the subject. When the Waikato Chiefs and Wi Tako visited him to enquire into the truth of the matter, he said :—"*The* "*Pakeha wants our land, but this war is about your Maori King. Do not listen to the Pakeha, but* "*bring your flag to Waitara. Go back and clear them out; send them all back to England.*" (*Rev. T. Buddle, Origin of King Movement, p.* 38.)—And in a letter just received, addressed by Wiremu Kingi on the 14th November 1860, to Te Kuini Topeora and others at Otaki, he says :— "*I am clothed with the dying injunction of Mokau* [*Rangihaeata, who died some years ago,*] *that* "*is in regard to the redcoats: and this it is that I am carrying out now. This is a word to you;* "*Let not the Chiefs of your Runanga come to make peace. Mother, peace will not be made. I* "*will continue to fight, and the Pakeha will be exterminated by me, by my younger brother Te* "*Hapurona, and by Waikato. I say to you, therefore, let no man come to make peace or to insult* "*me.*"—(*Letter from Wiremu Kingi Whiti, copied and sent up by Tamihana Te Rauparaha.*)

No view, therefore, of the Taranaki insurrection could be more erroneous, none more certain to mislead, as tending to place the subject on the narrowest and most superficial grounds, than that with which Sir William Martin opens his examination of the question, in the words "the present is a land quarrel."

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NOTE 2.

"*Native Tenure of Land.*" (*Page* 1.)

It is necessary to say at the outset that there are no fixed rules of Native Tenure applicable alike to all the tribes of New Zealand. [*See Note No.* 7.]

In his Despatch to the Secretary of State dated the 4th December, 1860, after giving numer-

ous instances of conflicting opinions among high authorities on the subject, the Governor said: "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 would permit, in all dealings with Native proprietors.....It must be "remembered that the ancient customs of the Natives with respect to land had been materially "affected by engrafting upon them the new practice of alienation since the first irregular settlement "of the country. We found that the Natives had no fixed rules applicable to all the tribes and to "every locality, and we adopted as our guide in each district the customs which in that district "were in force among the people themselves, where the right of alienation had followed the old "right of property, whether in the tribe or the family."—[*See Notes Nos.* 3. 4, 7.]

It may be as well to give some instances of the conflict of opinion on many material points of Native Tenure.

There is reason to think that an independent right to alienate land without the consent of the Tribe is unknown in New Zealand.—[*Bishop of N.Z.*]

The rights of ownership, whether in one or many joint proprietors, were not alienable without the consent of the tribe.—[*Bishop of N.Z.*]

Over the uncultivated portions of territory held by a Tribe in common, every individual member has the right of fishing and shooting.—[*W. Swainson.*]

Ordinary freemen (*tutua*) cannot alienate that land, 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.—[*Archdeacon Hadfield.*]

A Tribe never ceases to maintain their title to the lands of their fathers.—[*Chief Protector Clarke.*]

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.—[*Archdeacon Hadfield.*]

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.—[*Chief Protector Clarke.*]

Their right [of individual members of the tribe] was a good holding title as against every other member of the tribe. They might exchange land among themselves, but no one could alienate without the consent of the tribe.—[*Archdeacon Hadfield.*]

The individual claim to land does not exist among the New Zealanders according to our acceptation of that term.—[*J. White.*]

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.—[*Rev. J. Hamlin.*]

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.—[*Archdeacon Maunsell.*]

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.—[*Sir W. Martin.*]

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.—[*W. Swainson.*]

The title or claim to land by Tribes existed no longer than it could be defended from other Tribes.—[*Native Board.*]

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.—[*Native Board.*]

Conquest alienates the land, but it has its quibbles. Conquest and occupation give a valid title; conquest without occupation is doubtful. If the conquered party return, occupy and hold the land from which they were driven, the land is theirs. If the conquered people return to their land by permission of the conqueror, the land does not become theirs unless a transfer of the land is made to them by the conqueror.—[*Rev. J. Hamlin.*]

Whatever piece of ground an individual cultivates for the first time, it becomes his own private property if he be a claimant of the land in which it is situated: and when sold he only would be entitled to receive the amount.—[*Rev. R. Taylor.*]

The New Zealander has no law that I am aware of, by which he is debarred from asserting his individual right to land: it may be a small portion, nevertheless it is an individual right.—[*C. O. Davis.*]

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

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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 indispensible to be exact, because there the question entirely dedends 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

eighteen years it has been acknowledged amongst themselves that even a family of three or four people were free to dispose of or to retain their property.

These well known rules of tenure in the Ngatiawa tribe at Taranaki, together with the declarations of Governor Fitzroy in 1844 [*see Note No.* 16], have been the foundation of every cession of territory there, without exception.

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NOTE 4.

*"Every cultivator is a member"*..... (*Page* 1).

If Sir W. Martin means that a cultivator occupying a portion of land *the property of the community*, cannot deal with that land independently of that community, he may be right: if he means that *no cultivator* has land which he can deal with unless with the consent of the community to which he belongs, he may not.

The Bishop of New Zealand, in his statement before the Board of 1856 on Native Tenure, says: "In many, perhaps in most cases, there would at present be considerable difficulty in separating conflicting or joint claims upon the same pieces of property, they are so entangled; *yet there are instances of individual claims independently of the tribal right;* the difficulty is seen when the money given for the purchase of land comes to be distributed to the various claimants." The Bishop also says: "A case now occurs to me: *an old Chief at Otaki was pointed out to me by Mr. Hadfield as having been almost the sole donor of a piece of land, about* 500 *acres,* as an endowment for the native industrial school. I recollect another case at Waikanae, where an old *kumara* ground was wanted for the enlargement of the school yard, but was refused by an old man who had *an exclusive right to it,* he said, and this right was acknowledged by the other Natives. I suppose this individual claim is by inheritance. The Native deacon Riwai te Ahu holds land at Taranaki, which he describes as having been inherited from his father and other relations, though he himself has resided from his childhood at Waikanae.....I most cordially approve of the plan which Mr. McLean has carried out, of *ascertaining individual claims to land by name,* and not acting in the loose way we hear generally as "the Natives."—The Rev. Mr. Taylor says: "Whatever piece of ground an individual cultivates for the first time, *it becomes his own private property, if he be a claimant of the land in which it is situated; and when sold he only would be entitled to receive the amount.*"—The Rev. Mr. Hamlin says: "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.*"—Archdeacon Maunsell says, "Often, and more frequently, there will be several *take* (sources of title) and *one of them will sell without consulting the others.*"—The Rev. Mr. Wilson says: "According to the primitive usages originally existing in this country, *such a law as positive personal right to land was acknowledged.*"—Mr. Swainson says: "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.*"—Mr. C. O. Davis says: "It may be asked can individual claims exist with such an entangled web as this? *The New Zealander has no law, that I am aware of, by which he is debarred from asserting his individual right to land; it may be a small portion, nevertheless it is an individual right.*"—The Native Board of 1856 says: "The Chiefs exercise an influence in the disposal of land, *but have only an individual claim like the rest of the people to particular portions.*"

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NOTE 5.

*"And yet to claim great powers"*..... (*Page* 1).

It may be as well, in order to prevent misunderstanding which might occur from the use of the word "powers," to explain that the Chiefs never had any real authority, unless it was that of the strong arm.

Mr. Busby, writing in 1837 to the Governor of New South Wales, says:—"To those unac-
"quainted with the status of a Native Chief, it may appear improbable that he would give up his
"proper rank and authority. But in truth the New Zealand Chief has neither rank nor authority
"but what every person above the condition of a slave, and indeed the most of them, may despise or
"resist with impunity."—[*Parl. Pap. 7th Feb.* 1838, *p.* 9.] Even Sir William Martin says "The Chiefs of the Native communities possess *only influence, no authority.*"

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NOTE 6.

*"To make a sale thoroughly valid both chief and people."*..... (*Page* 1).
*"So that in each particular purchase"*.....

No doubt there was a necessity to ascertain this. But according to what principles was it to be ascertained?

The whole pamphlet is written to produce the impression that Wiremu Kingi was the Chief whose consent was needed in the Waitara purchase: but no proof whatever is offered of it. It is absolutely certain that the various sections of the Ngatiawa do not recognise him as the Chief of the

whole tribe; it is extremely doubtful whether he would anywhere be recognised as anything more than the principal man of the Manukorihi *hapu*. But since it has been an acknowledged usage among the Ngatiawa that their separate families had separate rights of alienation, the principle on which the enquiry was to be made was not, whether according to some fanciful general rules of Native tenure laid down by Europeans, the sellers of the Waitara block were to obtain the consent of Wiremu Kingi or any other Chief, but whether according to the usage in force among the Ngatiawa people themselves, the sellers were such a "community" as had a right to dispose of the land they were in possession of at the time of sale.

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NOTE 7.

*"It is established by a singular concurrence of the best evidence."*..... (*Page* 2.)

The conflicting opinions of high authorities on many material points of Native tenure, already quoted, prove that no reliance can be placed on any definition which lays down a general rule applicable to all the tribes, in reference to their title to land.—[*See Note No.* 2.]

On the contrary, nothing is more certain than that there were no fixed rules of tenure. The Rev. Mr. Hamlin, one of the earliest missionaries of the Church of England and admittedly one of the best authorities on the subject, says: "Tribal right, or any uniform course of action or general "plan for their guidance in the management of their lands or other affairs, I have not found to exist "among the Natives of this country, nor do I believe they have any such plan or general rule."—Mr. Busby, who as British Resident for many years had great opportunities for forming a correct judgment, says, "It is certain they had no fixed rule to guide them in the disposal of their land."—Chief Commissioner McLean, who has bought more than twenty millions of acres for the Crown, and whose experience extends over every district and every tribe in New Zealand, says, "The Natives have no "fixed rule: the custom varies in different districts. No fixed law on the subject of their lands could "be said to exist, except the law of might."—And Tamihana Te Rauparaha, a Chief well known in England, said openly at the Conference at Kohimarama, "We know very well that according to our "customs might is right. Our Maori plan is seizure. We, the Maories, have no fixed rules."

The whole argument of Sir W. Martin's pamphlet is based on the rules laid down by himself. He says in the first lines of it "The present is a land quarrel. The points of it cannot be understood "without some knowledge of the main principles of the Native tenure of land." If his rules do not apply to Ngatiawa, the conclusions he founds on them may be quite incorrect.

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NOTE 8.

*"At that time the alleged right of an individual member of a tribe to alienate a portion of the land of the tribe was wholly unknown."*..... (*Page* 3.)

Sir W. Martin assumes that the Waitara purchase was based on an improper admission by the Government of the individual right: and on this assumption his accusation against the Governor really rests.

In the first place, it is quite certain that the Waitara purchase was not made from any individual, but from a group of families: but this may be left for the present, and the enquiry confined to the assertion, made without any qualification, that at the time of the Treaty of Waitangi the alleged right of an individual member of a tribe to alienate a portion of the land of the tribe was wholly unknown. No more inaccurate statement could have been made.

There were some 700 claims to land under purchases made from the Natives by Europeans prior to the establishment of British Sovereignty. Out of these there are more than 250 cases in which the land was sold by one, or two, or three Natives. In upwards of 100 instances the land was sold by only one individual member of the tribe. One instance may be worth noting separately. Mr. George Clarke, who was appointed Chief Protector of Aborigines on the establishment of British Authority, had several claims. These claims arose out of no less than 36 separate purchases. Eleven of his deeds were signed by only one Native; eight were signed by two Natives; eleven were signed by three Natives; only six deeds were signed by more than three.—[*Records of the Land Claims Court.*]

It may perhaps be said in answer that the consent of the tribe was implied. But it will not do to assume this. If the consent of the tribe was a necessary incident to give validity to a sale, it was of course requisite that such consent should be proved before the Commissioners. The deeds executed by only one, or two, or three individuals, were either complete transfers without the tribe, or when the completeness of those transfers was matter of investigation, the concurrence of the tribe had to be shown. There are, on the other hand, instances of objection made by the tribe or *hapu* to these individual sales, when the claims were being investigated.

In these remarks only the sales made in the time prior to the establishment of British Sovereignty are alluded to, because it is to that time that Sir W. Martin's assertion refers. It would be still easier to show that under the waiver of the Crown's right of pre-emption, sales were often made by individual Natives, without interference either on the part of the tribe or of the chief men of the tribe.

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NOTE 9.

*"The rights which the Natives recognised"*..... (*Page* 3.)
*"This unknown thing."*.....

The interpretation here attempted to be put on the terms of the Treaty requires particular examination.

The fact of the Maori version of the Treaty being different from the English text, though

perfectly well known for many years, has never been officially alluded to by former Governors; but it will not have escaped any one who has read the Papers presented to Parliament from 1840 downwards, what anxiety has been shown, especially by the missionaries and by Sir W. Martin himself, in 1846, that the Treaty should be carried out in the sense in which it was explained to the Natives. Notwithstanding the controversy which existed as to what this sense really was, or what were the respective rights of the Crown and of the Natives, no practical difficulty ever arose about the interpretation of the Treaty by the Government of New Zealand; for every successive Governor has been willing, without a critical enquiry as to the Maori and English versions of the Treaty, to adopt the doctrine that it ought to be executed in the sense in which it was understood by the Natives. So long as every one agreed that the sense of both versions was really the same, and that the rights guaranteed to the Natives by the Maori version were substantially what the English text assured to them, it was never worth while to enquire into the rather curious fact of the difference between them. The matter becomes for the first time of importance, when an attempt is made to give an interpretation of the Maori version at variance with the English text; still more, when an interpretation is given to the Maori version inconsistent with itself.

It must be remembered that the Maori is a translation from the English, not the English a translation from the Maori. At the time the treaty was in contemplation, Governor Hobson was ill on board H.M.S. "Herald," and the Treaty was prepared by Mr. Busby, who for seven years before had been British Resident in New Zealand. Who it was who rendered the English into Maori has never, it is believed, been officially stated. However difficult it may have been to render correctly into the Maori language English expressions meaning things of which Maories were absolutely ignorant, and which had therefore no Maori words to represent them, it is admitted that the two ideas which were the basis of the Treaty were such as could be made perfectly clear. One was, that the Maoris placed themselves under a new and paramount authority; the other, that they retained whatever rights of property they had in their lands.

But while Sir William Martin so far correctly states what the well understood intention was, he falls into the error of wanting to prove too much; and in order to effect this, he omits material passages. In the first paragraph above quoted, he says, "We called them [the rights ceded to the Crown] 'sovereignty:' the Natives called them '*Kawanatanga*,' (Governorship). In the second paragraph he says, "To themselves they retained what they understood full well, the '*tino rangatira-tanga*' (full chiefship) in respect of all their lands."

It is unfortunate that Sir W. Martin should have quoted only the words which were necessary to sustain the distinction he evidently meant to draw. Immediately after the word "Kawanatanga" are the words "o o ratoa whenua." The thing ceded in Article II. was "*te Kawanatanga katoa o o ratou whenua*," *the whole governorship of their lands:* the thing retained in Article III. was "*te tino rangatiratanga o o ratou whenua*," *the full chiefship of their lands.*

Whatever idea it was, then, which was meant to be expressed by the words "Kawanatanga" (governorship), and "rangatiratanga" (chiefship) respectively, it is clear they both related to the same thing, "o ratou whenua," (their lands). Those persons who made the translation of the Treaty into Maori, chose, as they were of course bound to do, the words which gave in both Articles the nearest approach to the English meaning. That this meaning was not very clear to the Maories, is not to be wondered at, if the thing represented *had no existence among themselves;* but *if the thing existed,* they knew what they were surrendering or retaining. That there was an intention to insert anything in the Maori version expressing an idea *contrary* to the meaning of the English text, is an imputation on the good faith of the translators, which the Government at any rate will not make.

What then is the state of the matter as regards Articles II. and III. of the Treaty?

If the Chiefs ever possessed any right to exercise dominion over the other members of the tribe, any right such as is now claimed, under the designation of "seignorial right," to forbid the sale of land by its rightful owners, then they surrendered it knowingly. If the words used did not surrender it, that is the best proof that it had no existence *as a right.*

In another part of the 3rd Article Sir W. Martin unfortunately omits the most material words in the Maori version, taking only those which suit the inference he desires to draw. He says, "To "themselves they retained what they understood full well, the 'tino rangatiratanga' (full chiefship) "in respect of all their lands."

No one could fail to infer from this manner of quoting the Article, that this "full chiefship" was reserved to *the Chiefs.* Sir W. Martin does not say so, but the reader in England is left to infer it. This inference, however, would be quite untrue. The right is reserved, "Ki nga Rangatira" (to the Chiefs), "Ki nga Hapu" (to the families), "Ki nga tangata katoa o Nui Tireni" (*to all the men of New Zealand*). The words "full chiefship" will thus be seen to have a meaning quite different from that which it is assumed they have. The words "tino rangatiratanga" were chosen, not in order to confer any right on the Chiefs which was not enjoyed by all the members of the tribe, but to express what the English text guaranteed, the "full, exclusive, and undisturbed possession" of their lands to all. If then, no right existed in the Chiefs which was not also enjoyed by the people, the words of the Treaty did not create it; if each Native had not the same proprietary rights in the tribal land as a Chief, those words could not have been used.

But the intention of the Maori version is further shown by the remaining words of Article III., to which again Sir W. Martin avoids any allusion. The words relating to the Queen's pre-emption are, "ka tuku ki a te Kuini te hokonga o era wahi whenua e pai ai te tangata nona te whenua," (yield to the Queen the buying of those pieces of land which it shall please *the man to whom the land belongs* to sell). If there had been any intention to limit the right of sale to Chiefs or families, the use of the

singular must have been avoided, and terms chosen quite different from any which so expressly recognise the right in separate individuals to separate pieces of land. If, then, separate rights of property really existed at that time, they were preserved; if the individual right of property was unknown, the words in the Maori version would not have been used.

That the view taken by Sir W. Martin of the Treaty does not coincide with that taken by others who were on the spot at the time, and not less able to judge than even Sir W. Martin, is certain. Mr. Busby, in an address which he lately published to the Chiefs, said, "When the Queen promised to "every Maori that he should be as one of her own people, the law came; the law is the strength of "the weak man, and that law says, 'Every man's land is his own, to sell to the Queen or keep; no one "shall take it from him because he is weak; no one shall prevent him selling it if he wishes to sell it. "If the Governor allowed Wiremu Kingi to overcome Teira, *he would make the Queen false to the "promise she made to every Maori man when she entered into the Treaty.*" The following evidence was given by Archdeacon Maunsell before the recent Select Committee of the House of Representatives on Waikato affairs: "Did you deliver an address to that assembly in which you "expressed your interpretation of the meaning of the terms of the Treaty which relate to their lands; "and if so will you state to the Committee what you then said to the Natives on that subject?—*I said "that they ought to allow each man to do what he liked with his own land,* that their right to their "land was secured to them by the Treaty of Waitangi, and that no King ever interfered with his "people when they wished to sell land."

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NOTE 10.

"*These rights of the Tribes collectively.*"..... (*Page* 3)

These words, read immediately after the words "To themselves they retained what they understood full well, the full chiefship in respect of all their lands," might mislead the reader by inducing him to suppose that every succeeding Governor had "solemnly and repeatedly recognised" some right or chiefship distinct from ordinary proprietary right in the Ngatiawa at Taranaki.

The first Governor who recognised the Ngatiawa title at all was Governor Fitzroy, and he never recognised any general tribal right among them, nor any authority on the part of the Chiefs of that tribe to control the sale of land. His policy was pursued by Sir George Grey, and by the present Governor.—[*See Note No.* 16.]

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NOTE 11.

"*For through the tribes*"..... (*Page* 3)

The embarrassing uncertainty of Sir W. Martin's definitions is here apparent. If he had used his first term "community," there would have been no real objection to the paragraph as applicable to the purchases made from the generality of tribes by the Crown in New Zealand. But if, as a reader in England would naturally suppose, the word "tribe" here means the whole tribe (*iwi*), he could come to no more inaccurate conclusion. It is notorious that almost all the land purchases of the Government in New Zealand have been made of sections of tribes without any reference to the tribe at large, or even a notion on the part of any person concerned that such a reference was necessary.

The land purchases made from the Natives by the Crown are divisible into two great classes: First, those made of leading Chiefs representing whole Tribes (*iwi*); secondly, those made of sub-tribes (*hapu*), or of families or other comparatively small groups of individuals. In sales of *vacant territory*, the principal Chiefs have themselves been the vendors. In sales of *occupied territory*, an absolute and unquestioned right of alienation has always gone along with the right of occupancy, which is generally exclusive in certain *hapus* or families, and not common to the whole Tribe.

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NOTE 12.

"*About the year* 1827."..... (*Page* 3)

It may be so. It is probable that some part of the tribe went to Kapiti for purposes of trade. But Sir William Martin omits all allusion to the fact, that most of the migrations took place for purposes, not of trade but of conquest. This was distinctly asserted by the Protector of Aborigines and by Governor Fitzroy so far back as 1844, as was shown in the Governor's Despatch of 4th December, 1860.

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NOTE 13.

"*But it is quite certain that such intention was never carried out. The Waikato invaders did not occupy or cultivate the Waitara Valley.*"..... (*Page* 3)

It is not said on what authority Sir William Martin makes this statement. There is reason to doubt its accuracy. "At the time of the conquest," says Chief Commissioner McLean, "many acts of ownership over the soil had been exercised by the Waikato. The land was divided among the conquering chiefs, the usual customs of putting up flags and posts to mark the boundaries of the

portions claimed by each Chief had been gone through."—"I know," says the Rev. Mr. Buddle, "that a large party of the Waikato people belonging to the Ngatimaniapoto tribe under Niutone Te Pakaru, went to Waitara several years ago, and cleared a large piece of land there for cultivation in order to exercise their rights."—"I am decidedly of opinion," says the Rev. Mr. Whiteley, "that Archdeacon Hadfield is wrong and that Mr. McLean is right. Certainly the Ngatimaniapoto came to Waitara and had a *kainga* and cultivations there."—"The title of the Waikatos [to Taranaki,] said Chief Protector Clarke in 1844, is good so far as they have taken possession."—"The land is ours," said the Waikato Chiefs in 1844; "we claim it by right of conquest, and some part of it by possession."—"But as some of the Waikato," says Mr. White, "under Rewi and others, were still cultivating in the vicinity (for the crops then in the ground) this was given as an excuse by Wiremu Kingi (1848) for asking Teira and Ihaia to be allowed to come over to the south side of Waitara river."

Wiremu Nera Te Awaitaia, one of the greatest Waikato warriors, and next in rank as a Chief to Potatau Te Wherowhero, was one of the conquering party who made a partition of the land at Waitara, and struck a musket into the ground to denote the boundary of what he intended to claim.

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NOTE 14.

*"In order that they may return to their Native place without fear of the Waikato tribes."*..... (*Page* 3.)

Sir W. Martin is quite right here. The Ngatiawas of Port Nicholson and Queen Charlotte Sound prayed Colonel Wakefield to buy the Taranaki District, in order that the presence of Europeans might be a security to them against the Waikatos.

They accordingly sold the land in order to get the Europeans to settle there, *and as soon as the settlers went there they repudiated their sale.*

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NOTE 15.

*"Another instance occurred about the year* 1842."..... (*Page* 3.)

This assertion is evidently made on the strength of a statement by the Rev. Riwai te Ahu, in his letter to the Superintendent of Wellington (page 9). But it is quite incorrect. Nuitone Te Pakaru (see Note No. 13) certainly had a large clearing at Waitara, as well as others of the Waikato invaders.

The true cause of the return of these people to Waikato was not that "William King sent a deputation to warn them off:" it is given in the following extract from a Despatch of Acting Governor Shortland, dated 24th September, 1842: "At Kawhia several Chiefs were introduced to His Excellency, among whom were the leaders of a recent expedition to Taranaki, at which place their presence had created some alarm. On being asked what were their objects and intentions, they explained that reports of the high prices given to the Natives of that place for provisions and labour had reached them, and that considering the country theirs by conquest, they had resolved to settle in the neighbourhood of the Europeans; *but that since Te Wherowhero had sold the land to the Queen, and they understood the Governor was not willing that they should remain, they had returned.*" [Parl. Pap. 1844, Appendix to Report of Select Committee, p. 189.]

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NOTE 16.

*"On the 3rd August,* 1844."....."*The Governor publicly and officially.*".....(*Page* 4.)

This is the first time that it has been formally attempted to be maintained that a general tribal right in the Ngatiawa was allowed by Governor Fitzroy. It is true that the Governor disallowed Mr Spain's judgment, which awarded a grant for 60,000 acres to the New Zealand Company: but he certainly did not recognise a general tribal right in the Ngatiawa, for this would have given them rights which they had not before the Waikato conquest. The question then is, what he meant by allowing "in all their integrity" the claims of the Ngatiawa who had not been parties to the sale in 1840?

It is very important to know exactly what Governor Fitzroy's decision really was. Fortunately there is no difficulty in doing this, for there is the authentic record of the address which he delivered to the Natives on the 3rd August, 1844, which was published in the Maori Gazette for September, after the M.S. (in English) had been revised by himself. That address was given in full in the Appendix to the Governor's Despatch of 4th December, 1860. *In it the Governor distinctly recognised the individual right of each man, woman, or child, to land; desired each to point out his position; ordered schedules of the individual ownership to be prepared; gave as a reason for these schedules that they would prevent future mistakes; advised them to be careful each to sell his own property, in order that he might receive the payment himself; and expressly promised to buy any individual rights when they should be offered on reasonable terms.*

But this was not all. When in the second visit which Governor Fitzroy made in November 1844, the piece of land now known as the "Fitzroy Block" was under negotiation, certain proposals were made to the Governor by Protector Forsaith, Protector McLean, and the Rev. Mr. Whiteley, as follows: "Let a Block of land be marked out.....Let a definite sum be fixed as a fair and equitable

" price for this block, at a certain rate per acre ; the unpaid resident Natives receiving their propor-
" tionate share, and the residue lodged in trust for absentees ; *who should have notice that unless
" their claims were preferred and substantiated within a given period (say twelve months) they would
" be considered forfeited. Such award should be final and absolute.*" These proposals were adopted by the Governor as the basis of his decision.

Governor Fitzroy's concessions constitute the extreme limit of the Ngatiawa claims. He said he meant to recognise their rights in all their integrity : and here is conclusive evidence of what he considered those rights to be. If he had intended to recognise a general tribal right in the whole Ngatiawa tribe, he would not have recognised the sale of 1840 at all, seeing that it was made by those who represented neither Chief nor Tribe. Assuming the view of the tribal right taken by Sir W. Martin, it is clear that the 70 people who executed the deed of 1840 could have no right whatever to sell : whereas Governor Fitzroy recognised their right, and reserved a similar right to those who were not parties to the deed ; that is to say, the right of each section or family or individual of the Ngatiawa tribe that returned to the district, to sell without the interference of any one not being a part owner.

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NOTE 17.

" *In* 1848, *William King and his people returned.*"..... (*Page* 4.)

Sir William Martin omits to state that the return of Wiremu Kingi took place by the permission of Governor Sir George Grey, granted upon the condition that he should settle on the north bank of the Waitara River. Wiremu Kingi promised this, and broke his promise ; which is the true cause of all the difficulties which have since occurred.

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NOTE 18.

" *The boundary line.*"..... (*Page* 4.)

Sir W. Martin's quotation of this " boundary line" would imply that the Waitara was *intentionally excluded by Governor Hobson.* It is necessary to show that this is a complete misconception.

When the original arrangement was made by Governor Hobson with Colonel Wakefield in Sept. 1841, as to the right of selection to be exercised by the New Zealand Company, the New Plymouth Settlement was described as follows : " 50,000 acres more or less, to be surveyed and allotted by the " Company in the neighbourhood of New Plymouth, the boundaries whereof are as follows :—The " Coast Line from Sugar Loaf Point, *extending in a northerly direction ten miles in direct distance* ; " from thence a line at right angles with the coast line, eight miles; from thence by a line parallel with " the Coast line, ten miles; and thence by a line parallel with the northern boundary to the sea coast at " Sugar Loaf Point."

These " ten miles" came close up to the Waitara, but just left out the river. On the 15th October 1841 Mr. Carrington pointed out the injury this would be to the Settlement. On the 15th Nov. 1841, Colonel Wakefield wrote to the Company : " I am about to apply to the Governor for an " extension of the Block at Taranaki to the amount of 30,720 acres." On the 25th April 1842, Governor Hobson wrote to the Resident Magistrate at Taranaki :—" I have purchased Te Whero " Whero's claims, as well to your block of land as that which extends thirty miles to the north of " what Colonel Wakefield pointed out to me as your northern boundary.....I have permitted them " [the Waikatos] to settle near you, but by no means to infringe upon you. They will locate on your " northern frontier.....Have the goodness to point out to Mr. Whiteley your boundary line, and to " inform him on behalf of the Natives where they may go without interfering with the settlers."

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NOTE 19.

" *On the block stood two pas.*".....(*Page* 4.)

One of these pas was built by the permission of Tamati Raru, Te Teira's father. This was perfectly well known to Sir W. Martin, and should have been alluded to when he says that Wiremu Kingi and his people had been residing there for years : but the reference to these pas, in immediate juxta-position to the account of Wiremu Kingi's speech to the Governor when Te Teira made his offer, appears as if it was intended to show that Wiremu Kingi had a proprietary right in all the land which Teira offered. But it was always known that Wi Kingi had some claims on the south bank, and his property was carefully left out of the survey.

The sellers had exclusively occupied the block since their return from the South in 1848, with the exception only of the site of Kingi's pa. This fact of the exclusive occupation of the block is not disputed. Previously to the migration of part of the Ngatiawa to Kapiti, Tamati Raru (Teira's father) lived on the block in a pa called Pukekoatu. The pa of Kingi's father was at Manukorihi on the North bank of the Waitara ; and Kingi's own cultivations were all on that side. Up to the year 1826, none of W. Kingi's immediate relatives had ever cultivated on the south side but once. The sellers possessed the exclusive right of using a fishing net in that part of the Waitara river which bounds the Block. Subsequently to the offer of the land to the Governor they signally asserted their ownership by the destruction of a fence which the opposing party had erected on the block.

It must not be supposed, therefore, that Wiremu Kingi's residence in a pa erected by permission of Tamati Raru, was in itself any evidence of ownership of the land which was offered for sale.

NOTE 20.

*"It does not appear."..... (Page 4.)*

On the contrary, it is maintained that this was just the time and place to do it. There is little doubt that it is a custom among the New Zealanders that if a person present at the offer of land does not put in his claim at the time, he is held to be barred. The Rev. Riwai te Ahu, in his Evidence before the Board of 1856, said: "I think that if claimants do not come forward at the proper time, they should forfeit their claims." It was this which caused the cry which arose among the Natives at the meeting, "*Kua riro a Waitara*" (Waitara is gone). The Governor had just declared that while he would buy no man's land without his consent, he would not permit any one to interfere in the sale of land unless he owned part of it. Wiremu Kingi was bound distinctly to say, *then*, whether he claimed a proprietary right, or was merely repeating the determination he had constantly expressed before, of prohibiting the further sale of land even by the rightful owners. He did not say it, and the Natives cried out, "Waitara is gone."

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NOTE 21.

*"Even now it is not easy to gather."* ..... (*Page* 4.)

There was no doubt or ambiguity in this at all. The point contended for by the Governor was, that in accordance with precedents the sellers, as proprietors of land, should be allowed to sell it, and that Wi Kingi should not be allowed to prevent them. The point contended for by William King was, that he should be permitted to carry out the determination of the Land League, that no land should be sold by the rightful owners thereof even though they should not have joined the League. It was laid down by the League that any man attempting to sell land should be put to death. This was distinctly stated by Mr. Rogan, in his Evidence before the Board in 1856.—(See Note No. 1.)

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NOTE 22.

*"There is a remarkable difference between the two."..... (Page 4.)*

On the contrary, the Government view of the case has been perfectly consistent throughout. The Government relied, 1st, on the cession of the whole Taranaki district from the Waikato Chiefs in 1841; and 2nd, on the uniform decisions of successive Governors, which entirely denied the general tribal title of the Ngatiawas to have been revived since that cession.

For the present purpose it may be conceded that "according to Maori usage the conquered tribe was held to be justified in doing their utmost to recover possession if possible of their fathers' land, and that nothing but their inability to do that made the title of the conquerors complete." But there was not the shadow of a doubt that up to the time of the establishment of British Sovereignty in 1840, it was utterly out of the question for the Ngatiawa to attempt the reconquest of their territory from the Waikato. Does Sir William Martin mean, that *after* the establishment of our sovereignty the Ngatiawa might have made the attempt?

The cession of sovereignty to the Queen by the Treaty of Waitangi of course *finally fixed the relations between any contending tribes at the point at which they stood in February* 1840. The Ngatiawa not having been able (according to Maori law of Might) to reconquer their territory from the Waikato up to 1840, and the law of Might having been abrogated by the cession of sovereignty, in follows that in 1840 any right which formerly existed in the Ngatiawa was determined, and that according to Sir W. Martin's formula there remained that "utter inability to recover possession" which made "the title of the conquerors complete." The "right or might of the conqueror or successful invader," to use Sir W. Martin's own words, had "prevailed absolutely, displacing the Tribe altogether, and sweeping away all rights of the Tribe, of the Chief, and of the clansmen alike."

It was this title then, complete according to existing Maori right at the time of the Treaty, and not subject to be altered afterwards by resort to force, which Governor Hobson acquired by his purchase in 1841. The then Chief Protector of Aborigines himself negotiated the purchase; and in accordance with what was the real state of the case at the time, the deed of sale which he drew out did not purport merely to surrender *a claim* on the part of Waikato, it proceeded, in the terms always used in cases of absolute alienation, to sell and convey *the land*.

The Government might have rested from the first on this title. That Governor Fitzroy as a matter of policy suffered the Ngatiawas to bring in a claim afterwards, in no way altered or modified the completeness of the original purchase from Waikato. The same thing has been done over and over again: for instance, in the case of the territory of the Rangitane tribe in the Middle Island, the land was bought from the conquerors, but afterwards payment as a matter of grace was made to the conquered Rangitane also: but no one ever pretended that the Rangitane reverted to their original rights before the conquest.

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NOTE 23.

*"That which Potatau really possessed."..... (Page 5)*

What possible right of the sort could Potatau possess after the establishment of the Queen's sovereignty? The Waikato had completely driven off the Ngatiawa years before, and at the time of

the cession of sovereignty held that absolute right in the soil which, according to Maori usage, was vested in conquerors who had succeeded in displacing the original owners: and that right they sold. But though they could have no power or right of the sort stated by Sir W. Martin, it is true that they frequently threatened to renew their war on the Ngatiawa if they presumed to return to the district. The principal reason for no compensation being awarded to the Ngatiawa by Commissioner Spain in 1844, was, that the Protector of Aborigines specially charged with the maintenance of their interests himself declared, that if any payment were made, the Waikatos would certainly come down and take it.

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PAGE 24.

*"He could not possibly doubt the title of his Tribe."*..... (*Page* 5)

This argument could not be admitted even if there existed any doubt as to the occupation by the invaders. But whatever weight it might have had if the fact had been as here stated by Sir W. Martin, it must certainly fall to the ground if the assumption on which it rests is untrue. The occupation, cultivation, and possession by the invaders has been shown above (Note No. 13). But further, as was shown in the Governor's despatch of 4th December 1860, Wiremu Kingi asked and obtained the permission of Waikato to return. He knew very well, no one better, that it was not enough to get the consent of Sir George Grey—even when obtained by a distinct promise (which he broke) of settling on the north bank of the Waitara—without ensuring the sanction of Potatau. The Macris know too well that the British Government has hitherto allowed them to fight out their own land quarrels in all parts of the North Island, to expect any safety, on account of the Queen's sovereignty, against their Maori enemies.

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NOTE 25.

*"It was recognised by the Government itself."*..... (*Page* 5)

It has been shown that the Government might have rested from the first on the Waikato cession; and they would very probably have done so, if they alone had been concerned. It was on the strength of that cession that Governor Hobson fixed the limits of occupation by the Waikatos at Urenui, some miles north of Waitara, so as not to interfere with the European settlement. But the case was complicated by the two purchases made by the New Zealand Company—one in Nov. 1839, from Wiremu Kingi himself and other absentee Ngatiawa Chiefs, the other in February 1840, from the few resident Ngatiawas at Taranaki. It was these purchases which Commissioner Spain investigated,—it was his judgment upon them that Governor Fitzroy refused to confirm. When, therefore, Governor Fitzroy stepped in to disallow the Commissioner's judgment, he, no doubt, admitted the Ngatiawas to a position which up to that time had been denied to them. But that position, as has been shown, certainly *did not recognise the tribal title at all*; and it was, as shown in the Governor's Despatch of the 4th December 1860, the extreme limit of the Ngatiawa right. Where the case is perverted is this:—The Government never pretended that, after Governor Fitzroy's proceedings in 1844, they could claim the Waikato cession in bar of the separate rights of the Ngatiawa families and individuals: they have admitted Teira's proprietary right as they would admit William King's. Where the Waikato cession is good against William King is, that it absolutely precludes such a right as he claims to prevent Teira and the others of his party from selling their own land: it would equally preclude Teira from preventing any one else from selling his.

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NOTE 26.

*"The right or might of the conqueror was wholly outside the Tribe."*..... (*Page* 5)

The argument as here put forward appears complete. It is, nevertheless, incorrect in some respects. No one well acquainted with Native Tenure can be ignorant that a conquered tribe seldom was allowed to return to the ancient possessions from which it had been driven out by conquest, without some conditions which clearly brought out the relative positions of conquerors and vanquished. It was a frequent practice for the conquered party to be under the obligation of paying tribute for some years in the shape of produce of the soil, before they were permitted to resume full possession of the land as their own. There is not the slightest doubt that this was very commonly done in the case of the manumitted Ngatiawa captives. It was specially done by Taonui, the head chief of Ngatimaniapoto, when he liberated Orowhatua, the father of Rawiri Waiaua: who carried his tribute up to Mokau River to present to Taonui and his tribe. Even in cases of sale of their land to the Crown, the Ngatiawa have repeatedly sent up portions of the payment to Waikato as an acknowledgment of the permission to return; and this was really necessary, for (as the Protector of Aborigines and Commissioner Spain stated in 1844) the Waikatos often openly threatened that, if the Ngatiawas presumed to receive any further payment themselves, they would undoubtedly come down and take it from them. This is not consistent with Sir W. Martin's declaration that "if the Tribe returned, they returned to all the rights they possessed before the invasion." Even if there had not been numerous cases of the same kind among other Tribes, in the conquests whereby the lands of the New Zealanders so constantly changed hands before the establishment of British sovereignty, there was indisputable evidence before Sir W. Martin that in the case of the Ngatiawa they most certainly were never allowed to "enjoy their own again as of old."

The imposition of conditions on a vanquished Tribe in allowing them to return to their land was

practically an exercise of the right of *mana* in the conquerors. Now the Waikato cession transferred to the Government whatever right of *mana* the Waikatos possessed at the time of the Treaty of Waitangi. Governor Fitzroy was acting in strict accordance with the usages and rights which were vested in the conquerors prior to 1840, when he stipulated with the Ngatiawas in 1844 that they should set out their separate portions of land ; Governor Grey acted in strict accordance with those usages and rights when he stipulated with Wiremu Kingi in 1848 that he should settle on the north bank of Waitara.

But even if it were true as a rule, that when "the Tribe returned they returned of course to all the rights they possessed before the invasion and in the same measure and manner as before," without reference to conditions by the conquerors, it would still be quite fanciful to assume that the Ngatiawa would "return" as a tribe (*iwi*) to a common property in their territory. What they would return to was that state of title which has been referred to in Note No. 2, and which Sir W. Martin himself, in 1846, described when he laid down the general rule that "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.*"

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NOTE 27.

"*Why was this claim, so long abandoned, set up again?*"..... . (*Page* 5.)

It does not appear on what authority Sir W. Martin states it was abandoned. It is certain that he is completely misinformed. The Government have never given up the rights they had under the Waikato cession. So far from this, in his manifesto of February 1860, (before hostilities had commenced, and while it was yet believed that William King would not resort to force for the maintenance of the land-league claim) the Governor especially warned the Native people that he claimed under the transfer from Waikato, and that the *mana* was not with William King.

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NOTE 28.

"*The point, then, on which the Government relied.*".....
"*That it was the purpose of the Government.*".....(*Page* 5, 6.)

It is quite true that the point maintained by the Government was, that the Native cultivators and occupiers of the block could make a title without the consent of the whole tribe. This was quite plain from the very first. The error is, in supposing that it was anything which *Governor Browne* contended for at Taranaki, instead of being that which had been established by Governor Fitzroy, adopted by Governor Grey, and as a matter of fact been the foundation on which every block of land at Taranaki, without exception, had been acquired. It is one of the pervading fallacies of the argument, to treat that as a "new policy" which is sixteen years old, and had always been pursued before the establishment of the land league.

It is worth while to observe how closely the language of Mr. McLean's letter of 18th March 1859, and the Assistant Native Secretary's of 2nd April 1859, so much objected to by Sir W. Martin, approaches to that of Governor FitzRoy's address to the Ngatiawa on the 3rd August 1844.

| GOVERNOR FITZROY, 1844. (To the Ngatiawa.) | MR. SMITH, (A.N.S.) 1859. (To Wiremu Kingi.) | MR. M'LEAN, 1859. (To Wiremu Kingi.) |
|---|---|---|
| Point out your respective possessions correctly. Do not quarrel ; do not say, "All this is mine, all that belongs to me," but mark it out quietly, and do not encroach on any other man's possession, but each man point out his own.....If you sell it to the Europeans, well ; but you must be careful each to sell his own property, and then he will receive the payment himself. | The Governor has consented to his word, that is as regards his own individual piece, not that which belongs to any other persons. The Governor's rule is, for each man to have the word (or say) as regards his own land ; that of a man who has no claim will not be listened to. | This is a word to you to request you to make clear (point out) your pieces of land which lie in the portion given up by Te Teira to the Governor. You are aware that with each individual lies the arrangement as regards his own piece.....We will not urge for what belongs to another man, as with him is the thought as regards his own piece. |

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NOTE 29.

*They* [*the proceedings of the Government*] *were seen to be aimed.....against the rights of the tribe itself, and against the interference of the Chief in the affairs of his own tribe.*" (*Page* 6.)

This is surely a strange view to take of it. What was the cause of the Governor's declarations in 1859 ? Simply that for years past various sections of the Ngatiawa had engaged in internecine feuds, marked. by a ferocity of which there had been hardly a parallel since the foundation of the Colony. In the well-known speech which was made by Wiremu Kingi when investing Ihaia in the Karaka pa, he declared his will that the latter *was to be roasted alive on a slow fire.* This was his speech on the occasion :—"Men of Taranaki be strong ! Be brave, and capture Ihaia, Nikorima, and Pukere as

"payment for the *tapu* of Taranaki and the Umuroa. Then we will stretch out their arms and burn "them with fire. To prolong their torture let them be suspended over a slow fire for a week, and "let the fire consume them. Like the three men of old whom Nebuchadnezzar commanded to be cast "into the fiery furnace, even as Shadrach, Meshach and Abednego, shall it be with Ihaia."—This would be incredible (especially in a man who not very long after was assuring Archdeacon Hadfield "that he was remaining in great grace of Our Lord Jesus Christ"), if it were not vouched by one of the resident missionaries, and if the native letters to the Waikato chiefs, containing an account of it had not been seen and read by the then District Magistrate there. Wiremu Kingi and Ihaia were members of the same tribe : Rawiri Waiaua and Katatore were members of the same tribe : Katatore and Tamati Tiraurau were members of the same tribe : yet all these were successively murdered or attempted to be murdered one by the other.

Every one of these feuds originated in disputes about land. There was nothing to choose between any of the contending factions in cruelty. They all assumed the "right" to determine their respective titles by force of arms, and the "interference" of the Chief was exercised only to enforce or resist the threat that "land-selling brings death."

These then were the "rights of the tribe ;" this the "interference of the chief in the affairs of his tribe ;" which it was criminal in the Governor to announce that he would not tolerate in New Plymouth. It is something too much to find that the attempt of a Queen's Governor to put an end to atrocities such as those which disgraced humanity in these feuds, should be branded as an infraction of the rights of the tribe and of the chief.

But this paragraph is further remarkable for being the first instance which Wiremu Kingi is unmistakeably referred to as "the Chief" of the tribe. Further on at page 10, it is more distinctly stated, "*As the whole Tribe has not consented, he, as their Chief, expresses their dissent.*" Now this is a pure assumption. *It is absolutely certain that the various sections of the Ngatiawa do not recognise him as the Chief of the whole tribe ;* it is extremely doubtful whether he would anywhere be recognised as anything more than the principal man of the Manukorihi branch. There is no doubt whatever, that as between Reretawhangawhanga (Wiremu Kingi's father) and Te Hawe, the Chief who resided at Queen Charlotte Sound, the latter was everywhere recognised as the highest Chief. The best evidence of the *status* Wiremu Kingi holds is to be found in the history of these savage feuds. If he had ever been acknowledged by the Ngatiawa people themselves as their Chief, they would not have resisted his will as they have so often done even to blood. It was because they denied his right to govern their affairs, it was because they refused to submit to dictation from him, that so many have fought with him before, and are in arms against him now. On more than one occasion they had his life in their hands ; he was actually taken prisoner in one of the fights, and was spared by the very men whom he afterwards purposed to roast alive. There is something repugnant to good feeling and common sense in supporting the claim of such a man to a position, the refusal to grant which by other Chiefs of his own tribe has been the source of so much blood being shed ; and in blaming the Governor for not permitting a tyranny, which those immediately concerned had over and over again staked their lives to be delivered from.

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NOTE 30.

"*That which was darkly intimated.*"..... (*Page* 6)

There never was any "dark intimation" whatever by the Governor. His declarations were publicly made, and perfectly well understood by all those who for five years had been slaying each other in disputes about land. The Rev. Richard Taylor, a Church Missionary, says that the murder of Rawiri Waiaua was the first fruit of the establishment of the land league, which had been formed by many tribes at the general meeting at Manawapou in the Ngatiruanui country. The Ngatiawa perfectly well knew what the Governor meant, when he said he would no longer suffer the existence of anarchy and bloodshed in the settlement, and that he would no longer tolerate the tyranny of the land league by which they had been caused. Every one of the feuds which had occurred were founded on disputes about land. Nearly all were the result of resistance to the mandates of the land league, by loyal Natives like Rawiri and Ihaia, who claimed the guarantee of their proprietary rights under the Treaty of Waitangi, and the fulfilment of the pledges given by Governor Fitzroy and Governor Grey. It was because Wiremu Kingi had broken his distinct engagement to settle on the north bank of the river that these disputes occurred : and there was not a single Native present at the meeting of March 1859, who was not perfectly well aware that the Governor's declaration was in strict accordance with the promises of former Governors, and inaugurated no new system of land purchase whatever.

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NOTE 31.

"*Was the principle thus enunciated.*"..... (*Page* 6)

The assumption that the Governor's declaration—that "he would not permit any one to interfere in the sale of land unless he owned part of it"—was directed against the right of Chiefs and Tribes, is altogether erroneous. The words cannot be twisted into such a meaning ; on the contrary, all *owners*, whether as Chiefs, Tribes or individuals, are recognised. At the same time, these words had, and were intended to have, a significant meaning. In several parts of the country Land Leagues had been formed to prevent the alienation of land, and these combinations had already commenced to interfere

between the Government and owners of land. Many months before the meeting at New Plymouth, an offer to sell land at Waipa was made by the powerful Waikato Chief, Wiremu Nera Te Awaitaia. The Waikato King and Land League party interfered, and forbad the sale. The Governor made a precisely similar declaration to that subsequently made by him at New Plymouth. Wiremu Nera presented himself in Auckland in his uniform as a Native Assessor, and insisted on his right, as an officer of the Queen, to deal with his own property as he thought fit. He was firm in his purpose, and so was the King party. There was every appearance that something serious would arise out of the quarrel; and such would probably have been the case, but for one circumstance. *Claimants of proprietary rights came forward and expressed their unwillingness to be parties to the sale.* On investigation, they were found to be joint proprietors with Wiremu Nera. The Government could of course proceed no further: the Governor had declared that "he would buy no man's land without his consent"—a promise which had always been acted on in the past, and was fully intended to be maintained for the future. Wiremu Nera was very angry, and the very friendly relations which had previously existed between him and the Government were for a time interrupted. He declared that the Government had been influenced by fear of the Kingites, a body to whom he expressed his own determination not to submit.

This case is one precisely analagous to that of Waitara, up to the time of the refusal to sell by some of the acknowledged part-owners of the land; and might, had it not been for that circumstance, have led to the same consequences. Of course if any person at Waitara had made a claim it would at once have been investigated, as had been done at Waipa; and if on such investigation it had been found to be a *bona fide* claim on the part of a proprietor, and not a prohibition as a land-leaguer, the same course would have been followed, and the negociations for purchase broken off.

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NOTE 32.

"*Moreover it was profitable*"..... (*Page* 6.)

The imputation to the colonists of New Zealand of mere cupidity, which is conveyed by the sentence cited, should have been spared. It would have been well if the writer had borne in mind a sentiment of his own, "that very commonly judgments passed by man upon man are unjust in proportion as they "are uncharitable." The passage above referred to furnishes an apt illustration of the truth of the sentiment. Under the influence of his suspicions, Sir W. Martin misapprehends the true relative position of settlers and Natives in respect to what is called "the Land Question." The truth is, that the desire for the acquisition of territory on the one side, and for its retention on the other side, springs from far deeper feelings than the mere love of acquisition or of property. In the extension of British territory, the Colonist sees a guarantee for the extension of British law, and for the ultimate establishment of British Sovereignty. The Native, on the other hand, shrinking, not unnaturally, from merger in an alien race, clings to his territory as the sole security for his independence. The supposition of covetousness as the actuating motive of the colonists, is as unphilosophical as it is uncharitable. It will not account for the phenomena. Witness the case of Taranaki, where the settlers almost without a murmur have submitted to the desolation of their pleasant homes and the destruction of their whole property, and have been ready on all occasions to lay down their lives in the present quarrel. The paramount question on both sides is one of Sovereignty and of Nationality.

How little Colonists of New Zealand desire the spoliation of the Natives, was in a signal way made manifest in 1847, when on occasion of a supposed intention on the part of the Imperial Government to appropriate unoccupied Native lands, 400 inhabitants of Auckland and its vicinity petitioned the Queen that "Her Majesty would be graciously pleased to direct that the utmost publicity be given to a renewed "assurance to the Native Chiefs, that Her Majesty never contemplated and never would permit the "solemn engagements entered into between them and Her Majesty's Representatives to be evaded or "set aside, but that the spirit as well as the letter of the provisions of the Treaty of Waitangi, affecting "the lands of the Aborigines, should be most religiously maintained."

The foregoing remarks lead to another observation of great importance. Sir W. Martin evidently imagines that the British Government might take its stand with the Natives simply upon the vindication of the law, keeping itself clear of the land question as one with respect to which the motives of the Government will always be suspected. This is a misconception. The Natives of Taranaki hold the land to keep out the law. If they are unwilling to part with the land it is because they are unwilling to submit to the law. As soon as they have made up their minds to become British subjects the Land question will cease to be.

Mr. Riemenschneider's letter to Mr. McLean in 1855 plainly shews that this is the true state of the case. The Ngatiruanui and Taranaki Tribes were not prepared to allow the Government to take any measures against Katatore and Wiremu Kingi for the slaughter of Rawiri Waiaua, but asserted their complete independence of British jurisdiction. To them the question of jurisdiction, and the Land question, appeared identical. If the land were ceded, the jurisdiction, they saw, would follow. If the jurisdiction were allowed, the land would follow. The very object for its retention would indeed have ceased to exist. Between a policy of entire non-intervention in Native quarrels, such as that pursued by Acting Governor Wynyard in Taranaki, and a policy of intervention to settle even Land questions, there is no mean.

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NOTE 33.

"*How was the tribe to act?*.....

"*And who could that be except the chief?*.....(*Page* 7.)

It has been shown (see Note No. 29) that Wiremu Kingi is most certainly not acknowledged to be "the Chief" of the whole Ngatiawa tribe. But even if he were, he is barred from setting up the

claim here referred to, to be the "mouth-piece or representative of his tribe," in any question of preventing the sale of land in the Taranaki district. The Governor has desired throughout the proceedings he has taken, to rest entirely on the acts and decisions of the Government, and to avoid as much as possible any reference to the transactions of the New Zealand Company; but this paragraph in the pamphlet makes it necessary to refer to the following facts. In October, 1839, when the principal agent of the New Zealand Company, Colonel Wakefield, was engaged in making his first purchases from the Natives, Wiremu Kingi accompanied him in the ship *Tory* from Waikanae to Queen Charlotte Sound, in order to induce the Natives of the Ngatiawa tribe who were settled there to sell their land to the Company. He took an active part in the treaty that was made on that occasion, and with Himiona, a Native teacher from the Waimate Mission Station, explained to the Ngatiawa the nature of the bargain they were called upon to make; and himself, in the cabin of the *Tory*, gave out the names of the places sold, which were entered in the Deed of Sale.

Those names were as follows:—"Tehukakore, Warehama, Rangiwaiama, Wairarapa, Turakirae, Wanganuiatera (Port Nicholson), Rimarapa, Oterangao, Omera, Tuamero, Ohariu, Titahi, Porirua, Ohoeka, Te Rewarewa, Waikanae, Waimea, Otaki, Owaha [Ohau], Manawatu, Rangitiki, Wangaehu, Turakina, Wanganui, Waitotara, Whenuakura, Patea, Tangahohi, Ngatiruanui, Pahakahatiro, Taranaki, Moturoa and the several other Sugar Loaf Islands, and the river or harbour of Mokau." The Deed was executed at Queen Charlotte Sound on the 8th November 1839, *and the first signature was that of Wiremu Kingi for himself and his father Reretawhangawhanga.*

Either this deed effected a valid sale (so far as Wiremu Kingi as the "mouth-piece and representative of the Ngatiawa tribe" was concerned), of the whole of the land from the river Mokau on the west coast to the river Warehama on the east coast, in which case he is barred by his execution of that deed from assuming any right as the "mouthpiece and representative of the tribe" to repudiate in 1860 the sale which he made in 1839: or he signed it as an individual proprietor, in which case he showed that the "consent of the whole tribe" was unnecessary, and the argument of general tribal right in the Ngatiawa must be given up.

In either case it is a fraud in Wiremu Kingi to attempt the repudiation of his sale of 1839. He has admitted to Commissioner McLean that he received part of the payment given at Queen Charlotte Sound by Colonel Wakefield.

But this Deed raises a curious point. Governor Fitzroy excluded from his arrangements in 1844 the parties to the sale to the Company in 1840. It has been shown (see Note No. 16) that his recognition of that sale was one proof of his admitting no general tribal right in the Ngatiawa. But what of the sale in 1839? Exactly the same principle must be applied to it as to the sale in 1840: certain members of the tribe conveyed away their proprietary rights by both Deeds alike: and if Natives were justly barred by one deed, they were as justly barred by the other.

It has been urged against a reliance on this Queen Charlotte Sound Deed, that it leaves out *Waitara* in the enumeration of places sold by Wiremu Kingi. Again, another objection is that certain reserves were promised in the Deed to be made, but were never made. But, 1st, the Government has never rested on the Deed, and 2nd, the Deed cannot be claimed for its reserving part and rejected for its selling part; and there were no reserves promised specifically in any particular part of the immense territory described in the Deed.

Sir William Martin, in criticising an expression of Mr. Richmond's in the House of Representatives, that the Waikato Deed of 1842 "was relied upon as, at all events, precluding the interference of Waikato in the Taranaki question," admits that "in that way it has not been without its use." The Government have never desired to rest on the Queen Charlotte Sound Deed of 1839; but they might have relied upon it as, "*at all events, precluding the interference of Wiremu Kingi.*"

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NOTE 34.

*As to the alleged incompatibility."*..... (*Page* 7.)

The Government have not only not recognised this claim at Taranaki, they have uniformly and steadily denied it; and every cession of territory from the Ngatiawa has been based, not on its recognition, but on its repudiation.

It is difficult to understand how Sir William Martin could advance such a statement, in direct contradiction to all that was put forth by the Government, and particularly to the evidence of Chief Commissioner McLean at the bar of the House of Representatives, under whose control all those purchases have been effected.

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NOTE 35.

"*Nor did the Government disavow.*"..... (*Page* 7,)

The Government, of course, did not disavow their intention of pursuing the same policy everywhere. But what policy? It is very material that no doubt should be allowed to be insinuated as to what the policy was. It certainly was not the denial of any lawful rights of Chief or Tribe which had been recognised by former Governments, or had ever been understood to exist: these were always intended to be maintained in the future, as they had been in the past. But it was the denial of any right in Chiefs of the Land Leagues which have been formed throughout the country, to prevent the rightful proprietors of the soil from selling their land to Her Majesty if they please. This policy the Government had openly declared long before the Waitara purchase, and specially in the case of the offer of land by the Waikato Chief Wiremu Nera te Awaitaia. (see Note No. 31.)

NOTE 36.

"*The Natives also have understood.*"..... (*Page* 7.)

The Natives have understood this because they have been told so by Europeans. It is one of the most serious embarrassments against which the Government has to contend, that publications such as those which the Bishop of Wellington, Archdeacon Hadfield, and now Sir William Martin have put forth, lead the Natives to believe that the Governor has initiated a new course of policy which will end in wresting their lands from them and subverting the rights they possess under the Treaty of Waitangi.

The Governor has made many declarations to the Natives that their lands would not be interfered with. He published a circular letter to the Southern Chiefs in April 1860, which was extensively circulated. He wrote to Waikato to the same effect. He specially renewed to all the Chiefs, in a message to the Conference at Kohimarama, the solemn assurances so often given in the Queen's name, that the Treaty of Waitangi should be faithfully maintained. More recently he conveyed to the Bishop of New Zealand the assurance, that the Government does recognise to the fullest extent all lawful rights of Chief and Tribe which have been recognised by former Governments, or have ever been understood to exist.

If these repeated declarations are disbelieved by the Natives, if they "regard the Governor's "words as involving a declaration of war (sooner or later) against all the Chiefs and all the Tribes who "may not be willing to submit to this sudden and sweeping revolution in their social state," it is because the course taken by the Governor, in resisting at Taranaki the dictation of a Land League to destroy rights which have existed for sixteen years, has been misrepresented as being a new system of land purchase, aiming at the spoliation of Native lands.

It is always an embarassment to a Government that such misrepresentations should exist, even when circulated by persons whom it may not be worth while to notice. Sanctioned by the high authority of Sir W. Martin, they really become a public danger.

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NOTE 37.

"*The answer asserted the Tribal Right.*" (*Page* 8.)

It is satisfactory at last to obtain an admission of what this letter of King's really meant. The apologists of W. King have hitherto urged that this letter was a full notice of his *proprietary right*; the Government as constantly maintained it was no notice of any right except the assumed right of preventing the sale of their own land by other proprietors. Sir William Martin says it "asserted the *tribal right.*"

Here then was the whole question.

If a general tribal right in the Ngatiawa tribe had ever been admitted by the Government at Taranaki, the notice was one which the Government were bound to respect, and stay their hand accordingly. If, on the other hand, that general tribal right had never been acknowledged among the various sections of the Ngatiawa themselves, and had been invariably denied and repudiated by every successive Governor of New Zealand, the notice was one which the present Governor would properly disregard as a threat, in the same manner as all preceding threats of the same kind had been disregarded in the acquisition of other blocks at Taranaki.

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NOTE 38.

[*Letters from Wiremu Kingi to Archdeacon Hadfield.*] (*Page* 8.)

These letters were withheld from the Governor's knowledge up to August 1860. It appears that so long ago as the 2nd July 1859, Wiremu Kingi said, "*Therefore my thoughts of love go forth to you, that you may speak a word to the Governor* and McLean concerning the course of proceeding about Waitara here." Again, "I think that *you should concern yourself with the Governor* and McLean and Parris." Again, "*Let your word to the Governor and McLean be strong.*"

The Governor had specially requested Archdeacon Hadfield to keep him informed of anything important among the Natives of his district, and had his promise that he would do so.

The Governor has a right to complain of Archdeacon Hadfield for not communicating these letters to him, and of the manner in which they were published after being withheld from him so long. Archdeacon Hadfield came up to Auckland in the steamer which brought the Wellington members to the meeting of the Assembly last July. He had these letters in his possession. They were made public, for the first time, to serve a party purpose in the House of Representatives.

In the letter of 2nd July, exactly the same intimation is given to Archdeacon Hadfield as had been given to the Governor himself in Wiremu Kingi's letter of 11th February 1859 (quoted in the despatch of 4th December 1860); namely, an intimation of the determination of the Land League that Waitaha [Bell Block] should be the European boundary. Sir William Martin stops his italics just before this declaration: "*What I say is, that the boundary for the Pakehas is settled, namely Waitaha. That is all, let them remain there.*" In this passage Kingi's meaning appears quite clearly. He does not deny Teira's right, nor claim any right himself; he simply condemns the proposal for ceding any more land. "*What they say* is that although it be only one man who gives up the land, "the Pakehas will be perfectly willing, &c. *What I say* is that the boundary for the Pakeha is

settled." The "wrong, very wrong, very wrong," applies to any extension whatever of the European boundary.

But why are only two of the letters from Wiremu Kingi to Archdeacon Hadfield produced? There were three. Those dated 2nd July and 5th December 1859, are given by Sir William Martin; the intermediate one, dated 27th July 1859, is omitted. In this letter there are two remarkable statements. The first is this:—"Your clear words have reached me, and I have seen them.....If, "indeed, you had not heard the word which you quote in your letter to me; but, is it not so, you and "the Rev. Mr. Williams heard the word of Reretawhangawhanga relative to Waitara, saying that it "should be held? That was Rere's word and mine, *and that word was also from you two.*" What the "clear words" were will, perhaps, never be known. Archdeacon Hadfield has denied giving any advice to Wiremu Kingi since 1839 to hold the Waitara; but in a letter from him to Archdeacon Govett, at Taranaki (as reported by Mr. Parris), he said that "he would not advise Natives to sell "their land,—that he was not pleased with anything the Government had done for the Natives,—and "that the Governor would find that a large party of the Natives at Otaki would espouse William "King's cause."

The second statement is this:—"Mr. Parris has also talked of my being shot with a gun, and simply burying me outside—I am not to be taken to the graveyard. It was his plan (or idea) to fetch Te Whaitere [Katatore]: he died, and in like manner by Mr. Parris also shall I die. Mr. Parris is glad that I should die, so that he may get the land. He rejoiced also at the death of Te Whaitere Katatore, that the land might be clear."

Sir William Martin no doubt considered that this tissue of wicked calumnies against a man who, it is perfectly well known, saved the writer's life, would be too much for any one to credit. If the letter had been published, it might have destroyed the effect of the other two.—(see Notes No. 41, 47).

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NOTE 39.

"*He maintains that the land cannot be alienated.*" .....
"*It cannot be inferred.*".....(*Page* 8.)

Sir William Martin appears here to change his ground as to the true meaning of King's letters: but though the language is carefully guarded, the qualification is only apparent, not real. He says, "it cannot be inferred from this that Wiremu Kingi did not assert also some individual claim to land "within the block." This negative way of putting it escapes the difficulty to Wiremu Kingi's apologists of absolutely denying, as the Government do, that these letters contained any notice of proprietary right: but it as carefully avoids affirming that they *did* contain such a notice. If Sir William Martin could fairly have stated they did, he would certainly not have contented himself with such hesitating words. The point was of far too great importance not to have been taken if anything in the letters had warranted it.

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NOTE 40.

"*We have seen that in the official statement.*"..... (*Page* 8.)

It is true that failing other proprietary claims being preferred, the Government assumed to have extinguished the title of the real owners. But the Government never assumed this in the sense of excluding or denying the proprietary claim of any one who might show that he possessed it. The Government constantly invited such claims, and on the 29th November 1859, when the first instalment was paid to Teira, Rauponga, and the other sellers, a memorandum was read expressly saving the rights of every one having a proprietary claim and not assenting to the sale. The memorandum was as follows:—"*If any other person can prove that he owns any part of the land within the boundaries "above described, his claim will be respected, and he will be allowed to retain or sell the same as he "may think proper.*"

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NOTE 41.

[*Letters from Ritatona te Iwa.*] (*Page* 9.)

These letters are now for the first time seen by the Government. The same remarks may fairly be made as to withholding these letters as have been made in the case of the letters from Wiremu Kingi to Archdeacon Hadfield and from Riwai te Ahu and the other Ngatiawa Natives to the Superintendent of Wellington. (See Notes No. 38, 47.)

The second letter of 11th February 1860, says:—"On this account it was that I wrote to you and Hadfield, [on the 5th December] that you two should speak to the Governor. But we and Wiremu Kingi are waiting for the fulfilment of your word, that Mr. Hadfield should write to the Governor." The Governor never received any letter of the sort, either from Mr. Hadfield or Riwai te Ahu. It is strange that any persons professing to have at heart the welfare of the Natives and the maintenance of peace, should receive letters in which they are repeatedly prayed to write to the Governor, withhold the letters from the Governor's knowledge, publish them for a controversial purpose without any allusion to the fact of their having been withheld, and then accuse the Governor of neglecting the warnings they contained.

But the second letter is the condemnation of the writer. It contains the proof of the intention of

Wiremu Kingi and his followers to resist the survey of the land, even to blood. Let no one say after this that their resistance was the result of the proclamation of Martial Law. On the 11th February this Ritatona te Iwa, writing for himself and Wiremu Kingi, warns their friends at Waikanae that they will resist the survey by force and are prepared to fight. On the 20th February, nine days after this letter, the survey was attempted. On the 22nd February Martial Law was proclaimed. On the 17th March hostilities commenced.

Thus the evidence of the fact, that resistance by force of arms was deliberately intended by Wiremu Kingi and his people long before the proclamation of Martial Law, is furnished in a letter which was unhappily withheld from the knowledge of the Government for more than nine months after its date, and eight months after the commencement of hostilities.

It will be seen that great stress is laid in a following portion of the pamphlet on the peaceable manner in which the survey was obstructed on the 20th February. This letter, produced in support of the accusation that it was the Governor who resorted to force, affords the most conclusive proof of Wiremu Kingi's party having determined to resort to force themselves long before the survey was attempted.

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NOTE 42.

(*Tipene Ngaruna's statement*) "*Wiremu Patukakariki stood up and said.*"..... (*Page* 9.)

Tipene's statement is untrue. Patukakariki never made any objection when Teira's land was offered. He did object when Piripi offered to sell some land.

It is to be regretted that Sir W. Martin should insert a statement so untrue, when indisputable evidence was before him in the statements of the Native Minister and Chief Commissioner, who were present at the meeting. Mr. McLean, in his evidence at the bar of the House of Representatives, said that Patukakariki had never protested against the sale of Teira's block, though he had protested against the sale of other land.

In a letter addressed to the Governor by Mr. McLean on the 1st December 1860, the following statement occurs :—"I was present at Taranaki in March 1859, when the land was offered for sale. "Te Patukakariki never made the slightest objection to the sale of this land, although he did object "to the cession of some claims inland of this block which were offered by a Native named Piripi."

As little reliance can be placed on Tipene Ngaruna's statements about Tamati Raru, Teira's father, who instead of being opposed to the sale, with his own hands helped to cut the boundary line, and whose name is the first to the Deed of Sale.

These falsehoods dispose of the rest of the letter, and make it unnecessary to say more : but as Sir W. Martin has put in italics the concluding part which refers to a proposal made by Te Teira to exchange certain lands, it is perhaps as well to observe that the proposal, whatever it really was, *was made long before the offer of his land by Teira*, and had nothing whatever to do with any transaction in which the Government had been mixed up.

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NOTE 43.

[*Letter from Rev. Riwai te Ahu. Page* 9.]

The Rev. Riwai te Ahu was a child when he left the Waitara district. "He has resided," said the Bishop of New Zealand in his statement before the Board in 1856, "from his childhood at Waikanae, in Cook's Straits." He was even ignorant of the boundary of a claim of his own in the neighbourhood of the block, which was investigated some time since by the Chief Land Purchase Commissioner. In his statement before the Board of 1856, speaking of a piece of land as an endowment for a school, he said, "I could point out the boundaries, *provided I knew them.*"

In this letter to the Superintendent of Wellington he names three specific claims, one on behalf of Te Patukakariki, who being on the spot never claimed for himself ; another on behalf of Wiremu Kingi, whose cultivation within the block he says is called Te Parepare ; a third on behalf of King's two children. "The cultivations which belonged to their mothers are," he says "at Hurirapa, the pa "which was burnt by the soldiers : and another at Orapa on the south of their old pas." As regards the cultivations of Kingi himself, neither he nor any of his people had cultivations on the block. The Hurirapa was not burnt. No pa was burnt by the soldiers.

The Rev. Riwai te Ahu says that Te Patukakariki is the Chief of the Ngatihinga and Ngatituaho *hapus*. On this point the following evidence was given by Commissioner McLean at the bar of the House of Representatives ; "Is not Patukakariki the head of the *hapu* to which Te Teira belongs ? "If he is not, who is?—I have never recognised him as such. I know the contrary. I admit, how- "ever, that he is a Chief of some importance. The principal Chief of these *hapus* died some years ago. "*Ropoama Te One, at Queen Charlotte Sound, represents them.*"

Again, Riwai says, speaking of the occupation of Waitara by the Waikatos in 1842 : "Nuitone "te Pakaru was the first. Therefore one of those old Chiefs, Ngaraurekau, went up from Waikanae "to keep possession of Waitara, lest Ngatimaniapoto should come back." It has been shown in Note 15 that the Waikatos returned for quite a different reason ; but there is something extremely ridiculous in the notion of an old man from Waikanae preventing the Waikato conquerors from returning.

But Riwai admits Teira's title. "True he has a title, that is to say to his own cultivations within "that block."

This is an important admission by the adverse party. It goes to prove far more than the Rev.

Riwai te Ahu probably meant to admit. If Teira has a good title to his own cultivations and subdivisions, so has every other Native who is a party to the sale, including a number of absentees at Queen Charlotte Sound under Ropoama te One, who is a Chief of the *hapus* concerned in the sale. The title of the sellers, then, to part of the block is certain. The Government contends that their title to the whole is probable. The question as to the extent of their ownership was what the survey would have brought out when it was forcibly interrupted by Wiremu Kingi.

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NOTE 44.

"*In these documents the grounds of the opposition to the Government are clearly disclosed.*"..... (*Page* 11.)

Not one of these documents was ever submitted to the Government till they were read in the House of Representatives. Assuming that they "clearly disclosed" the grounds of opposition, it was as clearly the duty of those persons who received them to communicate them to the Government at the time.

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NOTE 45.

"*If anything be plain*"..... (*Page* 11.)

The points in dispute, then, were not so difficult to ascertain as they appeared to be at page 5. William King, it is said, representing the whole tribe, stands upon the fact that the whole tribe have not consented to sell the Waitara land.

As has been said already, it must not be believed for a moment that William King is the Chief of the whole tribe. William King is undoubtedly a chief of the Manukorihi section of the Ngatiawa tribe. He never has been and never would be acknowledged by the other sections of the tribe as the head chief of Ngatiawa.

But even if he were, the difficulty at once arises as to what is meant by the consent of the whole tribe. Does Sir W. Martin mean that it is necessary in every sale to get the consent of every man? not of the families, or subdivisions, or "communities," but of the whole *tribe*? If so, in the case of Ngatiawa, scattered as that tribe is, it is of course a simple impossibility. Being an impossibility, it has never been attempted, and yet, without it, large blocks of land have been acquired at Taranaki.

If this is not what Sir W. Martin means, what is his meaning? Does he mean a majority of the tribe? If so, what majority? How many men of the tribe will be sufficient to constitute a veto on a sale—one, or ten, or fifty? These questions are not irrelevant or unfair. It was the bounden duty of Sir W. Martin, 1st, not to state an impossible proposition: 2nd, having used a term which in its natural sense affirmed an impossible proposition, to define his term in that sense in which it could be specifically assented or objected to.

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NOTE 46.

"*In the case of the Bell Block.*"..... (*Page* 11.)

The instance given by Sir W. Martin in support of his statement is rather unfortunate.

1. The block was in the Puketapu country. The whole tribe of Ngatiawa did not agree to the sale; nor did all the Natives of Puketapu.
2. William King's opposition to the sale was not "withdrawn," for he never made any. He was not there at the time.
3. He never "ceased to oppose," for he had never made any opposition.
4. His people never "assented," for they had nothing whatever to do with the sale.

It is of importance that the circumstances of the Bell Block purchase should be acurately stated,

When Sir George Grey made his visit to New Plymouth in March 1847, he commenced the treaty for the purchase of the Grey Block, which was soon after concluded to the satisfaction of all parties. In May 1847, the New Zealand Company came to their agreement with Lord Grey. As soon as this agreement became known in the Colony, Sir George Grey determined on suspending all operations for the purchase of land in the Company's settlements. As respected Taranaki this was officially notified by the Governor to Mr. Dillon Bell, at that time representing the Company at New Plymouth.

In March 1848, Sir George Grey revisited New Plymouth, and specially authorised Mr. Bell to enter into negotiations with a Puketapu section of the Ngatiawa for the land between Mangati and Waitaha, now known as the Bell Block. The land was offered by Rawiri Waiaua and others, and violently opposed by Katatore, Parata te Huia and their followers.

"After the preliminary negotiations, a day was named (says Mr. Bell in his report) to commence "cutting the boundary lines in order to try the right of the disputants. Parata, Katatore, and the "other hostile men, *immediately cut lines as boundaries of their own land, and then prepared to resist "by force the determination of the others to sell theirs.* I took out with me the whole of the friendly "party to work, numbering nearly 60 men. The battle began at the first line, and at some places the "ground was fought for inch by inch. The natives only used their fists, sticks, and the backs of their "tomahawks; anything like a sharp edge was most religiously let alone; and it was wonderful to see "the amount of battering they endured without really using the deadly weapon they carried. The end "of it all was that in a few days I had cut the whole of the lines, and that *tangis* and feasts caused a

speedy oblivion of the hard blows that had been exchanged."—(Parl. Pap. 1st July 1852, p. 239, 240.)

At that time William King was not at Taranaki at all. He shortly afterwards met Mr. McLean at Wanganui, and put in a claim to the Bell Block. The claim was investigated when the payment was divided, and disposed of by the Natives themselves, who awarded him *nothing*. He had nothing whatever to do with opposing or with ceasing opposition to the sale, but was placed in the ridiculous situation of having put in a proprietary claim which was laughed at by the Puketapu people, and abandoned.

The Bell Block purchase, therefore, cited by Sir W. Martin as proof of the correctness of his doctrine that the consent of Wiremu Kingi and the whole tribe was necessary, happens to be conclusive evidence of just the reverse.

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NOTE 47.

"*They raise plain issues.*"..... (*Page* 11.)

Any one reading this would of course be led to believe that these issues had been raised before the commencement of hostilities; whereas the Government had vainly invited the claimants to bring forward their claims, and they had never done so. It was the bounden duty of persons possessing documents which in their opinion raised these issues, to have communicated them at once to the Governor, even if the letters themselves did not repeatedly pray that this should be done.

The Governor may not perhaps have an official right to complain of Archdeacon Hadfield not sending him the letters he received from Wiremu Kingi; but when the Superintendent of a Province receives remonstrances addressed to him in his public character on matters of grave public importance not within his functions to deal with, and when such remonstrances expressly pray that these matters may be laid before the Governor, the Governor has just grounds of complaint against an officer who withholds them altogether from his cognizance, and lets them see the light for the first time only to serve a party purpose in a debate in the House of Representatives. A double evil is produced by such proceedings: the Natives are invited and encouraged to address the Superintendent on Native grievances which he has no power to redress, and are then led to believe that the Governor pays no attention to remonstrances which he was never permitted to see. [*See Notes* 38, 41.]

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NOTE 48.

"*How could these officers, being agents for the purchaser, be fit and proper persons to decide on the validity of all the objections made to the purchase?* (*Page* 12.)

The answer to this is that these persons never decided at all. The decision in cases of difficulty has invariably been in the Governor's hands, where alone it could properly rest if no Tribunal was in existence.

But the objection here made comes rather late. These officers have been the means of acquiring nearly 30,000,000 acres for the Crown in New Zealand without objection on the part of Sir W. Martin, who was Chief Justice during the time when by far the largest part was purchased. The truth is, that investigation by means of the flexible practice of the Land Purchase Department, has hitherto afforded a better security for bringing out the truth as to Native title, than any formal and solemn enquiry before a Court of Law would have done; and must continue to do so until the Natives themselves shall give their assent to the institution of a Land Court.

That the Officers of the Government were the proper persons to conduct the enquiry was certainly the opinion of the party with which Sir W. Martin is identified. In a letter addressed to the Governor by Archdeacon Hadfield on the 15th April 1856, he says:—"It is absolutely necessary if the peace "of the country is to be preserved, that all transactions with natives in reference to the purchase of "land should be entered on with the greatest caution and care; *and that these should be entrusted to* "*those only in whom the Government has perfect confidence, and who are directly amenable to the* "*General Government.*" (Parl. Pap. July 1860, p. 234.)

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NOTE 49.

"*It is plain that he, Mr. Parris, did not investigate*".....
"*If, as appears, the Government had determined.*".. .....
"*Contrary to what was certified by Mr. McLean.*" (*Page* 12.)

If the general tribal title of the Ngatiawa had ever been admitted by the Government, there would of course have been a necessity to enquire into that right as now claimed for W. King. But as in accordance with the acknowledged custom among the various sections of the Ngatiawa themselves and the plan invariably pursued by the Government, no general tribal right would be admitted, but on the contrary the Government would necessarily recognise nothing but the separate tribal rights of families and subdivisions, there was nothing to enquire into in connection with a general tribal claim.

The Government never pretended to "recognize nothing but the individual right." As stated in Note 2, it is not disputed that everywhere in New Zealand the Native tenure is tribal rather than individual. An unsuccessful attempt was made some years ago by the Chief Commissioner to individualize Native claims at Taranaki which was referred to by him in his statement before the Board of 1856; in the

following terms :—"I have tried this system at the suggestion of the Bishop at Taranaki. It gave me "considerable insight into the state of Native Tenure, but in endeavouring to carry it out I found it "took about 30 days to define the boundaries of the claims of 40 individuals over an ex- "tent of 30 acres, and even then they regarded the arrangement as altogether imaginary, and it did "not appear to affect in the estimation of the Natives the general or tribal right. When I con- "sidered the title settled of some individuals on this basis, I found the Natives quarrelled among them- "selves about the boundaries, and prevented any definite arrangement being carried out until I after- "wards purchased the whole of the tribal claim in order to secure a clear title." This attempt was made with the Ngatipoutakataniwha, Ngatiurukinaki, and other subdivisions or families of the Ngamotu, which was itself a large *hapu* of the Ngatiawa. It was not found possible to separate the individual ownership from the tribal claim of each subdivision. But this tribal claim was not a general tribal claim of the whole Ngatiawa tribe, for the Ngamotu *hapu* would have resisted any interference with their land on the part of the other numerous *hapus* of the Ngatiawa residing in the country adjacent to them : and when the "clear title" was acquired, as stated by Mr. McLean, on "the purchase of the whole tribal claim," it was not the general tribal claim of the Ngatiawa which was purchased, but simply the tribal claim (in contradistinction to individual right) existing in these separate subdivisions of the Ngamotu *hapus*. The best evidence of the absence of any general tribal right was, that the payment was made to those subdivisions without any reference whatever to the tribe at large.

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NOTE 50.

"*That declaration does not appear to have been conveyed.*"..... (*Page* 13.)

It was publicly read to William King and a large assembly of Natives and Europeans on the 29th November, 1859. It is misleading to urge that it "could have no legal effect." No one ever pretended that it had. But what is absolutely certain is, that William King and all the Natives present knew perfectly well that its effect was to save their proprietary rights if any, while the Government absolutely repudiated their claim as land-leaguers to prevent the rightful owners from ceding their own proprietary rights to the Queen.

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NOTE 51.

"*Yet neither Mr. McLean nor Mr. Parris instituted any investigation at Waikanae.*"
"*Whatever enquiry there might be elsewhere, there was none at Waikanae.*" (*Page* 13.)

It cannot but be a matter of satisfaction to the Government that the accusations of not instituting a proper investigation, after all resolve themselves into the charge that no investigation was made at Waikanae. The reason for this is very obvious. Waikanae, of all places which at any time were in the occupation of any sections of the Ngatiawa, was the one place where no investigation was necessary. The Chief Commissioner made personal investigations among the Ngatiawa of Queen Charlotte Sound, because Ropoama Te One and the principal chiefs of the *hapus* concerned in the sale who had emigrated to the Sound, still resided there. He made personal investigations among the Ngatiawa of Port Nicholson, because Te Puni and other principal chiefs of Ngatiawa families still resided there. But he was not called upon to make an investigation at Waikanae, because the principal men of that section of the Ngatiawa which formerly lived at Waikanae had returned to Taranaki, and the investigation into the title of the Waikanae claimants would properly take place, not at Waikanae where they did not live, but at Waitara where they did.

The Waikanae Natives admit this completely when they say, "Still we felt no apprehension of losing our lands, because we were continually hearing of the strong declaration of Wiremu Kingi that he would keep our lands for us. For he is our Chief, a protecting shade for our lands there." Those Natives who were content to leave their interests in the hands of Wiremu Kingi cannot complain of the consequences of his refusal, either on their behalf or his own, to put in any claim except the claim to prohibit others, who were managing their own business on the spot, from selling their land. What the Government did, then, was to treat with the families at Queen Charlotte Sound and Wellington by going to the places where they still lived : to treat with the Chiefs who had formerly inhabited Waikanae but had returned, at Waitara where they were now settled. It may be looked upon as quite certain that if the Governor had held a formal investigation at Waikanae and come to the conclusion that there were no valid claims there, exactly the same outcry would have been made against him; and he would have been charged with pretending to investigate the rights of the Waikanae section of the tribe in the absence of the chief men of that section.

But in truth the accusation is without foundation. No one who has the slightest acquaintance with Maori customs can doubt that the offer of Teira's land was known to every individual native of the Waikanae section as perfectly as it was to William King himself. Yet not one of them ever preferred a claim or an objection.

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NOTE 52.

"*Last comes the letter of Wi Tako.*"
"*The Native word*"..... (*Page* 14.)

In a translation of Wi Tako's letter by Piri Kawau (who in 1854 accompanied Sir George Grey to England), who is a near relation of William King, and though in the service of the Government

has strong sympathies with Kingi, he renders the expression in question thus :—"O friends, this evil "is Wiremu Kingi's, and another by the Taranaki it is greater than all evils or wrongs in the whole "world." Piri Kawau speaks English perfectly well, and could not possibly be mistaken in his interpretation of Wi Tako's letter. And there is no doubt that it was understood by the Natives who received it to express condemnation of Wiremu Kingi. At the Ngaruawahia meeting in Waikato, Paora Tuhaere said: "I believe there is not a Chief in Waikato that is not convinced that Te Rangitake [Wi Kingi] is wrong. *I have seen Wi Tako's letter addressed to you all, and that letter and its statements should settle the question.*"

If the proper translation of the word "*he*" had been such as is here contended, viz., "trouble" instead of "wrong," it was to have been expected that a similar interpretation of it would have been given in the other letters quoted by Sir W. Martin.

In W. King's letter of 2nd July 1859, he says "*Ko tenei ka he, he rawa, he rawa.*" This is translated "*Now this will be wrong, very wrong, very wrong* :" and these words are given in italics. In W. King's letter of 5th December 1859, he says "*Ka he, ki te tae mai a te Kawana ko te he rawa tenei.*" This is translated "It is a bad business. If the Governor comes, it will be a very bad business." Again in the same letter, the words "*mau e homai te he*" are rendered "You may bring the *evil.*"

In Ritatona's letter of 5th December 1859, he says "*Ka ki atu matou, ka he tena.*" This is translated—"We said that is *wrong.*" Again, "*ma koru a e homai te he*" is rendered "if you bring *evil.*"

In the letter of Hohepa Ngapaki and others dated 29th July 1860, to the Superintendent, they say "*Na kua rongo matou i te kupu whakatikatika mo te mahi he a te Parete.*" This is translated "Now we have heard the defence of Parris' *wrong-doing.*" Again, "*hokona hetia atu ra e Te Teira,*" is translated "*wrongly* sold by Teira." Again, "*Me ka tangohia hetia atu o matou whenua*" is translated "when our lands are *wrongly* taken away."

In Riwai te Ahu's letter of 23rd June 1860, he says "*Kua kitea te he o ta te Teira ma.*" This is translated "they would have found out the *fault* in the statement of Teira's party."

Again, *Ki ta te kai hoko whenua o Taranaki he tika rawa ta te Teira hoatutanga i taua whenua, a he he rawa a Wiremu Kingi. Ki a matou he nui rawa atu te he o te Teira, kahore he mea hei hunanga mo tona he kia ngaro ai.*" This is translated "According to the Land Commissioner of Taranaki, Teira's offer of that land was perfectly just, and Wiremu Kingi was altogether *in the wrong.* We say that Teira is far more *in the wrong,* and there is nothing that can hide *his fault.*"

It thus appears that when the word "*he*" is applied to the conduct of William King, it must be translated "trouble": but when it is applied by Kingi and his supporters to any act of the Government or the sellers of the block, it must be translated "wrong."

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NOTE 53.

"*On such evidence as the above, the Government was prepared to assert.*"..... (*Page* 15.)

The Government asserted their rights to survey the land sold by Te Teira and his friends, and the absentees at Queen Charlotte Sound. They had expressly saved the proprietary rights of any one who might own any land within the boundaries offered by Teira and his friends: and those proprietary rights remain saved to this day.

In taking possession of the Block the Governor must be considered rather as asserting jurisdiction over the question of title in the only way in which it was possible to assert jurisdiction, than as putting himself in possession of a property which he had acquired "in his capacity as land buyer." The question between the Governor and Wiremu Kingi, truly viewed, was one of authority and jurisdiction, and not of the title to a particular piece of land.

But even up to the present moment no final decision has been made on the title to the whole Block. No one is precluded even now from peaceably coming in, showing title to part of the block, and either retaining or selling such part as he pleases.

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NOTE 54.

"*The Government also avoided the unsatisfactory course.*"..... (*Page* 15.)

Two inaccuracies are suggested here.

In the first place, it is notorious that no one but the Land Purchase Commissioners ever *investigated* any objections to purchases. In the second place, it is notorious that in the Waitara case (as in every other) it was the Governor and not the Land Purchase Commissioners who *decided* on the objection raised by Wiremu Kingi.

But a further inaccuracy is implied in the observation. In the great majority of cases in which "objections" have ever been made to any purchase, the objections were made by proprietors, having rightful claims of ownership within it. If Wiremu Kingi had at any time asserted that he possessed a proprietary right, all proceedings would have been stayed till his "objection" had been investigated. What the Government refused to entertain or investigate was the "objection" of the Land League, headed by Wiremu Kingi who was its mouthpiece, to any land being sold by the rightful owners.

NOTE 55.

"*At the Waitara, for the first time, a new plan was adopted.*"..... (*Page* 15)

This may be called the central point of Sir William Martin"s argument.

No one will deny that one of the things most to be desired in the existing state of the relations between Her Majesty's Government and the Native race, is the establishment of some tribunal in which the varying rules of Native tenure shall acquire some settled form, and to the decisions of which they will yield a peaceful submission.

But the difficulties in the way of doing this are immense. It can only be done with the complete assent of the Natives themselves. Without it the establishment of a Land Court to determine conflicting claims of title among the Natives, would only add to difficulties which already exist in the working of the ordinary Courts of Law in all cases where the natives are concerned. And at Taranaki especially, the establishment of such a Court would have been a mockery so long as the various sections of the Ngatiawa were resolved to fight out their conflicting claims to land.

It has been amply shown in public documents that the Governor's Proclamation of February, 1858, was openly violated by the Natives. At the very time that Teira's offer was made to the Governor they were at war, and peace was not made till six months afterwards. To have required them to come in and peaceably submit to the decision of a Court on the very questions which they were then fighting about, would have been absurd, because there was not the least chance of their doing it. They were resolved not to make peace. Wiremu Kingi himself, when the Bishop of New Zealand, on the 18th February 1858, earnestly prayed him to make peace, replied, " Ekore matou e whakarongo" (*We will not listen*).

But is it fair to lay so heavy an accusation against the Governor, as if the question had never been considered?

The question was carefully considered by the Legislature in the discussions on the Native Territorial Rights Bill of 1858. In that Bill both Houses of the General Assembly agreed to the following declaration (Section VIII.) :—

> "It is hereby declared that no Court of Law or Equity within the Colony hath, *or ought to* "*have*, cognizance of any question of or affecting the Title or right of occupancy of the "Aboriginal Natives, as amongst themselves, to or over any lands or hereditaments over "which the Native Title is not extinguished ; except so far as the Native Circuit Court "may have such jurisdiction under and by virtue of any regulation made in pursuance of "the Native Districts Regulation Act, 1858."

Probably those two branches of the Legislature were of opinion that the territorial rights and obligations of the Natives were not subject to the interpretation of our Courts. These rights stand upon Treaty, of which the Crown is, rightfully, the sole interpreter. This is well put by Mr. Busby :—

> "The Native title is not known to the law, nor is subject to, or entitled to be dealt with by law. "It rests exclusively upon a Treaty entered into at the time between the British Government (who "had recognised the New Zealanders as competent parties to a Treaty) and the New Zealanders. To "maintain the faith of Treaties there exists no law. And I confess that, in the responsibility of the "Queen's Governor acting in the name and on the behalf of the Queen, so long as he is not controlled "by what is called a responsible ministry, I see a greater security for the due fulfilment of the Treaty "than would be derived from any judicial tribunal which could be created for the purpose, could such "an anomaly exist as a tribunal to try the administrative acts of the Government in matters of so high "an import as the fulfilment of a Treaty. The issue, as it appears to me, was not as Sir William "Martin puts it (page 19), whether 'the Governor has no more right to seize land upon the decision of "his own agent than any other land buyer would have ;' but whether he was maintaining the obliga- "tions of the treaty in defending the rights of Teira against the interference of Kingi with those "rights."

The Law Officers of the Crown also decided in December, 1859, that the Colonial Courts had no cognizance of questions of Native title or occupancy. But the two Houses of Assembly proposed a tentative and flexible means by which a jurisdiction in such cases might be established, with the assent and co-operation of the Natives themselves. They proposed, as one means of ascertaining Native title, that "any question of, or affecting the Native title to, or right of occupancy over, lands comprised in "any such Certificate, may be determined by the Governor in Council, or otherwise as the Governor "in Council shall appoint." It was intended that the Executive Council should act through the medium of the Native Circuit Courts established by an Act of the same Session. The Bill was reserved for the signification of Her Majesty's pleasure, and was disallowed on the Governor's advice, which, however, had no reference to this particular subject.

In communicating this determination to the Governor, Lord Carnarvon, in his despatch of the 18th May, 1859, expressed himself as follows :—"It is no doubt most desirable that the disputes of "the Natives respecting the right to land should no longer be settled by arms ;" but, "I am bound to "ask myself whether, in case the decisions of the Governor in Council on titles to land should be "resisted by the Natives, the British Government are prepared to promise such a military force as may "be sufficient to enforce them." "If, as in this case, no such expectation can be held out, it is more "than questionable whether the moral influence of the European Government would not suffer by the "issue (to Natives) of certificates of title, which the Natives would be at liberty to disregard with "impunity."

The Imperial Government refused its assent to this plan, which involved the determination of Native title. It resolved to retain in its own hands, through the Governor alone, a free discretion as to the course which should be taken wherever Native title was in question ; and not to incur the re-

sponsibility of undertaking to give effect to decisions made by any one not immediately responsible to the Crown.

The Colonial Legislature, therefore, and the Imperial Government, both decided against an independent Court. It has been shown in Note No. 48, that Archdeacon Hadfield recommended that all transactions with Natives in reference to the purchase of land should be entrusted to those only who were directly amenable to the General Government. It may also be added that during the many years Sir William Martin held the office of Chief Justice there is no record of his having taken any steps towards the establishment of such a tribunal as that which he speaks of in his pamphlet.

It was hardly just, then, to blame the Governor for not establishing an *independent tribunal* in which the conflicting Claims of Wiremu Kingi and Te Teira could be determined. It was hardly fair to leave altogether out of consideration the state of internecine war in which the sections of the Ngatiawa concerned in those conflicting claims were at that very time involved.—[*See also Notes Nos.* 48, 62.]

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NOTE 56.

*"William King's refusal to attend the Governor."*.....(*Page* 17)

Whatever may be the surprise felt at the apology offered for the insolvent refusal of Wiremu Kingi to attend the summons of the Queen's Governor, protected as he was by a safe conduct, it may at once be said that Sir W. Martin is perfectly correct in his quotation as to the Governor's determination "not to permit him to defy the Government" if he had come.

William King, if he had come only to repeat the pretensions of the land league, would not for a moment have shaken the Governor's determination. But if he had even at that eleventh hour chosen to advance for the first time a proprietary claim, it would forthwith have been entertained, and all further proceedings suspended till it was enquired into.

It is quite plain that all the excuses made for William King in this and the succeeding passage are based on the proclamation of martial law. "Those persons," says Sir W. Martin, "who find in this "conduct of William King a justification for resorting to force, appear to overlook the fact that the "resort to force had been already determined on." But what Sir W. Martin avoids saying is that the "resort to force" had been already determined on by William King himself, and notified to the section of his tribeat Waikanae ten days before martial law was proclaimed.—[*See Note* 41.]

*"Was he safe without arms?"*..... (*Page* 17)

William King admitted to Mr. Whiteley that he did not doubt his safety.

*"Was their land to be taken because William King was uncivil?"*..... ..(*Page* 18)

It has been already shown that no man's land was taken or proposed to be taken without his full and free consent.

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NOTE 57.

*"Either to stay its hand for a time."*..... (*Page* 18)

The land was offered for sale by Teira in March, 1859, and the survey was not attempted until February, 1860.

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NOTE 58.

*"The party which sought to disturb the existing order of things."*..... '(*Page* 19)

The question, however, is what was the party which sought to disturb the existing order of things? It has been shown that Governor FitzRoy and Governor Grey laid down certain rules which formed and form the extreme limit of the claims of any section of the Ngatiawa Tribe. In soliciting the permission of Governor Grey to return to Waitara, Wiremu Kingi admitted his obligation to abide by those rules. He agreed to the conditions on which Governor Grey granted that permission, and then broke them.

Every block of land had been acquired in the New Plymouth settlement in accordance with the rules so laid down. Wiremu Kingi admitted the rules when he put in a claim to compensation for the Bell Block, which claim was disallowed by the Puketapu section of the tribe.

When he sought to establish in Taranaki the mandates of the Land League, which prohibited the further sale of territory under penalty of death, he attempted a new system wholly at variance with the precedents of many years.

It was Wiremu Kingi, therefore, and not the Governor, who "sought to disturb the existing order of things."

In one sense the Governor may be said to have disturbed it. The "existing order of things" among the Ngatiawa at New Plymouth was a desperate feud, in which the most horrible cruelties had been practised and threatened on both sides. This Sir W. Martin quite forgets, when he says "The "first wrong was not on the part of the Natives, it was on the part of the Colonial Government," and urges that "the party which sought to disturb the existing order of things was the party which needed "to justify itself by some legal warrant for so doing." The Governor was undoubtedly determined to "disturb" *that* "order of things."

NOTE 59.

*"To oust subjects of the Crown from their lands"*..... (*Page* 19)

In the way in which the accusation is stated Sir William Martin begs the question altogether. How does he know that these "lands" are the property of the "subjects" who are "ousted?" It would have been time enough to make the accusation when this had been proved.

At page 11 Sir W. Martin, after producing most of the documents and statements he had, tending to show there were adverse claims, said: "We are not at liberty to assert these claims to be true, "without investigation; neither are we at liberty to assert them to be false, without "investigation." But at page 22 these claimants are made to appear the rightful owners, whose land the Governor has unlawfully seized and whom he has unjustly ousted. It does not clearly appear how Sir W. Martin arrived at that conclusion.

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NOTE 60.

*"There are absentee claimants whose claims."*.....(*Page* 20.)

No one has arbitrarily denied these claims. No one has decided that they are not sound and just. No one has decided that the pah was not built on ground belonging to the persons who built it.

If there exists any valid claim of ownership it is saved to this day, as has been so often shown: and there is nothing for any proprietor to do but to come in peaceably and establish it.

But the manner in which this statement is made requires notice. Is it contended that when the Government is engaged in the purchase of a piece of land, when it has openly invited all claimants to advance their claims, when the rights of ownership of all who were not parties to the sale have been expressly saved, when nearly twelve months of patient investigation have been spent without a single adverse claim of ownership being proved, it is lawful for any one *who may pretend to be a claimant* to build a war pah on the land, gather a body of armed followers, and execute war dances by way of assertion of title?

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NOTE 61.

*"The doctrine laid down amounts to this."*..... (*Page* 20.)

This doctrine was not laid down by the present Governor. The plan of "compensation" was, however, laid down by Governor Fitzroy and Governor Grey.

1. When Governor Fitzroy met Colonel Wakefield shortly after assuming the Government of the Colony, the rule of maintaining the purchases of the New Zealand Company but awarding compensation to the Natives who were not parties to the Deeds of Sale, was expressly established. Thus, in the case of Port Nicholson, Mr. Clarke, the Protector of Aborigines, with the concurrence of Commissioner Spain, awarded £1500 to the natives. In the case of Wanganui they awarded £1000; in the case of Nelson they awarded £300; and in the case of Taranaki they would have awarded compensation also, if it had not been for the knowledge that if they did so the Waikato tribes would immediately have come down and taken it from the Ngatiawa.

2. When Governor Grey gave his decision in the presence of Wiremu Kingi in March, 1847, he determined that the whole land at Taranaki should be resumed for the Crown, the natives receiving compensation for their outstanding claims at the rate of 1s. 6d. an acre.

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NOTE 62.

*"The compact is binding irrevocably."*.....(*Page* 20.)

So it is. But it is a *compact:* it is something binding on both parties. It is unreasonable to urge that the "full privileges of British subjects" are due to natives who will not only perform none of the duties of subjects but have constantly repudiated the British authority with arms in their hands.

The particulars of the feuds in which various sections of the Ngatiawa were engaged have been fully given in the Papers laid before Parliament and the Assembly. It is enough here to recapitulate them,

1. A series of murders was committed during five years, under circumstances of peculiar atrocity, and arising in every case out of quarrels about title to land.

2. The Governor issued a Proclamation warning all the natives that this anarchy would no longer be tolerated.

3. The natives openly violated the Proclamation, and notably Wiremu Kingi and his followers.

4. The belligerents were fighting in the public highways of the district and in fields cultivated by peaceable settlers, whose lives were constantly in danger, and whose property was forcibly taken away.

5. Proposals were repeatedly made to Wiremu Kingi to make peace, which he constantly rejected.

6. He treatened without any disguise to roast alive the inmates of a pah he was investing, and letters containing these threats were sent to the Waikato district, where they were seen and read by the Resident Magistrate.

7. This happened long after the Governor's Proclamation of warning dated February, 1858.

8. Peace between the belligerents was not made till six months after Teira had offered his land.

Practically, therefore, the argument to which this note refers amounts to this; that persons who are there styled "British subjects" may make war against each other and roast each other alive to determine their relative rights to land, but that when any of them offer to sell land to the Crown, even while the war is raging, they are entitled to a peaceful investigation before a Court of Law. The Crown on the one hand is bound to give them a judicial decision by an independent tribunal, and they are free on the other, as soon as they leave the tribunal, to come to a decision by the musket and tomahawk.

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NOTE 63.

"*The letter which will be found at the end of this Chapter.*".....(*Page* 21.)

It is to be regretted that Sir W. Martin did not quote more of this Letter. It was published in the Blue Book presented to Parliament in July, 1860. In the latter part of the letter the Rev. Mr. Riemenschneider refers to the agreement between Governor Grey and Wiremu Kingi as to the condition on which the latter was allowed to return to Waitara, in the following terms:—"When I "further reminded them that Wiremu Kingi had no right either to hold or occupy land on this "(south) side of Waitara river, *since in* 1847 *he had given his distinct promise to Governor Sir "George Grey, previous to his coming up from the south, that he would not settle on this side but on "the opposite* (*north*) *bank of the river*, I received in reply that W. Kingi being the head Chief of "all Waitara, on both sides of it, it was for himself to choose and to say on which side he was to "reside." Other evidence of that distinct engagement was given in the Governor's Despatch of 4th December, 1860.

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NOTE 64.

"*For years the people experienced the mischiefs which flowed from the decline and the failure of the power which formerly restrained and governed their tribes.*" (*Page* 21.)

It must not be considered that the Chiefs possessed similar influence (*authority* they had nowhere) in all the tribes alike. The Ngatiawa were always celebrated for repudiating chieftainship and the exercise of influence by their principal men: in this they resembled the people at Poverty Bay on the East Coast, who have a proverb "*Turanga tangata rite*," all men are equal at Turanga.

But it has not been the fault of the party with which Sir W. Martin is identified that the influence of the Chiefs everywhere has not been much less than it is. In a letter addressed to the Governor by Archdeacon Hadfield on the 15th April, 1856, he gives the Governor this advice:—

"There is, however, a certain kind of restlessness among some of the Chiefs and leading men, "which has manifested itself within the last three or four years by efforts to get up meetings in "various places; and I now understand that there is a secret intention of assembling, if possible, "most of the leading Chiefs of the centre and southern parts of this island in the ensuing summer, "*for the purpose of raising the authority of the Chiefs. . . . It appears to be highly important, "notwithstanding a very general opinion to the contrary, that the Government should do nothing to- "wards establishing the influence of the Chiefs, but should rather endeavour to lessen this by every "legitimate means, and especially by raising the position of inferior men through the equal action of "law.*" (Parl. Pap. July 1860, pp. 233, 234.)

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NOTE 65.

[*Wiremu Tamihana's Statement.*] "*The Governor never does anything.*".....(*Page* 22.)

This is because interference on the part of the Governor (except by negotiation) would be useless, unless he were prepared to go to war. In cases of crime, whether committed by Natives against Europeans, or by Europeans against Natives, the latter are not very tractable. In cases of the former class, the surrender of the offender, if obtained at all, is invariably a matter of negotiation, In cases of the latter class, the Natives always evince, more or less, a desire to take the law into their own hands, and to use violence both towards the offender (or supposed offender) himself, and towards his unoffending countrymen. Cases of murder or homicide cause very great excitement. Native custom requires that life shall pay for life, and is not particular as to the victim. It is sufficient to mention, as instances of such occurrences as are referred to in this note, the case of the Kawau powder robbery, Sutton's case, Marsden's case, and the late case of the death of a Native, by means unknown, at Patumahoe in the neighbourhood of Auckland.

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NOTE 66.

"*The fact is that Wi Kingi strenuously resisted the King movement.*"..... (*Page* 23.)

As Sir W. Martin has quoted pretty fully from Mr. Buddle's pamphlet, it is strange he should not have remarked that the deputation from the Ngatiawa and Ngatiruanui tribes, which came up to yield their allegiance to the King and hand over their lands to the League, had been received at Waikato before hostilities were commenced. It was while the deputation was in the Waikato, and after they had made their most violent speeches, that news came from Taranaki of the breaking out of the war.

But there is ample proof of the connexion of Wiremu Kingi with the *Taranaki* Land League from the very earliest time. Even so far back as 1848, prior to the great meeting which took place at Waikanae (referred to in the Governor's Despatch of 4th December, 1860,) and before the migration, Wiremu Kingi had proposed to Natives of Ngatiruanui and Taranaki to give them allotments of land at Waitara, though they had not the slightest pretence of right to land there, and had not the slightest connection with the Ngatiawa tribe.

It is by no means certain that this proposal was not itself the germ of the land league. The league specifically called the *Taranaki Land League* was inaugurated at Manawapou in the Ngatiruanui country in 1854. The proposal originally made by Wiremu Kingi to members of that tribe to take up a position with him on the Waitara, with the avowed object of helping to prevent any further sales of land, fully accounts for their support to his proceedings in 1855 as stated by the Rev. Mr. Riemenschneider. They had already for years been bound up in a league with him to prevent the extension of English territory, and the Rev. Mr. Taylor admits that the murder of Rawiri was one of its first results.

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NOTE 67.

"*It is plain then that those operations were commenced in the belief and on the ground.*".....(*Page* 23)

The manifesto issued by the Governor before he went to Taranaki in February, 1860, entirely disproves this assertion. The ground was that Wiremu Kingi was acting not as "Chief of a tribe" but as a Chief of the Land League, and in no other capacity. The Natives were informed with careful distictness of the grounds on which the Governor was moving the troops :—

"The Queen has said that all the Natives shall be free to sell their lands to her, or to keep them, "as they may think best. None may compel the Maori people to sell their lands, nor may any forbid "their doing so.

"William King sets his word above the Queen's, and says, though the rightful owners of the "land may wish to sell, he will not allow them to do so.

"The Governor cannot allow William King's words to set aside the words of the Queen.

"William King has interfered to prevent the survey of the Queen's land by Her own surveyors. "This interference will not be permitted.

"The land has been bought and must be surveyed. The Queen's soldiers will protect the sur- "veyors. If William King interferes again and mischief follow, the evil will be of his own seeking."

There seems a peculiar injustice in the late Chief of the highest Colonial Court, accustomed to weigh evidence, rejecting distinct and unmistakeable assertions published to the world by the Governor, and then stating himself a "ground" which there is no evidence whatever to show the Governor ever took up.

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NOTE 68.

"*The proceedings at the Waitara.*".....(*Page* 23)

It is not clear whether Sir W. Martin means to refer to the proceedings of 1859, or the proceedings of 1860.

He says the proceedings were resorted to "*simply* because it was desirable to open the Waitara land :" and he gives in italics a quotation from the Governor's Despath of 29th March, 1859, which refers to the acquisition of the land south of Waitara. But if he had also put in italics the words immediately succeeding, which stated that it was "*most important to vindicate our right to purchase from those who have both the right and the desire to sell,*" every one would have seen that the former object, "simply," was not the one the Governor had in view, but that the real stress was laid on the other object, the vindication of that which, a year before hostilities commenced, had been laid down as a *right* in the Natives.

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NOTE 69.

"*But that connection began after our employment of military force and in consequence*".....
(*Page* 24)

This is at variance with the testimony of the Rev. Mr. Buddle, Superintendent of the Wesleyan Mission (quoted fully in the Governor's Despatch of 4th December, 1860), who expressly says that it was *while the deputation* which had come up from the Ngatiruanui *and Ngatiawa* tribes to give in their allegiance to the King, and to hand over their lands to the League, *was at Waikato, that intelligence was received of the breaking out of hostilities.* The most violent speeches had been made before.

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NOTE 70.

"*The movements of which we have been speaking*".....(*Page* 24)

In reference to this subject Sir W. Martin said in his Memorandum of 12th May, 1860 :—"Their proceedings (of the Natives engaged in the Waikato movement) are an unconscious attestation to the soundness of the views set forth in His Excellency's Despatches of last year relating to this subject." [Parl. Pap. 15th Aug. 1860, p. 9.]

NOTE 71.

"*That the law of England may be introduced.*".....(*Page* 24)

Early in 1856 the Governor requested Sir W. Martin to prepare for him such an Abstract of Law as that which he did prepare in 1859. Sir William's absence from New Zealand having prevented its being done at that time, the Governor caused an Abstract of Law to be prepared by Mr. Fenton, which was revised by the Attorney General, translated into Maori, and circulated generally in 1858.

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NOTE 72.

"*There was no place in New Zealand.*"..... (*Page* 27.)

To this there can be but one answer. There was no place in New Zealand where it ws more peremptorily necessary to interfere in order that the existing elements of discord should no longer be suffered to produce such scenes as Sir W. Martin, in the paragraphs immediately preceding, has described.

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NOTE 73.

"*Such men unwillingly accept.*"..... (*Page* 28.)

It is most unfortunate that answers are suggested which too often give a false colouring to the subject under discussion, and do not tend to make the Maoris loyal subjects.

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NOTE 74.

"*This was an unfortunate use to make of such an assembly.*".....(*Page* 29.)

Probably if the decision of the Conference had been the other way there would not have been the same complaint. The Chiefs themselves repeatedly invited an explanation from the Governor, of the Taranaki Question. It was made the subject of, or was alluded to in, the greater number of the speeches. Several Natiawa Chiefs from Waikanae, Port Nicholson, and Queen Charlotte Sound were present as well as Ngatitoas from Otaki, who were as thoroughly versed in the Ngatiawa title as the Ngatiawa themselves. The statement made by the Native Secretary was publicly challenged and answered by Wiremu Tamihana te Neke, a relative of Wiremu Kingi, and one of the three dissentients from the Resolution condemning King.

Sir W. Martin says that "the statement of the Native Secretary was not complete, nor on all "points accurate." It is to be regretted that this charge was brought against Mr. McLean without stating in what points he was inaccurate. It does not appear that any charge of the kind was made by the Ngatiawa Chiefs who were present at the Conference, and to whom every circumstance in the case was perfectly familiar.

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## No. 3.

REMARKS UPON SIR WILLIAM MARTIN'S PAMPHLET, ENTITLED "THE TARANAKI QUESTION,"
BY MR. BUSBY, FORMERLY H.M. RESIDENT IN NEW ZEALAND.

An attempt to controvert the opinions and reasoning of a person so eminent as Sir William Martin, by a person like myself, may savour of persumption. I think it right, therefore to preface the remarks I have to offer, on certain parts of his pamphlet, by the following narrative.

At the period (January, 1840,) when Captain Hobson, R.N, arrived in New Zealand with the appointment of Consul, and authority to treat with the chiefs and people for a cession to the Queen of the sovereign and territorial rights which had been acknowledged by the British Government, I had filled for seven years the office of H.M. Resident in New Zealand.

Though my official character terminated on the arrival of Captain Hobson, I did not the less consider it to be my duty to aid him with my experience and influence, and though I afterwards declined his invitation to join his Government, yet, till the Treaty was accomplished, our relations were of the most unreserved and confidential character. In writing to me afterwards he expressed himself in the following words:—"I beg further to add that through your disinterested and unbiassed advice, and to your personal exertions, I may chiefly ascribe the ready adherence of the chiefs and other natives to the Treaty of Waitangi, and I feel it but due to you to state that without your aid in furthering the objects of the Commission with which I was charged by H.M. Government, I should have experienced much difficulty in reconciling the minds of the natives, as well as the Europeans who have located themselves in these islands, to the changes I contemplated carrying into effect."

When it became necessary to draw the Treaty Captain Hobson was so unwell as to be unable to leave his ship. He sent the gentleman who was to be appointed Colonial Treasurer and the Chief Clerk to me with some notes, which they had put together as the basis of the Treaty, to ask my

advice respecting them. I stated that I should not consider the propositions contained in those notes as calculated to accomplish the object, but offered to prepare the draft of a treaty for Captain Hobson's consideration. To this they replied that that was precisely what Captain Hobson desired.

The draft of the Treaty prepared by me was adopted by Capt. Hobson without any other alteration than a transposition of certain sentences, which did not in any degree affect the sense.

A statement of these facts I have thought necessary, to relieve me from a charge of presumption, and in the hope that I may find means to give the following remarks a circulation co-extensive with those of Sir William Martin, which the advertisement on the back of the title page informs us "are printed for circulation among members of the Imperial Parliament and members of the General Assembly of New Zealand."

"Native Tenure of Land," (pp. 1, 2.)

The terms in which Sir W. Martin in the following sentences, speaks of the tenure of land by the natives, and the "rights" resulting therefrom, and what might and might not be done lawfully appears to me to be founded upon a misconception of the actual condition of the natives, who, down to the date of the Treaty, had no conception of the existence of a right implying an obligation on the part of others to respect that right.

"1. The land," (says Sir W. Martin) "occupied by a native community is the property of the "whole community. Any member of the community may cultivate any portion of the waste land of the "community. By so doing he acquires a right over that particular piece of land, and the right so "acquired will pass to his children and descendants. If he have no descendants the land may then be "cultivated by others of the community, as agreed amongst themselves."

"2 The chief naturally represents and defends the rights of his people. He has his own personal "interest like the rest. He is also especially charged with the protection of their honor and interests: "and would lose all his influence if he did not assert those rights manfully."

"3. To make a sale (of land) thoroughly regular and valid, both chief and people should consent."

"4. The holdings of individual cultivators are their own as against other individuals of the "community. No other individual, not even the chief, can lawfully occupy or use any part of such "holding without the permission of the owner. But they are not their own as against the community. If "it is said of a piece of land 'the land belongs to Paora,' these words are not understood by a Maori to "mean that the person named is the absolute owner exclusive of the general right of the society."

"5. It is established, by a singular concurrence of the best evidence, that the rules above-stated "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 land passed according to their custom and those in which it was taken "by mere force."

It is usual for writers on Ethics to treat of what are called "natural rights," meaning thereby the duty and obligation which rests upon every man to treat his neighbour as he would be treated himself, with that sense of justice which is implanted in the breast of every human being by Him who made of one blood all nations of the earth, and fashioned their hearts alike; and which, however obliterated by that selfishness and cruelty which reign in the dark places of the earth, requires only to be brought fairly before the mind even of the most ignorant savage in order to command his assent.

The natural rights are generally considered to be the right of life, liberty, and property; and in this sense Sir W. Martin's rules and observations might be accepted without comment. But this is not the sense in which the words used will be understood by the generality of readers, or by those statesmen whose business it will be to consider the obligations created by the Treaty of Waitangi upon the justice and good faith of the British Government.

In these remarks we have only to do with the rights of property, as they are necessarily understood by jurists and statesmen, implying corresponding obligations to respect such rights. In this sense I do not hesitate to say, that so far as we can trace their history, there is no evidence of the New Zealanders ever having possessed any rights, with the exception of those which were created by the Treaty of Waitangi. Of what use is it, practically, for a man to say I possess a right to my property, when there is no law to define the obligations which are created by such a right, or government with power to administer the law, supposing it to have existed? New Zealand was, in an emphatic sense, a country without a law and without a prince. It is doubtful whether the New Zealander, until he witnessed the exercise of authority under the British Government, possessed any idea corresponding to that which is conveyed to our minds by the word "authority." Their only law was that of the strong arm. "When a strong man armed kept his palace his goods were in "peace, but when a stronger than he came upon him, and overcame him, he took from him all his "armour and divided his spoils: and there was no redress."

I have not a copy of the Treaty of Waitangi before me, but unless my memory fails me, the word "rights" does not once occur in that document. The Queen guarantees to the Natives the possession of their property in land which they may individually or collectively possess. I believe it is in accordance with the rule of international law, as well as with the customs of the New Zealanders, that the obligations created by this guarantee could only extend to the actual possession at that time existing, and that no more fatal error could be committed than that which was committed by Governor Fitzroy when he admitted a right to land as existing in such of the Taranaki tribes as had been driven from their possessions at Taranaki by the more powerful tribes of Waikato, and had located themselves on the coasts of Cook's Straits. This was assuming an obligation on the part of the

British Government which was not created by the Treaty of Waitangi—an obligation which implied the duty of investigating not only the title by which those tribes who had been driven from their land claimed to possess it, but the title of the tribes who might have possessed it before and had been driven from it by those tribes who were now fugitives and exiles in their turn; and so on, in an endless series.

I do not make this observation as applying to Wi Kingi and his party, who appear to have migrated to the south before the Waikatos swept those who remained from their homes.

Of the difficulties of my position when holding the office of British Resident, which were neither few nor small, not the least arose out of the frequent reference to me, both by the Natives and my own countrymen, of questions and disputes respecting the title to land. One result of these difficulties, however, was to bring me acquainted with the ideas held by the Natives on this subject, before such rules existed as those laid down by Sir W. Martin, and of which it is affirmed by him that "It is "established by a singular concurrence of the best evidence that the rules above stated were generally "accepted and acted upon by the Natives."

Adopting the eloquent words of Sir W. Martin (page 20), that "The compact" (created by the Treaty of Waitangi) "is binding irrevocably," that "we cannot repudiate it so long as we retain the "benefit which we obtained by it," and "that it is the clear duty of every officer of the Crown and "of every loyal citizen to do his utmost, by deed and word, to fulfil this national undertaking." 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, 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. I sympathize most sincerely with Sir W. Martin in his desire to uphold the national faith, but I consider that it is amongst the greatest of misfortunes that Sir W. Martin and other eminent persons, who possess influence with the Natives, and whose truth and probity are above question, should entertain ideas so erroneous, and should publish opinions which cannot fail to be reported to the Natives, and thus encourage them in resistance to the Government by impressing their minds with the idea that they are suffering injustice by its dealings with them in respect to their lands.

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. That they have been "generally accepted and acted upon by the natives" in the later periods of their dealings in respect to lands, I do not dispute, but they are the natural and necessary deductions from the proceedings to which our own countrymen had resource in order to obtain an equitable title to the lands which they purchased from the natives. It is not more than twenty-five or thirty years since the natives first began to look upon land as an object of exchangeable value. Before that period they had as little idea of deriving advantage from its sale as of deriving advantage from the sale of the waters of the ocean, or of the air which they breathed.

The boundaries between the land possessed by different tribes or communities, which existed with more or less certainty, were rather a precaution against the inroads of enemies, than an assertion of title to property in the sense in which it is understood amongst civilized communities.

I have not hitherto referred to what is called "tribal right," which Sir W. Martin describes as overruling individual right in regard to the transfer or sale of land out of the tribe. He states (page 2,) that "Generally there is no such thing as an individual claim clear and independent of the tribal right." This is a quotation from the report of a board appointed in 1856 to enquire into and report upon the state of native affairs. This is again a deduction from the assumption that the natives possessed before the Treaty of Waitangi any rights corresponding to those which, in civilized countries, are defined by law, and maintained by the administration of an established Government. In New Zealand, law had no existence, and there was an equal absence of authority. No man admitted the right of another to interfere with his conduct. We are accustomed to speak of the "chiefs" of New Zealand, in terms which to our minds convey the idea of authority. But the chiefs had no authority. Those were "principal chiefs" who, being free men, had acquired that ascendancy which, superior natural ability and strength of mind always obtain over the less gifted and more timid majority, as well as those who stood nearest in lineal descent to the original progenitor from whom they all traced their descent. But, however naturally gifted, or lineally descended, no man claimed a right to subject another to his will. The power exerted by Hongi and other leaders of the people, was only the influence of superior intelligence and bravery. They had no power but that of violence. Who ever heard of a Maori chief punishing a murder unless by the commission of another, or of many more murders, ("when the Pah was taken a hundred died for the sin of one man")* or of his punishing a theft, unless by digging up the potatoes of the tribe to which the thief belonged.

It followed from such a state of things not only, as Sir W. Martin states, that "in many cases might overcome right." But that might, not right, was the rule of conduct. Before the natives had acquired the ideas which arose in their minds from their dealings with our countrymen in the sale of their lands, there was not a New Zealander who had boldness enough to make the attempt, who would not by himself, or associated with others of the tribe, have engaged not only to sell the lands of their tribe, but to maintain the purchaser in possession. He knew of no title superior to his own. When this was done by a person whose character made him feared, there was nothing for the weaker, or more timid portion of the tribe but submission. When the sale was determined upon, those who made the sale encouraged those who had no part in it, to make an additional claim upon the purchaser, which was generally satisfied. Another mode in which an acquiescence in a sale of land by parties whose titles had been ignored was brought about, was the suggestion, often acted upon, that the latter should,

* Speech of Te Kihi rini at the Kohimarama Conference, July 13th, 1860.

in their turn, sell another portion of land in which the former had an interest, and thus restore the sense of equality which the former sale had disturbed.

In fine, the result of my experience during the seven years in which I held office, was a conviction that the natives had no idea of property in land such as exists in the minds of people where it has been the subject of legislation. And that the rules which Sir W. Martin lays down, were not rules established by natives, but suggested by the precautions adopted by our own countrymen in order to obtain a title which could not be justly disputed.

We now come to the rights and obligations established by the Treaty of Waitangi; and the question which has given rise to the present insurrection against the power of the Government, is whether or not the Government was bound by its having guaranteed to the natives the "full, exclusive, and undisturbed possession of their lands and other properties which they may collectively or individually possess, so long as it is their pleasure to retain the same." I quote from Sir W. Martin's pamphlet, not from the Treaty, which I have not before me.

"This tribal right (says Sir William) is clearly a right of property, and it is expressly recognised "and protected by the Treaty of Waitangi. That treaty neither enlarged nor restricted the then "existing rights of property. It simply left them as they were. At that time the alleged right of "an individual member of a tribe to alienate a portion of the land of the tribe was wholly unknown." (Page 3.) Upon which I would remark that the words tribal right do not occur in the Treaty; nor is there any definition by which to fix authoritatively what constituted the collective, and what the individual possession of the lands which are guaranteed by the Treaty. Sir W Martin states that "That Treaty neither enlarged nor restricted the then existing rights of property." But how is such an assumption to be reconciled with the clause of the Treaty which yields to the Queen in return for their adoption into the British family, and the inestimable privileges thereby conferred, the pre-emption of their lands, relinquishing the right to dispose of their lands to individuals as theretofore, and restricting that right to a sale to the Queen, through agents to be appointed by her?

Has, then, the Government violated the Treaty in its conduct with respect to the land at Waitara, which has occasioned this unhappy disturbance? Is Sir W. Martin right in his assumption that the title of the natives to their land ought to have been the subject of Judicial investigation before the resistance of the natives to the survey of the land was met by the employment of a military force?

I am convinced that Sir W. Martin would not for a moment maintain that a specific provision in any instrument could be overruled and avoided by general words contained in the same instrument. The specific provision with respect to native title in the Treaty of Waitangi is, that the natives should thenceforth relinquish their right to sell their lands to individuals, and sell them only to the Queen, when, by voluntary negotiation between the owners of the lands and an agent to be appointed by the Queen, both parties should agree upon the terms of transfer. In technical language this is called the right of pre-emption; and it is established in New Zealand, by treaty, a power which not only Great Britain, but all other Colonizing powers had previously assumed, of preventing the transfer of an aboriginal title to a subject. To me it appears that the ascription to the natives of a right to have the title to their lands thus qualified and restricted, dealt with according to the laws defining the rights of real property in England, is as unreasonable and unfounded as would be the right of a lease holder to insist upon his title being dealt with as if it were a freehold. Nor is such a restriction in any sense inconsistent with all the rights and privileges of British subjects to which they became entitled by the Treaty.

Having before observed that there are no such words in the Treaty as "Tribal right," and no definition of the distinction between the property in land held collectively and that held individually, though both kinds of property are admitted and recognised, I think it will not be disputed that these distinctions may be settled without serious difficulty. I think then that there can be no objection to the classification of all the untouched forest lands in the country, and of all the waste lands which have been cleared and cultivated, but abandoned after their fertility was exhausted by cultivation, as lands held collectively by the tribe or community. In what then are we to recognize the individual title to land, if not in those portions which a man or his forefathers has subdued from the forest, and enclosed for cultivation, and in which the land marks which separated the cultivations of individuals still exist. It is asserted by Sir W. Martin that though these portions of land may belong to an individual to possess, they do not belong to him to transfer. Having no knowledge of Taranaki, or the agents of the Government there, and considering that the only security for the due fulfilment of the Treaty, consists in the selection by the Governor, as representing the Queen, of such agents as from their tenure of office, and their personal character, may be raised as high as possible above the influence of local prejudices and of private interests, I wish to guard myself against anything which I may say being construed into the expression of an opinion whether the provisions of the Treaty have in the case of Waitara been carried out with integrity, or not. The statements made upon this subject are so contradictory as to make it very difficult to come at the truth; and I believe I have not had an opportunity of reading all the statements which have been put forth. But assuming, as I do without hesitation, that the natural right of a man to land which he has subdued from the forest, to the uses of man, is not only well founded, but approaches to that instinctive sense of right which a man possesses in his own children, the next inquiry is whether the assumption of a right thus held by Teira and those who joined with him in their application to the Government to purchase the rights thus held, conflicted with any prior right existing in other parties. Sir W. Martin contends that such a right did exist, which he designates a Tribal right. Now, my acquaintance with the Natives dates back to a period at which I had better opportunities of judging of them in their aboriginal condition than Sir W. Martin could have, after they had imbibed the ideas of property which are held by civilized men, through their negotiations for the sale of land: and I am most decidedly of opinion that no such right

had any existence, farther than as it might be the right of the strongest, to which the weak were obliged to submit. If Teira had, under the same circumstances, offered land for sale before the Treaty of Waitangi, he would, without doubt, have been forced to succumb to the superior influence of Wi Kingi and his party. That is, weakness must have yielded to power. But the question may be fairly put, whether the toleration of such a state of things at the present day is consistent with the obligations of the Treaty, by which the Queen engages to protect individuals as well as communities in the possession of their lands until they are willing to dispose of them on terms to be mutually agreed upon.

Much may doubtless be said on the point of expediency in dealing for lands, especially under circumstances in which they may be likely to be required for the use of the Natives; and of the confusion which may be created in a Native Tribe by the settlement of one or two Europeans in their midst. Undoubtedly, it is of the highest moment that the Government should carefully regard such considerations. But, so far as I can ascertain such questions were not raised in the case of Waitara. It would appear that Wi Kingi's cultivations lay upon the north side of the River, although according to Riwai Te Ahu's letter it would appear that he possessed, through his wife and his sons—probably by a former wife,—certain claims to one or more portions of the land.

In offering the block of about 600 acres to the Government, Teira acted as any Native would have acted before the treaty Waitangi, who was bold enough to take such a step. In opposing the sale Wi Kingi acted as he would have acted at the same period, if not disposed to participate in the sale. But in neither the one case nor the other would the decison have rested upon any Native custom or consideration of "right"; but solely on the power of the one party to carry out, or the power of the other party to prevent the carrying out of the proposition to transfer the land.

Of the expediency of raising such a question, under the circumstances, I desire to say nothing, not being in a position to judge; but the question having been raised I do not see how the Government could avoid the obligation of protecting Teira in dealing with whatever individual property he might have held in the block, or of resiting Kingi in his attempt to enforce the law of the strongest—which was the only law known to the Natives before the Treaty, but which came to an end when the Treaty was concluded.

I feel the great importance of giving public expression to my views upon this question. I have seen in a published despatch from the Governor to the Secretary of State a quotation given from the evidence of Mr. Merivale, one of the Under Secretaries in the Colonial Department, before a Committe of the Legislature, to the effect—I quote from memory—that the proprietary rights of the New Zealanders had been admitted as analogous to those of landlords in England. The same number of words could scarcely be made to convey a more erroneous impression.

With the exception of the Colonies of Australia, where the Natives were in too degraded a state to admit of any dealings in respect to the land over which they wandered with as little right or pretension to any property in it, as their fellow wanderers the Kangaroos, aboriginal titles have always been restricted by the colonizing power to the "use and occupation of the land." In no case did the land become subject to the laws regarding property until the Native title was extinguished. The recognition of the title of the New Zealanders to the sovereignty of their country and the property in its soil, on the part of the British Government, involved the necessity of obtaining by treaty the right of pre-emption, which in former cases had been assumed as an incident of the right of the Nation to colonize a country which was occupied by scattered tribes not numbering the one-thousandth part of the human beings which the land was capable of maintaining. With this difference, that, in one case, the right was assumed as an incident of power, and that in the other case it was acquired by treaty, I can perceive no difference between the aboriginal titles, as recognised in America, and those possessed under the Treaty in New Zealand. Nor can it be maintained that any injustice has been done to the Natives by withholding from their titles the rights of property as established by law. The advantages they have obtained by the Treaty immeasurably outweigh the value of their lands, even if they had parted with all that they do not require, for nothing. It is therefore with pain that I see a claim put forth by some of their friends of a right to the value of their lands whatever they might bring in an open market. It is from its security that property derives its chief value, What right can the Natives have to claim that the British Government should give to their property a value which it could never acquire otherwise than by the protection of the British Government? While they are paid for their aboriginal titles at such rates of value as they were anxions to dispose of them before the Treaty, there is not a shadow of ground for alleging that they have been unfairly dealt with; on the contrary, it may be affirmed that history affords no similar example of a savage people having been treated and cherished by a superior nation as they have been.

There is still one point upon which I would, but with great diffidence, offer a remark. It appears (page 18) that in December, 1859, the opinion of the law officers of the Crown in England was obtained upon the question whether the Aboriginal Natives of New Zealand are entitled to the electoral franchise under the Constitution Act. In their opinion the following passage occurs :—'Could he (one Native) bring an action of ejectment or trespass in the Queen's Court in New Zealand? Does the Queen's Court ever exercise any jurisdiction over real property in a Native district? We presume these questions must be answered in the negative.' It appears then (says Sir William) that the law officers hold that the Colonial Courts have no cognizance of questions of title or occupancy in any case." (Page 19.) It would appear, from the observations that follow, that Sir W. Martin entertains a different opinion from that expressed by the law officers of the Crown, as above quoted. He says: "What is maintained is this: that it was not their business (that of the Natives) to appeal to the law in the first instance, but the business of the Government." And again: "This is the point which has been forgotten throughout, that the Governor in his capacity of land buyer is as much bound by

law as other land buyers." (Page 19.) These observations, and those which follow, appear to me, and I suggest it with humility, to arise from Sir W. Martin's over-looking the specific provision of the Treaty in favor of the general words of the Treaty. The native title is not known to the law, nor is it subject to, or entitled to be dealt with by law. It rests exclusively upon a Treaty entered into at the time between the British Government, who had recognized the New Zealanders as competent parties to a Treaty, and the New Zealanders. To maintain the faith of Treaties there exists no law. And I confess that, in the responsibility of the Queen's Governor, acting in the name and on the behalf of the Queen, so long as he is not controlled by what is called a responsible ministry, I see a greater security for the due fulfilment of the Treaty than would be derived from any judicial tribunal which could be created for the purpose, could such an anomaly exist as a tribunal to try the administrative acts of the Government in matters of so high an import as the fulfilment of a Treaty. The issue, as it appears to me, was not as Sir William Martin puts it (page 19), whether "the Governor has no more right to seize land upon the decision of his own agent than any other land buyer would have;" but whether he was maintaining the obligations of the Treaty in defending the rights of Teira against the interference of Kingi with those rights.

The greatest blessing which could befall New Zealand would be an Act of the Imperial Parliament reciting the uniform practice of the British Government in respect to aboriginal titles, and the necessity of maintaining the same in New Zealand, in such terms as would put down the mischievous agitation respecting the purchase of native lands, by rendering it hopeless that the law would ever be relaxed; and arming the Governor with power to take from the proceeds of the sale of public lands such sums as might be necessary for the discharge of all obligations created by the Treaty, and for the administration of Native affairs, independently of the interference of the local Assembly, making him responsible only to the Queen and Parliament for the exercise of the powers to be delegated to him by such an Act.

JAMES BUSBY.

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## No. 4.

MEMORANDUM BY MR. RICHMOND IN REPLY TO SIR W. MARTIN, D.C.L.

## ANALYSIS:

# MEMORANDUM

BY

# MR. RICHMOND

IN REPLY TO

A PAMPHLET BY SIR W. MARTIN, D.C.L.,

ON

# THE TARANAKI QUESTION.

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AUCKLAND:
1861.

# ANALYSIS:

# MEMORANDUM BY MR. RICHMOND

## IN REPLY TO SIR W. MARTIN, D.C.L.

[MEMORANDUM.]

Auckland, 28th December, 1860.



The arguments used by Sir W. Martin in his recent pamphlet on the "Taranaki Question" * have been anticipated, and, it is believed, sufficiently answered, in the Governor's Despatches to Her Majesty's Secretary of State for the Colonies, or in other documents already forwarded to the Imperial Government. Such of the statements of the pamphlet respecting matters of fact as require correction, and they are not few, may likewise be rectified by reference to the same papers. Nevertheless, it seems desirable to place in the hands of the Secretary of State a direct, and, so far as time will admit, a full reply to this elaborate attack upon the Governor's policy in reference to the Waitara purchase.

2. It is true Sir William Martin does but expand and enforce arguments and opinions which have been already advanced by the Bishop of New Zealand, Archdeacon Hadfield, and other members of the party with which he is identified. But his paper challenges attention as the fullest, the calmest, and the most able exposition of the views of that party which has yet appeared.

3. The former chief of the highest Colonial Court of Judicature may almost seem to have a special right to make his voice heard when he complains of a denial of justice and of a breach of Treaty engagements. At the same time it cannot be denied, that his opposition to the Government must necessarily aggravate, to some extent, existing difficulties. The views of all parties amongst the Colonists are reported to the Natives. At the present stage, and in the present aspect, of the struggle with the insurgents, it is believed that every attempt to impugn the justice of the Governor's original proceedings in reference to the Waitara purchase is very mischievous, as having a direct tendency to retard the establishment of peace. The original merits of the question have disappeared in subsequent occurrences. Have we not witnessed the spoliation of property, the destruction of a settlement, the massacre of settlers, the repulse and slaughter of the Queen's troops? Are not the insurgents enriched with the plunder of our homesteads, and do they not hold as trophies the captured arms of British soldiers? Moreover, it can no longer be denied that the struggle is for the sovereignty of New Zealand. To all but a few, blinded by enthusiasm for Native rights, it must be apparent that the dispute with Wiremu Kingi is now entirely merged in a war which threatens to become National.

4. Sir William Martin resuscitates a question which it is worse than useless to agitate at the present time. In other respects his opposition to the Government is legitimate enough. He writes in the English language to Englishmen, and though he must necessarily have a wider audience, he intends to address himself exclusively to those who are judges in the case. His opposition partakes, indeed, of the danger of an agitation conducted by direct correspondence with the insurgents and their friends, but is free from its criminal folly.

5. The author enjoys whatever advantages attend perfect leisure and complete seclusion from the active life of the Colony; and it may be supposed that the labour of several months, understood to have been bestowed on a pamphlet of 140 pages by the most cautious and painstaking member of his party, must have succeeded in placing the case of the insurgent Natives in the most favorable point of view. Unquestionably Sir William Martin is animated by an ardent and elevated desire for the welfare of the Native population. It may, however, be doubted whether his sympathy with the Natives is not too exclusive to be quite judicious.

6. Before proceeding to a detailed examination of the pamphlet, it will be convenient to present the several points of controversy in a compact form. Passing by the first section of the pamphlet (which opens no very material question), and omitting also, for the present, the sixth and concluding section, it will be found that the substance of the intermediate chapters may be condensed into the following propositions, which are either expressly affirmed or presented to the mind of the reader as probably true:—

I. The territory of the Ngatiawa in Taranaki belongs to the whole Tribe; their tribal right having been allowed by the British Government, and subsisting in full force at the time of the Waitara purchase.

II. Wiremu Kingi, as principal Chief of the Ngatiawa, has plainly asserted this tribal right, and the present Governor, initiating a new policy, has denied it, and has pretended to acquire a title to the Waitara block from individual owners. Besides the tribal claim, various claims of ownership were put forward by individuals opposed to the sale. The question between the Government and the opposing Natives, therefore, was, to whom did the Block belong.

III. This question was insufficiently investigated, and the title of the selling Natives remains, at best, doubtful.

IV. In the face of opposition from Native claimants, the Governor was not justified in taking possession of the Block without the judgment of a Court of Law.

These propositions, in their order, will be found to embody the principal matter of the 2nd, 3rd, 4th, and 5th sections of the pamphlet, respectively.

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* "The Taranaki Question," by Sir W. Martin, D.C.L., late Chief Justice of New Zealand. Printed at the Melanesian Press, 1860.

NATIVE AFFAIRS.

7. The counter-propositions of the Colonial Government are as follows :—

I. No such thing as tribal right has ever been recognised, or can be considered to exist, amongst the Ngatiawa in Taranaki. During a long course of years every transaction has proceeded upon the basis of the non-existence of any such right; and the precedents of former purchases have in this respect been strictly followed in the Waitara case.

II. Wiremu Kingi and his supporters, comprising members of other tribes than his own, did not pretend to found their opposition upon right of any kind (tribal or individual), but upon force—it being their announced determination to resist the further extension of the neighbouring British settlement.

III. The question to whom the Block belonged was investigated as completely as the contumacy of Wiremu Kingi and his supporters admitted: the right of the sellers to a portion of the Block is certain ; and their right to the whole is probable. No adverse claim of ownership has been proved to exist, or has even been authentically preferred.*

IV. The Governor, being of right sole judge of questions respecting Native Territorial rights, was justified in enforcing his jurisdiction in the only practicable mode, viz., by Military occupation. The taking possession of the Block was lawful, on the further ground, that the rights of the apparent owners, (after due inquiry) had been ceded to the Crown.

8. It is now time to proceed to an examination of the pamphlet in detail. The printed Appendix to His Excellency's despatch to the Secretary of State, of the 4th December, 1860, No. 126, will be adopted as an Appendix to this Memorandum.

9. The opening proposition that "the present is a land quarrel" has a tendency to mislead. The question raised in the original dispute with Wiremu Kingi was one of authority and jurisdiction, and not a question of the title to a particular piece of land. Since the intervention of the Waikato King party it is past all controversy that the contest is not whether the land belongs to Wiremu Kingi's party or to Te Teira's, but whether the Governor has authority to decide between the two, and power to enforce his decision. It is the pervading fallacy of Sir William Martin's argument that he affects to treat as a question of title that which is in fact a question of sovereignty, and is so regarded by the Natives themselves. The question, with them, is one, not of right, but of might. One practical issue now being tried is, whether the Natives are in future to trust to the justice of the British Government for the recognition of their rights, or to force of arms.

## I.—NATIVE TENURE OF LAND.

10. It may be conceded that the Native Tenure is, generally speaking, a kind of Communism. The question whether any such thing as a strictly individual right of property exists, does not arise in the case of the Waitara purchase, which was made, not of one person but of a group of families, with the consent of all their chief men.

11. The terms 'tribe' and 'community' are confusingly interchanged by Sir William Martin; but it is to be particularly noted that this section of his pamphlet does not prove, or attempt to prove, that the right of disposal is vested in the Tribe (*Iwi*), as distinguished from the Sub-tribe (*Hapu*) or other smaller communities into which the petty Nations of New Zealand are divided. Such a position could not for a moment be maintained, because it is notorious that almost all the Land Purchases in New Zealand have been made of sections of Tribes without any reference to the Tribe at large, or even a notion on the part of any person concerned that such a reference was necessary.

12. It is remarkable that the word *Iwi* only occurs once in the Treaty of Waitangi, and is then used to describe not the Native Tribes but Her Majesty's European subjects. The word *Tribe* in the English text is *Hapu* in the Maori.

13. As regards any right of chieftainship distinct from ordinary proprietary right, there can be no doubt it is abandoned by the Treaty. The second article of the Treaty, closely rendered from the Maori, is as follows:—

"The Queen of England confirms and guarantees (*lit., settles and agrees*) to the Chiefs, and to the "Sub-tribes (*or Families: the Maori word is 'Hapu'*), and to all the men of New Zealand, the full "ownership (*te tino Rangatira tanga*) of their lands, their dwelling-places, and all their property. But "the Chiefs of the Assembly (*Whakaminenga*), and all the other Chiefs, will yield to the Queen the "buying of those pieces of land (*wahi whenua*) which it may please the man to whom the lands "belong [to sell], according to the payment which may be settled by them with the agents for "purchase who shall be appointed by the Queen as agents to buy for her."

14. This agrees in substance with the English text of the second article, which is as follows :—

"Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New "Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed "possession of their Lands and Estates, Forests, Fisheries, and other properties which they may col-"lectively or individually possess, so long as it is their wish and desire to retain the same in their "possession; but the Chiefs of the United Tribes and the Individual Chiefs yield to Her Majesty the

* All the claims alleged to exist have been brought forward by Europeans subsequently to the commencement of hostilities. (*Vide post*, §§ 56 to 64.)

"exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate, "at such prices as may be agreed upon between the respective Proprietors and persons appointed by "Her Majesty to treat with them in that behalf."

15. Sir William Martin's rendering (p. 10) of the phrase *tino rangatiratanga* as *full chiefship* gives an apparent countenance to the doctrine that the Chiefs have some special territorial right, which is not justified by the context of the Treaty. The right expressed by this phrase *tino rangatiratanga* is reserved to the Chiefs, hapus, *and to all the men* of New Zealand. In such a connection *rangatiratanga* can mean no more than *ownership*.

## II.—THE WAITARA PURCHASE.

16. The account given by Sir William Martin of the Waikato conquest of Taranaki, does not clearly bring out the complete mastery over the territory which the Invaders had obtained. The following extract from the evidence of Mr. Commissioner McLean before the House of Representatives, better describes the true state of the case:—

"The Waikato title to Taranaki was universally admitted by the Natives at the time of the "conquest; many acts of ownership over the soil had been exercised by them. The land was divided "among the conquering Chiefs, the usual custom of putting up flags and posts to mark the "boundaries of the portions claimed by each Chief had been gone through. Any occupation of the "land by the Ngatiawa at that period was entirely out of the question, but those Natives who were "released from slavery from time to time were permitted by Waikato to occupy: but those who had "fled to the South were not allowed to return, and they were distinctly warned that if a return were "attempted it would be the cause for fresh war against Ngatiawa. The Waikato right was thus "established as a right of conquest, and was fully admitted by the Ngatiawa themselves: who, on each "occasion when they sold a portion of land at Taranaki, sent a part of the payment to Waikato "as an acknowledgment of conquest or of the right of *mana* possessed by the Waikato Chiefs as their "conquerors. In this view of the question it is quite evident that the Ngatiawa title had been "superseded by the right of the conquerors (1)."

(1) *McLean, Evidence.* App.: p. 35.

17. After citing this evidence, His Excellency the Governor, in his Despatch of the 4th December, 1860, already referred to, proceeds as follows:—

"Another important proof of the validity of the Waikato title is afforded by the fact that when "Wiremu Kingi finally decided to return to Waitara in 1848, he did so by the express permission of "Te Whero Whero; thus recognizing the right of the latter to the district as conqueror, and illus-"trating a practice not infrequent among the New-Zealanders as a means of reconciling feuds and "securing quiet occupation of land about which the Tribes concerned might have been at war (2). "And I beg to add to this the further testimony, given to myself by the Waikato Chiefs Tamati "Ngapora (half brother to Potatau) and Te Katipa, who absolutely maintain to this day the right of "Waikato to sell Taranaki to Governor Hobson: and the evidence of the Rev. Mr. Buddle and Rev. "Mr. Whiteley, Missionaries who have resided at Taranaki and have been twenty years in the Colony, "which has just reached me (3)."

(2) *McLean, Speech.* App.: p. 33.

(3) *Buddle, Whiteley.* App.: p. 55.

"But the most conclusive evidence is furnished by the Waikato Chiefs themselves, so long ago "as 1844. When Mr. Protector Forsaith was sent down to Taranaki by Governor FitzRoy, he had "interviews on his way with the Waikato and Ngatimaniapoto Chiefs, who expressly asserted their "title, and desired him to warn the Ngatiawas of it. 'You are now going to Taranaki; listen to our "parting words. That land is ours. We claim it by right of conquest, and some part of it by possession. "We hold the late Governor's permission to locate any of the lands at Taranaki, provided we do not "go south of Urenui. *Go and tell the Ngatiawas that the Waikato Chiefs remind them that the land "is theirs, and advise them to settle their dispute with the Europeans, or the Waikatos will settle it "for them.*' (4)."

(4) *Forsaith, Report.* App.: p. 21.

18. It thus sufficiently appears that the return of the Ngatiawa to Taranaki was impossible except by the sufferance of the conquerors, and of the British Government to whom the title of the conquerors had been transferred (5.)

(5) *Extract from Deed.* App.: p. 15.

19. Sir William Martin declares it to be "quite certain" that the intention of the Waikatos to occupy the vacant territory was never carried out. "The Waikato invaders," he says, (p. 11) "did not occupy or cultivate the Waitara valley." And he further states (p. 12) that in 1842 Te Pakaru, a Chief of the Ngatimaniapoto branch of the Waikatos, relinquished his intention of taking possession in consequence of a warning message from Wiremu Kingi. These statements are directly contradicted by the Rev. T. Buddle and the Rev. J. Whiteley. The latter gentleman, who was on the spot at the time, declares that "certainly the Ngatimaniapoto came to Waitara, and had a *kainga* (village) "and cultivations there." (6).

(6) *Buddle, Whiteley.* App.: p. 55.

20. Mr. Commissioner Spain's award of the New Plymouth Block (including Waitara) to the New Zealand Company, and the various transactions connected with that award, are touched upon in the pamphlet with a light hand. The title of the Company depended upon a Conveyance from the resident Natives, and upon another deed known as the "Queen Charlotte's Sound Deed," purporting to convey an immense territory, over part of which the Ngatiawa had claims. The latter deed was signed by Wiremu Kingi. After a protracted and very careful investigation, conducted with all the solemnities of a Court of Justice, Wiremu Kingi himself being present during a part of the time, Mr. Spain decided that the New Zealand Company was "fairly and justly entitled to the whole Block of "60,000 acres of land." Extracts from Mr. Spain's first Report and final Award are given in the Appendix (7).

(7) *Spain's Award.* App.: p. 16.

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21. Mr. Spain held a Commission from Her Majesty to investigate and determine Titles and Claims to land in New Zealand. His Award was a solemn judicial determination. It affirmed the complete extinction of the title of the Ngatiawa tribe within the boundaries of the Block.

22. Governor Fitzroy had no authority to reverse Mr. Spain's determination; but it rested with him to issue a Crown Grant to the Company, and he refused to do so. He also publicly recognized certain claims on the Block to be outstanding. It is important clearly to make out what the claims so recognized were, and, in particular, whether any tribal claim was admitted to be outstanding. Governor Fitzroy's concessions were disapproved of by the Imperial Government (8) as going beyond what reason or justice required, but they have not been in practice departed from. They constitute the only real basis, and the extreme limit, of the Ngatiawa claims.

(8) *Rt. Hon. W. E. Gladstone, Despatch.* App.: p. 26.

23. In order then to ascertain the nature of these concessions it is necessary to refer to Governor Fitzroy's Memorandum of 2nd December, 1844 (9). Sir William Martin has very carefully culled his quotations from this document. He has not even given complete sentences. As often happens in such cases, what is omitted in citation by one party in a controversy as irrelevant, appears to the other side to be of considerable significance. In the Memorandum the Governor declares, that "he would immediately cause further investigation to be made *as to the various* "*claimants to particular portions of land. He would then endeavour to make special arrangements* "*with those claimants,* and he would allow, in all their integrity, the claims of those of the Ngatiawa "Tribe who were not parties to the sale in 1840." The words in italics are omitted by Sir William Martin, and certainly they do not favor his views as to the recognition and restoration of the Tribal title of the Ngatiawa. Even the concluding portion of these sentences which is relied upon by him shows, that Governor Fitzroy, in the full height of his liberality, never contemplated and never admitted the assertion of a tribal claim. How could he, with any justice, have done so? He evidently intended that the purchase, which had been fairly commenced, should be proceeded with by dealings with the former occupants of particular portions of land. In fact, he recommended in the same Memorandum, with respect to the sections selected by the settlers but not yet cultivated, that the Company's Agent "should defer treating for those sections until their real owners or the majority of them were on the spot."

(9) *Governor Fitzroy.* App.: p. 25.

24. Could any doubt exist as to the nature of Governor FitzRoy's arrangement, it is set at rest by the report of his Address to the Natives, published in the *Maori Messenger* for September 1844 (10) This Address is even more important than the Memorandum just cited, as it gives the actual communication made to the Natives. The following passages are here extracted:—

(10) *Official Report.* App.: p. 23.

"I have no wish to fight," said the Governor. "One great work I have to do, it is this: I "will not permit one man to behave ill to another.....My work is this—to carefully settle the "question about the land; and I will arrange it thus. I will not consent to the Pakehas being ex- "pelled; the matter must be left with me. I will not agree to your molesting the Pakehas, nor will I "allow the Pakehas to molest you. I will insist upon quiet being maintained. If you do not listen, "I will bring soldiers, that quiet may be kept.....Now this is the Governor's opinion; that "all the Natives at Taranaki should go to their teachers, or to the Protector of the District who lives "among them, and state the names of their places; *and the Protector will write down the names of* "*the owners and their estates, whether belonging to man, woman, or child. And if such owner* "*agrees to sell his place on reasonable terms, it will be purchased and he will receive payment*..... "Mr. McLean has been left by the Governor as a Protector for you; he will arrange about your lands. "Be kind to him, and attentive to what he says; and point out your respective possessions correctly. "Do not quarrel; do not say, '*All this is mine, all that belongs to me;' but mark it out quietly,* "*and do not encroach on any other person's possession, but let every man point out his own. Do* "*you ask why we are thus to take down the names of your places? It is to prevent future* "*mistakes.* You have heard that no land will be taken unjustly. If you sell it to the Europeans, "well: *but you must be careful each to sell his own property, and then he will receive the payment* "*himself.*"

25. In this address we have in the most explicit terms a positive engagement to purchase the portions of particular owners, absolutely inconsistent with the recognition of any such claim as it is now pretended to set up in Wiremu King's behalf.

26. At p. 21 in the third section of the pamphlet (to which it will be convenient to pass for a time), the writer contends that upon the withdrawal of the Waikato right of conquest, the Chief and Tribe were of necessity remitted to their presumed original rights and relations. Now, in the first place, it is purely fanciful to assume that the Tribe (*Iwi*) of Ngatiawa ever had a common property in their territory. It will be remembered that Sir William Martin by his disquisition on Native Tenure has not established more than that the ultimate right of property is, generally speaking, vested in some community. He himself, in 1846, expressed the opinion that "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.*" (11). Such a thing as general tribal right *may* exist. Apparently it *did* exist in undivided and unappropriated territory. But did it ever exist amongst the Ngatiawa in Taranaki, or was the right, as with Ngapuhi, Ngatikahungungu, and many other tribes, vested in the *hapus?* It will not do to assume this point. It is known that the Ngatiawa, even before their migration and conquest, were much broken up into sections, and very democratic and quarrelsome. It is therefore exceedingly unlikely that their territory was ever, in any sense, owned by the tribe as a whole.

(11) *Sir W. Martin.* App.: p. 5.

27. But whatever the original right may have been, and granting for the sake of argument, first, the improbable assumption that the Ngatiawa ever had tribal right of control over their whole territory;

secondly, that the right survived the dispersion of the tribe; and lastly, that the exercise of such a right to interfere with sales is not contrary to the Treaty of Waitangi—after all these concessions, it is still manifest that the overriding tribal claim is shut out by Governor Fitzroy's arrangement, which is the necessary limit of the Ngatiawa rights, and which does not admit the exercise of such a control over those who have the right of occupancy. The right of conquest, vested by transfer in the British Government, has never been withdrawn in favour of the tribe as a whole. Claims which have arisen by the sufferance of the British Government, cannot transcend the already most liberal extent of their recognition by Governor Fitzroy.

28. Subsequent transactions render it still more evident that no such thing as Tribal Right has ever been recognised, or can be considered to exist, amongst the Ngatiawa in Taranaki. The following account of Governor Fitzroy's further transactions is extracted from His Excellency Governor Browne's Despatch of 4th December, 1860, already cited :—

"In November (1844) the Governor (Captain Fitzroy) returned as he had promised, to give his "final decision Certain proposals, made jointly by Protector McLean, Protector Forsaith, and the "Rev. Mr. Whiteley, were submitted to His Excellency and adopted by him as the basis of that "decision. In Mr. Forsaith's Report of the transaction dated 23rd November, he distinctly "says : 'These suggestions have been so far approved by His Excellency that his decision has been "based upon the general principles they embody: the modifications required in their practical "application to the existing dispute will doubtless be made fully apparent in the more detailed report "of Mr. McLean (12).

(12) *Forsaith*, App.: p. 22.

"I beg Your Grace's special attention to the following extracts from those proposals :—

"'Let a block of land be marked out, bounded on the South by the Sugar Loaves and on the "'North by the Waiwakaiho River, running back as far as the Company's surveys have been extended "'or still further inland if mutually agreeable, which would comprise an area of 7150 acres. * * "'Let a definite sum be fixed as a fair and equitable price for this block, at a certain rate per acre; from "'which deduct the amount of payment which any of the present claimants may have received from the "'Company: the unpaid resident Natives receiving their proportionate shares, and the residue lodged in "'trust for the absentees; *who should have notice that unless their claims were preferred and substan-*"'*tiated within a given period (say twelve months) they would be considered forfeited. Such award* "'*should be final and absolute.*' (13).

(13) *Forsaith, Ibid.*

"It is then quite clear that in these decisions, as in the previous proceedings of Governor Hobson, "neither the Tribal Right of the Ngatiawa, nor any 'Seignorial Right,' nor any Chieftain Right to "forbid a sale, were recognised by Governor FitzRoy: but that on the contrary he, in accordance "with his pledge two months before, admitted the individual right of ownership; which, however, was "hardly acknowledged in the proposed block. 7000 acres were to be laid off, whether the absentee "claimants were willing to sell or not; a price per acre was to be fixed by the Government, whether the "Natives agreed to it or not; and the absentee owners were to come in and prove their claims in 12 "months or have them absolutely and finally forfeited. It is material to observe, that Governor FitzRoy "professed to admit the rights of the Ngatiawa 'in all their integrity': and we have in these decisions "conclusive evidence of what he considered those rights to be. It is true that the proposals were "specific only as respected the block between the Sugar Loaves and the Waiwakaiho, a river about five "miles north of them; but that country was just as much part of the ancient possession of the Ngatiawa "as the Waitara, and what was justice in one case would have been justice in the other."

29. His Excellency's Despatch then goes on to describe the proceedings of Governor Sir G. Grey.

"The decision come to by Governor FitzRoy did not result in a cessation of disputes. The "Government had to accept a block half the size originally fixed. The Ngatiawa Chief Moturoa, from "Wellington, put in a claim to some country which was claimed by another section of the tribe; this "section claimed part of the payment which another branch of the tribe was to receive; the claimants "flew to arms, and blood was all but shed. A striking account of these occurrences, and of the "condition to which the right of chieftainship had been degraded in this broken and scattered tribe, is "given by Mr. McLean in his official Report of 17th December, 1844 (14).

(14) *McLean*, App.: p. 20.

"Soon afterwards, Wiremu Kingi, who had returned to his place at Waikanae, announced his "intention of returning to Waitara with his people, and offered to sell Waikanae to the Govern-"ment. (15). The proposal was discouraged by the Superintendent of the Southern Division (16), and "by the District Protector, who reported that 'their claim was of a doubtful character; that the whole "'of the tribe had not consented to remove, as it was still uncertain whether the Ngatimaniapoto and "'Waikato would allow them to resume the territories they were many years ago obliged to surrender; "'and lastly but particularly, that Te Rauparaha desired him not to recommend their claims as "'valid.' (17). The proposal was referred to Governor FitzRoy, who minuted upon it 'Read R. F. "'Oct. 30,1845,' but does not appear to have given any directions upon it (18).

(15) *W. Kingi*, App.: p 26.
(16) *Richmond, Ibid.*
(17) *Kemp, Ibid.*
(18) *Gov. FitzRoy, Ibid.*

"The Native Insurrection of 1846, in which it is only just to say that Wiremu Kingi bore arms "on our side, had interrupted his plans for returning to Waitara : but upon peace being made they were "revived, and he accompanied Sir George Grey in the visit which His Excellency paid to New Plymouth "in February 1847, with the special object of settling the land question.

"On the 1st and 2nd March, the Governor held meetings with the Ngatiawa Chiefs, and "announced his decision. The principle of it was identical with that adopted by Governor FitzRoy. "The following extract from his despatch of the 2nd March 1847, is submitted to Your Grace, in which "you will find that Sir George Grey expressly says his plan was 'in fulfilment of the promises of his "predecessor.'

"'Upon taking a review of the whole of these circumstances, together with our isolated and weak "'position in this portion of New Zealand, the only arrangement I thought could be advantageously

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" ' made was, to acquaint the Natives that I should order, in the first place, that the most ample reserves " ' for their present and future wants should be marked off for the resident Natives, as well as for those " ' who were likely to return to Taranaki; but that the remaining portion of the country, in that district, " ' should be resumed for the Crown, and for the use of the Europeans ; that, in the fulfilment of the " ' promises made by my predecessor, the value of the resumed land, in its wild and defenceless state, " ' should be assessed by a Commissioner, and that a Court should then be appointed to inquire into the " ' Native titles to the whole, or portions of the district so resumed; and that those Natives, who established " ' valid claims to any parts of it, should receive the corresponding portions of the payment to which they " ' would become entitled. But very few of the Natives seemed disposed to assent to this arrangement ; " ' *but they distinctly understood that it was my intention to enforce it.*' (19).

(19) *Grey, Despatch* App.: p. 27.

" And the following extracts from his instructions to Mr. McLean at the same time show the " precise mode in which the Governor meant the plan to be carried out:—

" ' It is proposed to evade, in as far as practicable, the various difficulties which have arisen under " ' these conflicting circumstances, by in the first place reserving to the several tribes who claim land in " ' this district, tracts which will amply suffice for their present and future wants; and 2ndly, resuming " ' the remaining portion of the district for the European population, and when the extent of the land so " ' resumed has been ascertained, to determine what price shall be paid to the Natives for it; this amount " ' not to be paid at once, but in annual instalments, extending over a period of three or four years; at the " ' end of which time it may be calculated that the lands reserved for the Natives will have become so " ' valuable as to yield them some income, in addition to the produce raised from those portions of them " ' which they cultivate.

" ' If possible, the total amount of land resumed for the Europeans should be from 60,000 to " ' 70,000 acres ; a grant of this tract of land will then be offered by the Government to the Company.

" ' The price paid for any portion of land should not, under any circumstances, exceed 1s. 6d. per " ' acre, and the average price should be below this amount. The greatest economy on this subject is " ' necessary.

" ' This arrangement should be carried out, in the first instance, with those parties who have " ' given their assent to it, including the Natives who have offered a tract of land for sale to the south of " ' the Sugar Loaves.

" ' Where land without the block awarded by Mr. Spain is now acquired, and required for " ' immediate use by the Company's settlers, sections must be surveyed for them.

" ' Those Natives who refuse to assent to this arrangement *must distinctly understand that the* " ' *Government do not admit that they are the true owners of the land* they have recently thought proper " ' to occupy.' (20).

(20) *Grey, Instructions,* App.: p. 28.

" At first the Ngatiawa Chiefs resisted this decision ; but shortly afterwards it seems Governor " Grey had reason to believe that Wiremu Kingi meant to submit, for he informed the Secretary of State " ' that he had ascertained that ' the whole of the Ngatiawa tribe with the exception of one family of it, the " ' Puketapu, had assented to the arrangement, and that several European settlers had already been put " ' in possession of their lands.' (21)."

(21) *Grey, Postscript, Ibid.*

30. His Excellency next details circumstances connected with the Ngatiawa migration from Kapiti in 1848, as follows:—

" But Governor Grey had been deceived in the belief that the whole of the Ngatiawa tribe ac- " quiesced in his decision. It was soon evident that Wiremu Kingi was as much bent as ever on returning " to Waitara. He pretended to be anxious not to act in opposition to the Government; but pressed on " Major Richmond the offer of Waikanae, his anxiety on this head being caused by the scarcely con- " cealed intention of the Ngatitoa tribe to seize on the land at Waikanae the moment he left it. (22.)

(22) *Richmond.* App.: p. 30.

" The Governor hearing that canoes were being built at Port Nicholson for the migration, sent " peremptory orders that they should be dismantled, and if necessary, seized and destroyed : (23) and " these orders and a Memorandum recorded by the Superintendent, show clearly that at that time it " was seriously in contemplation to prevent the migration by military force (24). But Sir George Grey, " desirous of trying a last effort to come to terms with Wiremu Kingi, made a further proposal of certain " conditions on which he would permit him to sell Waikanae and come up to Waitara. The basis of this " proposal was, that Wiremu Kingi should settle on the north bank of the river Waitara, and should " ' relinquish all pretensions to any lands on the south bank,' (where the Block purchased by me is " situate).

(23) *Sir G. Grey* App.: p. 29.

(24) *Memorandum, Ibid.*

" ' Upon all pretensions being at once relinquished to all lands to the south of the Waitara, the " ' Government will, without further enquiry into such pretensions to these lands, admit that from the " ' prompt settlement they are making of this question, the natives are entitled to such compensation as " ' may be agreed on between themselves and the Officers of the Government. The Government will " ' then also recognise and permit them immediately to dispose of their claims at Waikanae and " ' Totaranui for such compensation as may be agreed on. The compensation in both cases to be paid in " ' annual instalments, spread over a period of not less than three years.' (25).

(25) *Sir G. Grey,* App.: p. 30.

" ' Thus Your Grace will perceive that even in this proposal, Sir George Grey carefully refused " to recognise either the Tribal Right or any ' Seignorial right' in Wiremu Kingi, and treated his claims " as mere ' pretensions.'

" Wiremu Kingi agreed to the condition of locating himself on the north bank of Waitara. At the " end of 1847 offers to sell Waitara were made to Government; and just before the migration in the early " part of 1848, Mr. McLean went to Kapiti, any purchase of Waitara being kept in abeyance till all the " claims should be clearly ascertained. At a large gathering of the Ngatiawas on that occasion, Wiremu Kingi distinctly agreed to go on the north bank : ' Let me return thither, and I will then consider the

"'matter [of the sale]. When I get there, one side of the river shall be yours and the north side mine,
"'whence I can look out for the Waikatos in case that tribe should meditate an attack upon us.' (26).
"'This was publicly stated by Mr. McLean at the Kohimarama Conference, adding: 'That was his word
"'which is retained in the memories of myself and others here present who heard what passed between
"us. (27).'

"Further evidence of his intention is afforded in a proposal which he made to Te Teira. 'When
"'Wi Kingi thought of returning to Waitara he sent to Teira, and said: 'Let us return to Waitara, you
"'take one side, I will take the other, as Waikato gives us permission to return.'"(28).'

"Under these circumstances the Government no further opposed the return of Wiremu Kingi,
"and the migration took place in April 1848."

(26) *McLean, Speech at Kohimarama.* App.: p. 34

(27) *Ibid.*

(28) *McLean, Speech at Ngaruawahia,* App.: p. 33.

31. His Excellency's Despatch then proceeds to describe the transactions from 1848 to 1859 as follows:—

"The immediate fruit of Sir George Grey's arrangement in 1847 was the acquisition of the
"'Grey Block,' immediately adjoining the 'Fitzroy Block' of 1844. In the early part of 1848,
"just before Kingi's migration, the 'Bell Block' was acquired. I desire, in connexion with this last
"purchase, to bring three things to the notice of Your Grace.

"In the first place: the land was bought from the Chief Rawiri Waiaua, and a part of the
"Puketapu section of the Ngatiawa Tribe, in the teeth of the most determined opposition from the
"Chief Katatore and others of the same family.

"Secondly: Wiremu Kingi, who was at Wanganui at the time, on his way up with the migration
"from Waikanae, put in a claim to the land, which was met in the way thus described by Com-
"missioner McLean in a speech to the Conference of Chiefs at Kohimarama: 'He met me on this side
"'of Wanganui, and said to me, 'Do not give the payment for Mangati. I am willing that it should
"'be sold, but I have a claim on it; let the payment be kept back until I arrive there; when I am
"'there let it be given.' I replied, 'It is well, William.' Some months afterwards I called together
"'all the people of Puketapu, and other places, to receive the payment. William King was also invited
"'to be present to witness the payment. He came; and when the goods had been apportioned out
"'among the several divisions of Tribes I looked to see what portion was assigned to William King.
"'*None appeared: he got nothing.* I therefore came to the conclusion that William King had no
"'claim at Mangati' (29).

"Thirdly: the purchase of the Bell Block received in 1855 the unqualified approval of the
"Bishop of New Zealand, who, in his Pastoral Letter to the members of the Church of England at
"New Plymouth, said:—'This happy result may fairly be attributed to the judicious manner in which
"the purchases were completed.....The whole business, conducted with the greatest
"'fairness and publicity, was concluded to the satisfaction of both Native and Europeans' (30).

"'In further pursuance of the same plan, the Omata Block, the Tataraimaka Block, the Hua
"Block, the Tarurutangi Block, and other smaller pieces of land, were successively acquired under the
"immediate control and supervision of Commissioner McLean; who says, 'The whole of the
"purchases previously made at Taranaki had been effected on the same principle as the present one
"from Te Teira, namely, that of acquiring the land from the different clans and subdivisions of clans
"which came in from time to time to offer it' (31). No such thing as a 'seignorial right" was ever
"recognised, either in Wiremu Kingi or any body else. No general tribal right or right of Chieftain-
"ship was allowed to interfere with the rights of the several *hapus* or families to dispose of their
"lands to the British Government (32). At first the resident Natives objected, that 'it would not be
"right to entertain the claims of the absentees who forsook the land, and took no part indefending it
"against the Waikatos' (33). But in every one of the purchases a portion of the payment was
"reserved for the absentees who had any claim, and these payments duly appear in the public
"accounts (34)."

(29) *McLean, Speech* App.: p. 34

(30) *Bishop of N. Z.,* App.: p. 53.

(31) *McLean, Evid.* App.: p. 37.

(32) *Ibid.*

(33) *McLean, Speech,* App.: p. 34.

(34) *Public Accounts,* Gen. Assembly Pap.

32. The facts of the case are thus entirely against the conclusion which Sir William Martin affirms, or rather insinuates than affirms, in favor of the Tribal title of the Ngatiawa. It is submitted that the first of the Government counter-propositions is now fully established, and that it is proved, that *No such thing as Tribal Right has ever been recognised or can now be considered to exist amongst the Ngatiawa of Taranaki. During a long course of years every transaction has proceeded upon the basis of the non-existence of any such right; and the precedents of former purchases have, in this respect, been strictly followed in the Waitara case.*

33. Before finally quiting the 2nd section of the pamphlet, a few detached points require notice. At page 16, Sir William Martin cites Mr. McLean's Report of the 17th December, 1844 (35), to shew that, at that time, the few occupants of the Taniwha and Waitara did not consider themselves empowered to negociate for the sale of the land in their neighbourhood, "without the consent of "several absentee Chiefs residing at Kapiti who owned the greater portion of the land." This certainly (notwithstanding Sir W. Martin's frequent italics) proves nothing in favour of Kingi's alleged paramount rights, but rather makes against them. Amongst the several chiefs referred to, no doubt, some of the present sellers were included.

(35) *McLean, Report,* App.: p. 20.

34. At page 16, in giving an account of the Pas on the Block, Sir W. Martin should have stated, that Kingi's pa at Waitara, by the confession of his hottest advocate (36) did not stand on his own land, but "a few chains nearer to the water side than it would have stood had it been erected on "his own land." It was in fact erected there by the permission of Teira's father, Tamati Raru, who is one of the sellers (37). It ought further to be stated, that Te Teira's party did not live in the same pa with Kingi, but occupied an adjoining pa, called Hurirapa, from which all Teira's letters are dated. More particulars respecting the occupation of the land will presently be given.

(36) *Archdeacon Hadfield, Letter.* App.; p. 59.

(37) *Hadfield, Evid.* App.: p. 61
*McLean at Kohimarama, Ib.* p. 33.
*Parris, Report, Ib.* p. 38.
*White, T. Herald Ib.* p. 54.

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35. The assertion, at page 17, that the meeting of March, 1859, was not the time or place for Kingi to state the nature of his claim, will be noticed in a subsequent page.

### III.—THE POINTS IN DISPUTE.

36. If the author of the Pamphlet were not blinded by a false theory, he would experience little difficulty in his inquiry, "What were the precise points contended for by the agents of the Govern- "ment on the one side, or by William King and his people on the other." There was really no contention (in the author's sense) between the agents of Government and Wiremu Kingi; no "points" were raised; because Kingi with his supporters wholly declined to enter upon the discussion of the title to the Block.

37. The view taken by the Government of the rights of the returned Ngatiawa was in exact accordance with Governor Fitzroy's arrangement. Had there been put forward any such claim of an over-riding Tribal Right as the author imagines, it would probably not have been admitted. But it will be seen, in the sequel, that no such claim was advanced—that Wiremu Kingi's claim, if claim it can be called, was not of so refined a character.

38. The Governor's policy in Taranaki was new in so far as His Excellency deliberately announced his determination to put down Maori violence, but there was no other novelty about it. The terms of the Governor's speech at New Plymouth, represented as so vague and dark, and those of the Chief Land-purchase Commissioner's letter of 18th March to the Chiefs of Waitara (p. 24), in which Sir William Martin discovers the plain indications of a new and aggressive policy, are identical with the language used by all former Governors in reference to the same subject. Neither that letter, nor the letter of the Assistant Native Secretary (p. 23) was written under any special instructions, or is couched in any unusual phraseology. Such expressions are quite commonly used by the Natives themselves in reference to their land claims.

39. It is curious to observe how closely the language of Mr. McLean's letter of 18th March, 1859 approaches to that of Governor Fitzroy's address to the Natives in 1844, when he declared to them his intention to respect the outstanding Ngatiawa claims.

| GOVERNOR FITZROY IN 1844. | MR. McLEAN IN 1859. |
|---|---|
| ..... "Point out your respective possessions "correctly. Do not quarrel: do not say, 'All "'this is mine, all that belongs to me,' but mark "it out quietly, and do not encroach on any other "man's possession, but each man point out his own. "Do you ask why we are thus to take down the "names of your places? It is to prevent future "mistakes. You have heard that no land will be "taken unjustly. If you sell it to the Europeans, "well; but you must be careful each to sell his "own property, and then he will receive the pay- "ment himself," &c., &c. (38). | "This is a word to you to request you to make "clear (point out) your pieces of land which lie in "the portion given up by Te Teira to the Gover- "nor. You are aware that with each individual lies "the arrangement as regards his own piece. In "like manner Te Teira has the arrangement of "his piece. Another cannot interfere with "his portions, to obstruct his arrangements, for he "has the thought for what belongs to himself..... "We will not urge for what belongs to another "man, as with him is the thought as regards his "own piece." (39). |

(38) *Gov. Fitzroy*, App.: p. 24.
(39) *McLean*, App: p. 36.

40. Having concluded his search for the Government principle, the author "proceeds to *gather*, as well as he can, the Native view of the case." Rather, he proceeds to *construct*, as well as he can, the Native case. Certainly it has never been so well put together before. It is worth remarking with what tact adverse points are kept out of view. Any one, for example, who desires to consider the effect of King's declarations to Mr. Parris, adverted to at p. 29, must look for the full Report in (*E No. 3, p. 2, 1*)—wherever that may be. Another important document, King's letter of Feb. 11th, 1859, is not referred to until page 93, long after a reader of the Pamphlet may be supposed to have safely reached the desired conclusions. Not a word is cited from the original of this letter, for which a reader is referred to "*Pap. E., No. 3a, p. 5.*"

(40) *W. Kingi, Letter* App.: p. 31.

41. Sir W. Martin commences with Kingi's letter of the 25th April, 1859 (40) in which King claims the spacious "bed-room" of Waitara, of which one wall is at Waitaha and the other, 40 miles off, at Mokau. *Petiruma* (bedroom) is an Anglo-Maori word. Its use by King in this letter seems traceable to the circumstance that Native visitors to Mission stations are warned not to enter the sleeping apartments of the family.

42. That King meant by Waitara the whole district on both banks of the river will presently appear to be certain, for he says that his word is an old one. His attitude as regards land-selling is, he says, unchanged, and the position now assumed by him in reference to a particular proposition is merely the maintenance of that attitude. "I have no new proposal to make," he says, "either as regards selling or anything else." The regular course pursued by Natives in making their land claims is to state their boundaries. Such claims are sent in to the Land Purchase Office in profusion, and as many as 50 or 100 names of places are often given in letters from Natives defining their own boundaries. It will presently be seen what the boundaries of King's claims really are when he states them with the usual precision.

43. King's real position is very clearly though briefly stated in the next letter, quoted by Sir William Martin—that, namely, to Archdeacon Hadfield, dated 2nd July, 1859. This material passage has, of course, escaped Sir W. Martin's italics. Kingi writes, "*What I say is, that the boundary for the Pakeha is settled, viz., Waitaha. That is all: let them remain there.*" Waitaha

is the extreme Northern limit of the settlement of New Plymouth, and King's declaration is simply that he will permit no more land sales in the district.

44. This same determination is again expressed in King's letter to the Governor, of 11th February, 1859, so slightly alluded to in the Pamphlet. "Do you hearken," writes Kingi, "to our "*Runanga* (assembly) respecting the land. Do you hearken. The boundary commences *at Waitaha*, "thence along the boundary of Tarurutangi to Mangoraka, thence on till it reaches Waiongana; it "there ends; again it proceeds along the course of the Waiongana stream till it reaches the boundary "of Paritutu, where it ends. Again it commences at the mouth of the Waitaha, thence along the "coast-line in a Northerly direction to Waiongana, Waitara, Turangi, Waiau, Onaero, Urenui, "Kaweka, Kupuriki, Waiti, Paraeroa, Karakaura, Te Kawau, Poutama, and Mowhakatino. The "boundary of the land which is for ourselves is *at Mokau*. * * * If you hear of anyone desirous "to sell land within these boundaries which we have here pointed out to you, do not pay any "attention to it, because that land-selling system is not approved of. This is all (41)."

(41) *W. Kingi Letter* App.: p. 31.

45. The Southern boundary of this claim is, as has been already said, the Northern limit of English settlement, and the distance between the extreme boundaries of the district described is about 40 miles. The immense territory subjected to the prohibition includes the lands of various branches of the Ngatiawa, (using that designation in its most extended sense)—comprising those of Mahau of the Puketapu branch, Ihaia of the Otaraua, and Nikorima of the Ngatirahiri, all considerable land claimants, who are anxious to sell to the Government, and are now fighting against King. Mahau may even be said to be a party to the present sale, as the South boundary of the block was laid out under an arrangement between him and the principal resident sellers, Raru, and Raupongo. There can be no doubt that if, in 1859, the boundary of the European settlement had been still farther South, say at the river Waiwakaiho, instead of at Waitaha, King's veto upon sales would have extended to the Waiwakaiho. In that case it would have included the several blocks North of that river which have been acquired since 1848, as stated in the Governor's Despatch of 4th December, 1860, above quoted. Yet King had nothing whatever to do with any of these sales. He did not sign the deeds of cession, he received none of the purchase money, nor was he in anywise consulted either by the agents of the Government or by the selling Natives. As regards the Bell Block he did put in a claim to share in the money, but he got nothing (42).

(42) *McLean, Evid.* App.: p. 37.

46. It is, then, manifest that the boundary of Waitaha was assumed quite without reference to the claims of Maori proprietors within that limit, and that the attempted prohibition of all sales North of that limit was in entire contravention of Governor Fitzroy's arrangements as understood and acted upon, for a series of years, both by the Government and by the Natives.

47. There is, perhaps, not any substantial distinction to be drawn between the dictation of a Native *Runanga* (assembly) when exercised over hitherto independent sections of a Tribe, and when exercised over several aggregated Tribes. The lattter is what is more properly termed a Land League. The, so called, *hapus* of many large Tribes are often quite as much separated as the communities which, in other cases, are called distinct Tribes. The same community is sometimes treated as a *hapu*, and sometimes as a Tribe; as, for instance, the Ngatimaniapoto branch of the Waikatos. Amongst the Ngatiawa this has been very much the case. The people of Puketapu and Ngamotu, in particular, are often referred to as separate Tribes. There is, therefore, no sharp line of distinction to be drawn between the Land League proper, and smaller combinations to prohibit land sales by hitherto independent *hapus* of the same Tribe. In either case there is the wrongful use of a political influence, backed by physical force, to prevent the free exercise of rights of ownership which had previously been admitted to exist. The New Zealand Tribes are of course more or less nearly related. Just as each *hapu* of a Tribe may claim to have a voice in the disposal of the lands of neighbouring *hapus*, so each Tribe may assert a like authority over the territory of the related Tribes which adjoin it, until, by a gradually ascending scale, the Tribal Land League has become a National Land League, identical with the Maori King movement.

48. It may not, then, seem very material to trace King's connection with any League more extensive than the Ngatiawa Tribe. The influence exerted within the Tribe may be, and in the New Plymouth district indubitably is, as illegitimate as that of a more extended combination.

49 It will, however, fortify the argument as to the wrongful character of King's pretensions to show his connection with the Ngatiruanui and Taranaki Tribes on the subject of land sales. He is known, as far back as 1848, to have intrigued with these two Tribes for their support in a land-holding policy. Recently this connection has been more open. The Land League Meeting held at Manawapou, (between Wellington and Whanganui) in 1854, is referred to by the Rev. R. Taylor of Whanganui in his work on New Zealand.

50. According to Mr. Taylor's statement, Matene te Whiwhi, on his return from a political visit to Taupo and other places, "wrote a letter to the Ngatiruanui and Taranaki Natives, calling a meeting "at a central place—Manawapou; there the Natives erected a very large building, the largest, "perhaps, which has ever been made in New Zealand, being 120 feet in length by 35 in width; this "was named *Taiporohenui*, or the finishing up matter, and there all the head Chiefs from "Wellington to the Waitara, a distance of near 300 miles, assembled. Five hundred were present, "and much speaking and bad spirit was displayed. The result of it was, their determination to sell "no more land to the Government, and to hinder any who felt disposed from doing so. It was not "many months after this meeting that a Chief at New Plymouth did offer his land for sale, and "when he went to mark out the boundaries he was shot with several of his Tribe, which led to "reprisals, and there is much reason to fear that the evil will extend (43)."

(43) *New Zealand & its inhabitants by Rev. R. Taylor*, 1855, p. 278.

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51. King himself was not present at this meeting, but the Waitaha was named as the Pakehas boundary to the North. The Taranakis and Ngatiruanuis were the guardians of the Southern boundary at Okurukuru, and Kingi of the Northern at Waitaha. The letter of the Rev. J. T. Reimenschneider to Mr. McLean (44) fully expresses the determination of these two Tribes on the South side of New Plymouth to uphold the land-holding policy of Kingi, and on the commencement of hostilities they immediately rose in arms to support him. Mr. McLean's declaration that King's interference "has been obviously based upon opposition to land sales in the Taranaki "Province generally, as a prominent member of an Anti-Land-selling League" (45) though questioned by Sir William Martin, thus appears to be fully justified.

(44) *Parly, Pap, N.Z.* July, 1860, p. 173, *et seq.*

(45) *McLean, Report* App.: p. 39.

52. At page 55, and again at page 94, Sir William Martin endeavours to shew that there is a substantial discrepancy between the view taken by Mr. Richmond's Memorandum of 27th April 1860, of Kingi's wrongful interference, upon the pretence of chieftainship, and Mr. McLean's statement that Kingi's opposition was in the character of a prominent member of an Anti-land selling league. The observations in paragraphs 47 and 48, of this Memorandum are an answer to this refinement. The right of the Chief, if only that of the strong arm, as little deserves the name of right as the unauthorized dictation of the Land League. It is, however, plain, that Kingi belonged to a Land League in the strictest sense.

53. Finally, that Kingi stood upon might, and not upon right, is made still plainer by his demeanour. His attitude throughout has been, not that of a claimant asserting right, and demanding inquiry, but of a potentate, setting up an independent authority, and simply opposing his will to that of the Governor. "Waitara," he told the Governor in March, 1859, "it in my hand; I will "not let it go." During the whole of the time over which the inquiry into the title of the sellers extended, he maintained the same position of dogged resistance, and haughty refusal to enter into any discussion on the subject of the sale. The District Land Purchase Commissioner, Mr. Parris, who, far from being, as Kingi's pretends in his letters to Archdeacon Hadfield, at all personally obnoxious to Kingi, had always been on good terms with him, and had even been the means on one occasion of saving his life, spent day after day in the endeavour to bring him to reason. It was all in vain. He remained perfectly obdurate.

54. But his expressions at the meeting of 29th November, 1859, when the first instalment of the purchase money was paid to Te Teira's party—expressions which are very cursorily noticed in the pamphlet (see page 29)—are absolutely conclusive as to the true character of Kingi's opposition. On that occasion the following dialogue took place between the District Land Purchase Commissioner and Kingi, in presence of a considerable assemblage of Europeans and Natives. Mr. Parris asked "Does the land belong to Teira and party?" Kingi replied, "Yes, the land is theirs, but I will not "let them sell it." Again Mr. Parris asked, "Why will you oppose them selling what is their "own?" Kingi answered, "Because I do not wish that the land should be disturbed; and although "they have floated it, I will not let it go to sea." Again it was inquired, "Shew me the justice "(or correctness) of your opposition?" Kingi's reply was, "It is enough, Parris, their bellies are "full with the sight of the money you have promised them, but don't give it them; if you do, I "won't let you have the land, but will take it and cultivate it myself." (46).

(46) *Parris, Report,* App.: p. 40.

55. Something will have to be said in a future section of this Memorandum, respecting Kingi's actual preparations for the armed maintenance of his pretensions. What has been already advanced fully bears out, it is submitted, the Government proposition, that *Wiremu Kingi and his supporters, comprising members of other Tribes than his own, did not pretend to found their opposition upon right of any kind (tribal or individual) but upon force it being their announced determination to resist the further extension of the neighbouring British settlement.*

56. In the section of the pamphlet now under review, Sir William Martin endeavours to shew that *besides the Tribal claim, various claims of ownership were put forward by individuals opposed to the sale* (See page 33). He refers to certain documents, which he says "shew distinctly that "there are divers persons who aver that they are interested in the land, and that they never agreed "to the sale." This is very cautiously put. It is neither stated that the documents referred to make proprietary, as distinguished from tribal claims, nor whether these claims were, or were not, brought forward previously to the commencement of hostilities. At the same time, by the mention of these claims as "points in dispute" between the Government and the Natives, and by the mode in which they are referred to at pp. 44 and 63, an unwary reader may be led to suppose that proprietary claims were made before the occupation of the block and received no attention from the Government.

57. The documents referred to are four in number, viz.:—

1. A letter from Ritatona te Iwa, a Native Teacher of Waitara, to the Rev. Riwai te Ahu, Deacon of the Church of England, at Waikanae, dated Waitara, December 5th, 1859.
2. A letter—same to same—dated Waitara, February 11th, 1860.
3. A letter from Riwai te Ahu to the Superintendent of Wellington, (Dr. Featherston,) dated Otaki, June 23rd, 1860. (47.)
4. A statement respecting proceedings at Waitara, by Tipene Ngaruna.

(47) *Riwai te Ahu, Extract from Letter* App.: p. 47.

58. The question of the soundness of such claims as are put forward in these documents belongs to a subsequent part of the present remarks, where the question of the goodness of the title to the block is entered upon. It may, however, be remarked in passing, that Maori claimants come forward "like a swarm of bees" when anything is to be gained by so doing. "It is often found," says the Chief Land Purchase Commissioner, "that a hundred fictitious claims are adduced when the actual

" owners, altogether, do not exceed thirty or forty persons." (48.) When this natural willingness is further stimulated by influential Europeans, it may be easily seen that there will be no dearth of claimants, whatever may be the soundness of the claims. The extent to which European influence has been at work in this case is apparent at once on the face of the letters.

(48) *McLean, Evid.* App.: p. 36.

59. Upon perusal of the three letters just referred to it appears that only one of them, the letter of the Rev. Riwai te Ahu to Dr. Featherston, *dated Otaki, June 23rd*, 1860, puts forward any claim of ownership. Ritatona's first letter shews no more than that he backed Wiremu Kingi's opposition. He thus reports the result of Mr. Parris's efforts to get Kingi's people to enter upon the question of title ;—" We answered : All we intend is that the land shall not be given to you and the Governor." This is exactly in Kingi's own style. Ritatona's second letter states that the opposition proceeded upon the claim of a controlling power in the whole tribe (*Iwi*). What was the real character of the opposition has been already shewn. Ritatona's statement is evidence of nothing more than that he had imbibed the doctrine of his ecclesiastical superior with reference to tribal title.

60. In the remaining document (Tipene Ngaruna's statement), it is not alleged that any proprietary claim was ever preferred to the Governor, nor even that any such claim exists. Tipene only asserts that several Natives joined Kingi in verbal protest against the purchase at the meeting of March, 1859, when Teira made his offer. Tipene's account of what occurred is contradicted by the European witnesses present on the occasion (49). As regards Te Patukakariki's opposition, the fact is, that he did, at the meeting, violently oppose another offer of land then made by Piripi, but said nothing in opposition to Te Teira, although he followed Kingi when the latter abruptly quitted the meeting. The contrast between the boisterous interruption to which Piripi and Hemi Kuka were subjected, and the dead silence in which Te Teira was heard, was a striking feature of the meeting. Tipene's assertions about Tamati Raru (Teira's father) are ridiculous falsehoods. Raru has throughout been one of the principal sellers, his son Teira being merely the spokesman of the party. With his own hands, he helped to cut the boundary line of the Block; he has throughout the war borne arms against Kingi; and his is the first signature to the Deed of Cession (50).

(49) *McLean, Letter* App.: p. 62. *Parris, Report, Ib.* p. 38.

(50) *Deed of Cession* App.: p. 40.

61. But for the present the only material point is this, that two of the four documents, whatever be their value, which contain these alleged individual claims, viz., Riwai's letter and Tipene's statement, first came to the knowledge of the Government when they were produced in the House of Representatives, in August, 1860, by the Superintendent of Wellington in support of an attack upon the Governor's proceedings. Riwai's letter, indeed, is only dated in June.

62. As regards Ritatona's letters the case is still worse. Their existence first became known to the Government on the publication of Sir W. Martin's pamphlet. In Ritatona's first letter of December 5th, 1859, he says, " It is for this cause I write to you that you may tell Hadfield, and that " he may tell the Governor when he comes your way." In his second letter dated 11th February, Ritatona again says, " On this account it was I wrote to you and Hadfield, that you two should speak " to the Governor." And adds, " But we and Wiremu (Kingi) are waiting for the fulfilment of your " work, that Mr. Hadfield should write to the Governor." This letter distinctly intimates the intention of Kingi and his party to fight. It is dated *eleven days before the Proclamation of Martial Law* at New Plymouth, and *thirty-five days before a shot was fired.*

63. Neither the letter nor its contents became known to the Governor until the publication of the pamphlet. How Ritatona's letters came into the possession of Sir W. Martin does not appear; nor upon whom rests the blame of suppressing the information they contain. But it does appear that information intended for the Governor of New Zealand, and which might have been used for the prevention of bloodshed, first reaches him after the lapse of nearly a year as part of an attack upon his policy by the late Chief Justice of the Colony. As to the other adverse claims reported by Dr. Featherston and Mr. Fitzherbert, leading members of the Opposition, these claims also, such as they are, first became known when they were adduced in the House of Representatives, months after the commencement of hostilities.

64. The pamphlet, then, does not adduce one single instance of an adverse proprietary claim preferred to the Government. The alleged adverse proprietary claims were kept back, only to be used as weapons of attack when the Governor had taken up his position. Had Sir William Martin known of any proprietary claim which had been preferred to the Government and neglected, he would not have failed to adduce it. It may therefore fairly be concluded that *no adverse claim of ownership was preferred until after the commencement of hostilities.* The conclusion previously arrived at respecting the nature of the opposition stands unshaken, therefore, by this part of Sir William Martin's argument.

65. A few detached points may be noticed before passing to the next section. Sir William Martin conceives (page 33) that the existence of dissentient members of the Tribe who had an interest in the land, comprised in the Waitara block is indicated by Teira's own letter to the Governor of 20th March, 1859, in which he says:—" Your word advising them to mark " off their own pieces of land within our line they have received, but they do not consent. I consent " because it is correct." Teira here, no doubt, refers to a small undefined portion of land, which he admitted to be owned by Kingi's party, opposite to the Manukorihi pa. This land is surrounded by land belonging to Teira's party. As laid out on the ground, the land-ward boundary of the Block excludes the whole of this piece, together with a considerable extent belonging to the selling party. In one sense this piece of land was within Teira's boundary, on the Bell Block side, because it lay in a direct line between it and the river. Had the dissentients agreed to define the limits of this piece, as Teira desired, the size of the Block would have been considerably enlarged. In consequence of their refusal to do so the land-ward boundary was deflected, with a view to avoid disputes.

66. At p. 42 Sir W. Martin writes :—" In the case of the Bell Block, where every one interested " in the Block agreed to the sale, William King's opposition was withdrawn. In that case he ceased to

"oppose when his people assented." In this passage Sir Wm. Martin either admits that a section of the Ngatiawa Tribe had an exclusive interest in the Bell Block, or implies that the whole Tribe assented to the sale. In the former case he abandons his doctrine of the tribal right of the Ngatiawa. In the latter he affirms, what is not the fact, that the whole tribe assented to the sale. The Tribe, as a whole, was never consulted. The block is in the Puketapu country, and not even the whole of the Puketapu section of the Tribe consented. Katatore always opposed the sale. Sir W. Martin altogether misrepresents the transaction. The evidence already cited shows that Kingi never opposed the sale, but put in a claim on his own behalf, to share in the purchase money—a claim which was disallowed. The truth is, that King's section of the tribe had nothing whatever to do with the sale, and that King never acted the sublime and disinterested part of a Protector which the author's theory requires that he should be supposed to have played. This passage is pure fiction.

67. At p. 33 the writer, after stating that William King, as a Chief, put prominently forward the right of his Tribe, goes on to declare, "According to Native law their dissent was a sufficient answer, "and precluded all minor questions." This is begging one of the questions at issue—at issue that is, between the Government and the writer. Sir William Martin has not made even an attempt to demonstrate his proposition, but has leapt from title *in the community*, at p. 2, to title *in the Tribe* (*Iwi*) at p. 33. Again, at p. 42, he says:—"If anything be plain in the case, it is this, that the "whole Tribe never have consented to part with the Waitara land. Upon this fact William King stands." Nothing, certainly, can be plainer than that the whole Tribe of the Ngatiawa have not consented to the sale of Waitara, seeing that a portion of them are in arms to prevent it. The Government cannot contradict this "averment." William King so far "stands on this fact" that he would not have attempted resistance unless he had been assured of the support of a party which he judged would be sufficiently strong to resist the Governor and to cause him to recede from his purpose. But, in the logical sense, Kingi does not "stand on this fact" or on argument of any kind. William King's logic is much simpler than Sir W. Martin's. He is less skilled in the learning of "points," and "issues," and "averments." The author's over-refined way of looking at the question is well exposed by Mr. Busby, from whose "Remarks upon Sir William Martin's Pamphlet" the following passage is cited:—"Sir W. Martin contends that such a right [to interfere with Teira's sale] did "exist, which he designates a Tribal Right. Now, my acquaintance with the Natives dates back to a "period at which I had better opportunities of judging of them in their aboriginal condition than "Sir W. Martin could have, after they had imbibed the ideas of property which are held by civilized "men, through their negotiations for the sale of land; and I am most decidedly of opinion that no "such right had any existence farther than as it might be the right of the strongest, to which the "weak were obliged to submit. If Teira had, under the same circumstances, offered land for sale "before the Treaty of Waitangi, he would, without doubt have been forced to succumb to the "superior influence of Wi Kingi and his party. That is, weakness must have yielded to power. "But the question may be fairly put, whether the toleration of such a state of things at the present "day is consistent with the obligations of the Treaty, by which the Queen engages to protect "individuals, as well as communities, in the possession of their lands until they are willing to dispose of "them on terms to be mutually agreed upon."

## IV.—The Investigation.

68.—Nothing more plainly shews how artificial a position is taken up by Wiremu Kingi's advocates, than the fact, that he himself doggedly refused the enquiry which they, on his behalf, pertinaciously demand. From first to last—from the date of Mr. McLean's note to the Chiefs of Waitara, of the 18th March 1859, down to the time of the Governor's arrival with the troops on 1st March 1860, when a message was sent to Kingi, requesting him to meet the Governor, together with a safe conduct under the Governor's hand—no effort was spared to induce him either to assign a reason for his opposition, or to relinquish it. It is very improbable that, if he had been able to adduce any claim entitled to recognition, he would have failed to do so.

69. Sir William Martin, in his criticism on the Investigation, starts with the assumption that no inquiry conducted by the Land Purchase Department could be satisfactory. This assumption opens a distinct subject of discussion. But let it for the present be granted (as many persons will be disposed to do) that a Department which has extinguished the Native title over not less than twenty or twenty-five millions of acres, is competent to deal with the questions which arise in such investigations: the question then will be, were all, or more than all, the ordinary precautions used on the present occasion?

70. An answer to this question will be found in the following citation from the evidence of the Chief Land Purchase Commissioner before the House of Representatives, describing the general character of the investigation:—"With reference to the particular block under consideration, the claims "of the actual owners were carefully enquired into. Notice was given publicly at the time of the pur-"chase to such absentee claimants as were known to have a right to the soil. It was not considered "necessary to go about the country to rake up claims, or to induce Natives to prefer them It was well "known that when any block of land was offered for sale, there was no hesitation on the part of claim-"ants to come forward to receive that portion of the proceeds to which the extent of their claims might "entitle them. The sale of any land in the country soon becomes known throughout it, from one end to "the other, and it is often found that a hundred fictitious claims are adduced when the actual owners "altogether do not exceed thirty or forty persons."

71. After referring to the letter of 18th March, 1859, calling on the men of Waitara to define their claims, the witness proceeds as follows:—

"This invitation was given to the Natives to bring forward any claims which they might "possess; but none was ever asserted, except the general claim of an anti-land-selling league, "which grasped at the *mana* of the whole of the extensive territory *between Waitaha and Mokau* "although this same land had been ceded to the Government. The rights of Retimana and others "were fully recognised. It was admitted that the land was theirs, and that their title could not "be disputed. Indeed it must have been evident to any impartial person who witnessed the "proceedings, that the parties selling the land were confident in the justice of their cause, and "were determined to carry out the sale—notwithstanding the anti-land-selling league and the "King movement. The whole of the purchases previously made at Taranaki have been effected on "the same principle as the present one, namely: that of acquiring the land from the different clans "and subdivisions of those clans which came in from time to time to offer it. I never, during my "residence there, heard of any of the pretended claims that have since sprung into existence, in the "imagination (not of the Natives themselves, who are most interested, and whose imaginations are "easily worked on,) but of persons who have a false sympathy instead of a true one with the Natives, "in matters affecting their real welfare. There was no urgency displayed in this matter, no desire to "hasten it, but ample time was given to all parties to put forward their claims; and not only was there "ample time given but claims were solicited and hunted up in every direction in Taranaki itself. Yet, "with the exception of the two tribes who sold the land on the banks of the Waitara, and another tribe "on the banks of the Waiongana, who were joint claimants to a part of the block, no substantial claims "were put in. If I were to say that no other claims were adduced I should be wrong, but I mean no "substantial claims, no claims that could be recognized by the Government, or which would be "regarded by the natives as valid. Certainly one man told me that his grandfather had once lived a "a short time on the land, and that he therefore expected compensation. Another told me that in one "of their fights he was wounded and suffered great incovenience there, and therefore thought it was "right that he should have some consideration now that the land was sold. Now, this is the class of "claims of which I have just been speaking, which it it is clearly the duty of the Government to resist, "as otherwise it would be an utter impossibility to carry out any purchase of land without defrauding "the real owners. By compensating this class of claimants, the real owners would be deprived of "what they are fairly entitled to, merely because the Government chose to recognise ficticious "claims of this character. What I maintain on the present occasion is, that the actual owners of the "soil, the men known and recognized as such, have been conferred with, and their consent to the sale "obtained. With respect to the offer of this land to the Governor at Taranaki, I may state that "great pains were taken both previously to and after the offer, to inquire who the real claimants were, "and to settle with them. And here, I should not omit one important fact that, in settling with them "a section of the Puketapu tribe which is located in the vicinity of the Waitara, was associated with "Te Teira, Retimana, and others in effecting this sale. These men were exceedingly jealous of the offer "when it was first made and were on the eve of protesting altogether against the sale of the land. Their claims "were at once admitted by the selling party, but it was rather difficult to effect a satisfactory arrange-"ment at once between the parties. It happened that they were too distinct, and it was this which "caused the difficulty. During the investigation which took place, and while the difficulty was being "adjusted, I felt convinced that the claims then preferred by these conflicting parties were substantially "good, and that in fact the sale must be proceed with, or otherwise the Natives who had offered "the land would be treated with great injustice. The officer whom I instructed to conduct the "negotiation (Mr. District Commissioner Parris) was requested to persevere in his enquiries into the "matter from time to time; not in any way to hasten the arrangement, but to give full opportunity to "opposing claimants to come forward and state their case. He not only did this, but he also took a "great deal of trouble in visiting, as far as lay in his power, every part of his district, to make sure "that there should be no substantial claim overlooked. I have already stated that there was a public "notification from myself inviting all persons who had claims to bring them forward in order that they "might be carefully investigated. No fresh claims were recorded, however; no rights were shown by the "Natives who opposed the sale, except the right which the land-league conferred upon them, that of "claiming land everywhere, and of opposing the sale of land everywhere. In the officer who conducted "the negotiation I place the most implicit reliance. He was on very friendly terms with William "King, and was universally liked by the Natives of the district. He was instrumental, I am almost "certain, on one occasion, in saving the life of William King when a trap had been laid for him, by "Ihaia, and a party of Wanganui Natives. It was with great regret that I heard this officer' character "assailed—a man who has taken such an interest in the welfare of the Natives of his district since he has "been there, and who has used all his influence to prevent the disgraceful feuds continually being carried "on in the district, frequently with the greatest success; and who has, in carrying out these duties, "more than once run the risk of losing his own life. I regret exceedingly to find a public officer, who "devotes his time to the interests of the community in which he resides, stigmatised in the manner in "which Mr. Parris has been. I should have much preferred that any reflection in connexion with this "purchase should have been at once directed to myself, by whose instructions it was carried out; I "should have preferred this, to hearing an officer thus stigmatised who is certainly worthy of a better "reward.

"I passed over from Taranaki, where the transaction had been so far initiated, and went almost "directly to the Natives in Queen's Charlotte's Sound, who were claimants to this Block. I had a "meeting of them at Waikawa, having first intimated to them by letter that I was coming, and the "whole of the Natives there, after a careful enquiry into the extent, position, description of "boundaries, and the rival claims of the Natives, agreed to sell their own interest in the land,

"besides a considerable extent of territory lying beyond the boundaries of the offered block. I "devoted as much time as I was able to this investigation. I knew that these were the real "claimants, and I found a great deal of unanimity among them about the sale of the land. (In "reply to Mr. Fox)—The date of my letter to them is the 9th of April, and the interview took "place on the 12th of April, 1859. The Chief Ropoama, who offered to dispose of his claim, was "recognised as the head of the *hapus* or sub-divisions of the Ngatiawa tribe, who owned the land "and sold it. He holds a high position among his people, and is much respected by the Europeans, "On several occasions it was contemplated by the Natives of Waitara to invite him there, and "to live among them as their Chief, to keep peace and order in the tribe. In this arrangement "Wm. King (about whose Chieftainship we have heard so much, and who undoubtedly was a Chief "of the section of the Ngatiawa at Waikanae) acquiesced. No actual payment or promise of "payment was made to the Natives at Queen Charlotte's Sound at that time. When they informed "me that they had agreed to sell the land, my reply to them was, that they had better wait until "matters had been finally arranged at Waitara, as I should not feel myself justified in concluding "the purchase with them till then.

"Having arranged with them that they should be paid after matters were settled at Taranaki, I "left Ropoama's place for Wellington, where I notified to the Natives what had taken place with "reference to Waitara. I had previously ascertained the names of the Wellington claimants to the "land. I consulted them about it, and made similar arrangements with them to those which I had "made with Ropoama, that they should be paid when the block was settled for at Taranaki. I "believe that one or two of Ropoama's people were at Waikanae at that time, and he promised to "see them on their return, and to endeavour to arrange matters with them with respect to their "claims. It has been recently stated that, in addition to these persons who are known and "recognised as the actual owners, claimants are to be met with at the South as numerous "as a swarm of bees; but I think that those who say so would find very great difficulty "in establishing anything beyond mere assertion of right to the land comprised in the Government "purchase. Knowing how scattered the claimants were, and the difficulty of getting them "all together in any one place, at any one time, I was a long time pursuing investigations before I "myself came to the conclusion that the purchase was quite satisfactory; but the more I enquired "into the case, and came into contact with impartial Natives residing at a distance, and having no "particular interest in the locality, the more I became satisfied that the purchase was a good one. "There may be one Native at Waitara, not a party to the transaction, who, I admit, may yet have "a claim to a small portion of the block, but he has never asserted it. I cannot tell the exact quantity; it "could not be large; indeed, I am not sure that he has not relinquished his claim in the block, if any "existed, in exchange for some lands in the vicinity of the purchased block which Teira gave up to him, "as the latter owns a considerable quantity of land there. There may have been some such accommo- "dation between them—at any rate Patukakariki has never asserted any proprietary right (51)."

(51) *Gen. Assembly Papers*, 1860. E. No. 4.

72. Although the contumacy of the opposing party necessarily threw difficulties in the way of a complete enquiry, enough was elicited to establish satisfactorily the validity of the seller's title. Absolute demonstration in such a case is not to be looked for. It is said that the proof of title even to English estates never can stand higher than a moral certainty.

73. It is not possible to state at length in the present memorandum the whole of the specific grounds for concluding that the selling parties are owners of the block. They may, however, be indicated. Perhaps the most important circumstance is, that the sellers have exclusively occupied the block since their return from the south in 1848, with the exception only of the site of Kingi's pa (52). This fact of the exclusive occupation of the block is not disputed by Archdeacon Hadfield (53). As regards Kingi's pa, the circumstances relating to its erection on the block, furnish additional evidence of the title of Teira's party. This point has already been incidentally touched upon. There is no doubt that the pa was placed in its present position by the express permission of Tamati Raru and his party (54.) Previously to the migration of the Ngatiawa to Kapiti, Tamati Raru (Teira's father) lived on the block, in a pa called Pukekoatu. The pa of Kingi's father was at Manukorihi, on the north bank of Waitara (55.) The sellers possessed the exclusive right of using a fishing net in that part of the river which bounds the block (56). They defended the boundary, on the Bell block side, in a dispute with the Puketapu Chief, Mahau, which occurred about three years ago, and cut a line at a place called Matataiore, beyond the place called Onatiki, which is named in the Deed of Cession. Kingi took no part in this dispute. Subsequently to the offer of the land to the Governor the sellers signally asserted their ownership by the destruction of a fence which the opposing party had erected upon the block (57).

(52) *Parris, Report*, App. p. 38.
(53) *Hadfield, Evid.* App. p. 61.
(54) *Ante* § 34.
(55) *Parris, Report*, App. p. 38.
(56) *Ibid.*
(57) *Ibid.*

74. Kingi's attitude throughout the whole transaction has been utterly different from that of a true Native claimant. His demeanour at the meeting of March, 1859, (*vide Mr. Parris's Report. Appendix p.* 38) is very remarkable. Sir William Martin (at p. 17) attempts to defend Kingi's reticence on that occasion, by the statement that the meeting in question was not the time or place to define his right. This is quite incorrect. Native custom required him to come forward with a specific claim, and especially required him to oppose the delivery of the mat presented by Teira to the Governor (58). The assembled Natives perfectly understood the significance of the transaction, and exclaimed, "Waitara is gone" (59). Such matters may seem trifling to Europeans, but their importance is understood by Natives.

(58) *Kapereira, Speech* App. p. 41.
(59) *Parris, Report*, App. p. 38.

75. But the true proprietary right of the sellers to, at least, a portion of the block, is placed beyond doubt by the admissions of their opponents. First there is King's own public admission already referred to: "*The land is theirs*" (60). King's own brother travelled over the district with Mr. McLean in 1847, and pointed out that King's claims, and those of his immediate followers, were

(60) *Parris, Report*, App. p. 40.

almost exclusively on the North bank of the Waitara (61). This indeed was a matter of notoriety in the District, as appears from a passage in the letter of the Rev. J. T. Reimenschneider to Mr. McLean dated 24th September, 1855 ; of which an extract is printed in the Appendix to the Pamphlet (62). The passage is omitted in Sir W. Martin's extract. Again, Komene Patumoe, now with the insurgents, admitted to Archdeacon Govett that if Rawiri Raupongo had been a consenting party to the sale, they (the opponents) could not have had anything to say against it (63). Rawiri, though the fact was unknown at the time to Komene, actually is a party to the sale. The Rev. Riwai Te Ahu admits the title of one of the sellers, Teira, to portions of the block. "Yes," he writes, "his title is good to his own pieces within the boundaries of that land—two or three pieces. Our title is equally good to our own pieces" (64). Wi Tako as reported by Dr. Featherston (Pamphlet p. 43) makes a similar admission.

(61) *McLean, Evid.* App. p. 35.
(62) *Parl. Pap. N. Z.* July 1860, *p.* 174.
(63) *Archdeacon Govett,* App. p. 39.
(64) *Riwai te Ahu,* App. p. 47.

76. The attempts which have been made to invalidate the conclusion arrived at in favour of the title of the sellers have completely failed. No adverse claim of ownership has been proved to exist, or has even been authentically preferred. Take, first, Archdeacon Hadfield's evidence before the House of Representatives.

77. Speaking of the official statement which the Governor had caused to be circulated immediately on the breaking-out of hostilities, the Archdeacon says:—"I deny the truth of all the "statements. I am prepared to prove their falsity here, [in New Zealand] where evidence can be obtained" (65). Upon the General Assembly being finally summoned for dispatch of business on the 31st July last, Archdeacon Hadfield came up from Wellington. The House of Representatives, being made aware of the strong views which he entertained on the subject of the Waitara purchase, examined him at the Bar of their House. Considering that on the 29th May he had committed himself to a public pledge that he was "prepared to prove the falsity of all the statements," his evidence at the bar in August, when he had had so much time to complete his case, should have been clear, definite, and conclusive. The following summary (extracted from His Excellency's Despatch of 4th December, 1860) of his answers on most important points requires no comment. When he is asked if he knows the position of the land in dispute, he says, "I do not know the "precise boundary line." When asked who were the owners of the land previously to the dispute, he says, "I have direct information from persons stating they are claimants; I am only giving my opinion "on that information." When asked on what authority he states there are 90 claimants on the block, he says, "What I have now stated on this subject rests on the assertions of others. I am here as an unwilling "witness in the case before the House, unprovided with direct proof. I am but a secondary witness. "*I do not know whether I fully understood the question.*" When asked whether Wiremu Kingi is one of the ninety, he says, "I have before stated that the right of the tribe extends over the whole of that "block; therefore he is one of the claimants." When asked whether King ever made a proprietary claim, he says, "*I hear* that he made a proprietary claim to a portion of the block." When asked what proof he has of a certain Native (Hamere) having a claim, he says, "An old man who resided "at Waitara 40 years, pointed out to me *when I was at Waikanae* [150 miles away] portions of the "land which belonged to Wiremu Kingi." When asked whether he is acquainted with the details of the negotiations for land in the New Plymouth district, he says, "I could not say that I was acquainted with the details." When asked of whom the Bell Block was bought, he says, "Principally I believe from returned slaves from Waikato; so I have been informed." Of whom the Hua Block? —"I do not know." Of whom the Taururutangi?—"I do not know." When asked if Wiremu Kingi received any payment for the Bell Block, he says, "I do not know whether he did or not." When asked the territorial boundary of the four hapus of which he says Wiremu Kingi is the head, he says, "I am not acquainted with the boundaries. *I have never professed to be acquainted with the boundaries.*" When asked whether these four hapus have equal rights to the South bank of Waitara, he says, "I think they have." When asked if King's people ever cultivated on the disputed block, he says, "I am not aware that they have cultivated any part of that land since their return." When asked whether any of their cultivations were in the disputed block, he says, "I do not know from personal knowledge." When asked where Reretawhangawhanga (Wiremu Kingi's father) had his Pa before the migration, he says, "I do not know." When asked if there was a Pa on the disputed block before the migration, he says, "I do not know." When asked on what authority he said there was no investigation of the absentee claims, he says, "I am quite certain none was made at Waikanae. It must be generally understood that my evidence in reference to this dispute is derived chiefly from the Chief Hohepa Ngapaki and Riwai te Ahu. I have had information from others, but I limit myself to those two." When asked whether Wiremu Kingi had any opportunity offered him of stating his claim to the Government officers, or to the Governor himself, before military force was brought into action, he says, "I presume he had innumerable opportunities; he might have written by every post. He had an opportunity of meeting the Governor after the publication of martial law. After further conversation between Mr. Sewell and the witness, witness said, *I must then confess myself unable to understand the question.*" When asked whether prior to the dispute he had had conversations relative to the respective rights of the four hapus on the south bank, he says, "I have previously stated that I belive in the fact of the tribal right of Wiremu Kingi—having stated as much distinctly, *it is a question in which I take no interest, as I think it irrelevant.* I have had conversation on the subject, and I do not believe that any separate rights exist between Ngatihinga and Ngatituaho on the one side and Ngatikura and Ngatiuenuku on the other: the various hapus through former intermarriages are so mixed up one with another that it would be impossible to give either an affirmative or a negative to a question which you can neither believe nor disbelieve: *the question is perfectly unintelligible and irrelevant*" (66).

(65) *Hadfield Letter to the Duke of Newcastle.* App. p. 58.

(66) *Hadfield, Evid.* App. p. 60.

NATIVE AFFAIRS.

78. The Natives whose statements have been brought forward since the commencement of hostilities to invalidate the title, or to set up particular claims within the block, speak without exception in the vaguest language. There is no such distinct definition of boundaries, as a *bonâ fide* Native claimant always knows how to give. The claim is of "Waitara" as "a bed," as "a bedroom," as "land belonging "to our ancestors," or (which is a favourite formula) as "the land of the widow and the orphan." The only specific claims are those made in the Rev. Riwai te Ahu's letter.

(67) *Hadfield, Evid.* App. p. 61.

79. The Rev. Riwai te Ahu and Hohepa Ngapaki are stated by the Venerable Archdeacon Hadfield to be his main informants in reference to the dispute (67). These two Natives are absentee Ngatiawa resident at Waikanae, in Cook's Straits. They must have been mere children when they left the Waitara district, and can have no accurate knowledge of boundaries at Waitara. Riwai was even ignorant of the boundary of a claim of his own in the neighbourhood of the block, which was investigated some time since by the Chief Land Purchase Commissioner (68).

(68) *McLean, Evid. Gen. Assembly Pap.* 1860. E. 4 p. 22.

80. Riwai names in his letter of 23rd June three specific claims, one on behalf of Te Patukaka riki, who being on the spot, never claimed for himself (68*a*). Another on behalf of Kingi himself, whose cultivation within the block, he says is called Te Parepare, a third, on behalf of Kingi's two children. "The cultivations, which belonged to their mothers, are," he says, "at Hurirapa, the pa "which was burnt by the soldiers; and another at Orapa on the south of their old pas." As regards the cultivations of Kingi himself, Riwai is directly contradicted by the evidence above cited, which establishes that neither Kingi nor any of his people have had cultivations on the block. Nor is it at all likely that if he had been entitled to cultivate on the block, in right of his wives, or children, he would have omitted to do so, were it merely for the purpose of asserting his title. Riwai's passionate inaccuracy is shewn in his statement that Hurirapa was burnt by the soldiers. Hurirapa was not burnt. No pa was burnt by the soldiers. In the same spirit he scoffingly denies the fact that Wiremu Kingi had leave to place his pa on the block. "How then can it be said that they gave Wiremu Kingi leave to "settle on that block when he came from Waikanae. A fine saying, indeed! No. Each man knew "the cultivation of his own ancestor. Was it they who gave Wiremu Kingi leave to cultivate Te "Parepare when he went from Waikanae? Was it they who gave his children leave to cultivate at "Te Hurirapa (Teira's pa) when they went from Waikanae, which cultivations have been taken from "them by the soldiers?" The statements implied in these questions are, as have already been seen absolutely contradicted by the officers charged with the investigations, and are inconsistent with the proved facts of the case. Sir W. Martin may have good ground for his expressed belief (p. 44) in the Rev. Riwai Te Ahu's general honesty of character, but it is evident that in the present case, his statements show strong passion, and slender information.

(68*a*) *Ibid.*

81. But even supposing that the particular claims in the Block, which, since the commencement of hostilities, have been alleged to exist, should be hereafter established, the position of the Government, that the title of the sellers, to a portion, at least, of the Block, is good, would not be affected, and it will presently appear that due provision has been made for possible outstanding claims.

82. The investigation is alleged to have been defective in one important particular. "It was well "known "says the author," that there were other members of the Tribe at Waikanae, as well as at "Wellington, Queen Charlotte's Sound, &c. * * Yet neither Mr. McLean nor Mr. Parris instituted "any investigation at Waikanae" (p. 50). Sir William Martin might have gone further, and have stated, that it is well known that there are members of the Ngatiawa Tribe in almost every corner of New Zealand, and also in the Chatham Islands. But it is not reasonable to expect that every individual or even every section, of that numerous and scattered body—most of them absentees, for 30 years and more, from Taranaki, and permanently settled elsewhere—should be hunted up before the conclusion of a purchase, from the actual occupants, of some few hundred acres in Taranaki. Where unrepresented claimants are known, or believed, to exist, the Government makes inquiry on the spot; as was done in the present case at Queen Charlotte's Sound, and at Wellington. But where, (as in the case of the Waikanae Natives) there is no reason to believe in the existence of valid claims, no local investigation is instituted. The Waikanae claimants (for whom the Rev. Riwai te Ahu acts as Secretary) ought to have come forward. They admit that they were aware of the negotiation at the time when the first instalment was paid in November 1859. Archdeacon Hadfield, at least, must have known sooner—the first published letter of Kingi's addressed to him, bearing date the 2nd July of that year. Mr. Parris also, privately applied to him through Archdeacon Govett, of New Plymouth, requesting him to use his influence to procure the withdrawal of Kingi's opposition. The Archdeacon replied, "that he "would not advise Natives to sell their land; that he was not pleased with anything the Government "had done for the Natives, and that the Governor would find that a large party of the Natives at "Otaki would espouse William King's cause" (69). The Natives of Waikanae, which is close to Otaki, were therefore, it is evident, fully aware of what was going on, long before the commencement of hostilities, and ought to have come forward. There is, however, another answer to their complaint. They were represented (as they themselves admit) by Kingi at New Plymouth, who is certainly Chief of that section of the Tribe to which the complainants belong.

(69) *Parris, Report. Gen. Assembly Papers,* E. 3A, p. 9.

83. On the whole, then, it is submitted that the Government position in reference to this section of the Pamphlet is well established. *The question to whom the block belonged was investigated as completely as the contumacy of Wiremu Kingi and his supporters admitted; the right of the sellers to a portion of the Block is certain, and their right to the whole is probable. No adverse claim of ownership has been proved to exist, or has even been authentically preferred.*

84. One or two observations of the writer challenge special attention before passing on to the next section. At page 58, at the close of a review of the grounds stated by Mr. Richmond's Memorandum of 27th April, 1860, for the conclusion that Wiremu Kingi had no right to interfere

with the sale, Sir William Martin exclaims, "on such *evidence* as the above the Government was "prepared *to assert a title* to the Block." It will hereafter be fully shewn that the position of the Government, properly understood, is not that of "asserting a title to the Block." The purpose of the present observations is, to point out that Mr. Richmond's Memorandum expressly rests its conclusion *upon authority*, and by no means pretends to go into the *evidence* of title. "The question of "Title," says the Memorandum, "is one on which persons not versed in the intricacies of Native "usage cannot expect to form an independent judgment. It is a question to be determined *upon* "*authority*."

85. A single item of what the Memorandum properly calls *testimony*, is adduced; namely, the letter of Wi Tako, a Ngatiawa Chief, whose evidence is represented as carrying "great weight, "as his prepossessions are adverse to the British Government." The letter in question was written by Wi Tako to the Waikato Chiefs, from New Plymouth, at which place he stopped on his return South from a Maori King meeting in the Waikato country. It seems he had been asked by Waikato to report upon the merits of the Waitara question.

86. The translation of the letter appended to the Memorandum is as follows:—

"Waitoki, Taranaki, April 10th, 1860.

"This is my message to Waikato, that Waikato may understand the character of this foolish "work at Taranaki. I arrived here and have ascertained the causes of this war. Enough of this.

"Another word. My message is to Tikaokao Chief of Tongaporutu, to Te Wetini Chief of "Tarariki, to Takerei of the Kauri, to Hikaka of Papatea, to Reihana of Whataroa, to Te Wetini of "Hangatiki, to Eruera of Mohoaonui, to Te Paetai of Huiterangiora, to Heuheu of Taupo, to Paerata "of the Papa, to Te Ati of Arohena, to Epiha of Kihikihi, to Ihaia of Hairini, to Hoani of Rangia-"whia, and Hori te Waru, to Tamihana of Tamahere, to Rewi at Ngaruawhia—to all of you. You "requested me to investigate the subject and send you the truth, which is this. Friends, *this wrong* "*is William King's. Another wrong has been committed by Taranaki greater than all the evils* "*that have been done in the land.* Let your thoughts be true to the words (or pledges) given to me "by you, and which we consider to be right. Friends, the work that you have to do is that which "is right and that only. Don't you look towards the foolish works of this land. Friends, listen to "me—former days were days of error, the days that succeeded were days of truth; let this be your only "work, to obey the word of the Great Father in Heaven, which is a line that has one end above and "the other reaching down to the earth. That is the fighting for us: be true to your agreement with "me.

"Friends listen to me. The cause of the war is only the land. Not the King. Let not the "evil spirit lead you into temptation.

"From your loving friend in the Lord,

"From WI TAKO NGATATA."

87. Sir William Martin contends that the word '*he*' in Wi Tako's letter should be rendered 'trouble,' not 'wrong,' as in the translation appended to the Memorandum. This must appear a strained construction to any one who observes, that William King's act (this wrong of William King's) is coupled in the letter with mention of *another wrong* ('*tetahi he*') done by the Taranakis, *i. e.* with the murder of the defenceless settlers and boys at Omata, which last he describes as greater than all the evils of the world. Wi Tako undoubtedly intended to condemn (*whaka-he*) the Taranakis, and it plainly follows that his mention of King's proceeding also was meant to be condemnatory.

88. Wi Tako's language was understood by natives who read it to express condemnation of William King. At the meeting at Ngaruawahia, Paora Tuhaere addressing the Waikato Chiefs says, "You say that you have not seen wrong on the part of Te Rangitake (Kingi). I have seen his wrong doing. Letters have reached you that convict him of wrong. Yet you say you have not seen it. I repeat I have seen it and I believe there is not a Chief in Waikato that is not convinced that Te Rangitake is wrong. I have seen Wi Tako's letter addressed to you all, and that letter set my mind at rest on the subject. You have all seen that letter, and its statements should settle the question" (69A). It does not appear that the interpretation of Wi Tako's letter was called in question at the meeting. The letter was printed and widely circulated among the natives, and was understood by them as unequivocally censuring William King's proceedings.

(69A) *Rev. T. Buddle, Pamphlet on Maori King Movement* p. 51.

89. Wi Tako's testimony was only valuable as proceeding from the opponents of the Government. It appears that on reaching the South he was talked over by the Native or European supporters of King. This was quite to be expected. His altered sentiments have nothing whatever to do with the interpretation of the letter written by him from New Plymouth. What passed at the interview with Dr. Featherston, by no means bears out Sir William Martin's assertion that "the interpretation adopted by Mr. Richmond was expressly repudiated by Wi Tako." The Natives, Te Puni, Wi Tako, and others, who answered Dr. Featherston s question, were not giving an opinion as to the meaning of what Wi Tako had previously written, but were declaring what they themselves then thought, or pretended to think, upon the question of the quarrel with Kingi. Nothing is proved but that Wi Tako contradicted himself.

90. It is curious to compare Sir William Martin's translation of the word "*he*" in Wi Tako's letter with the rendering of the same word in passages of other letters printed in his pamphlet, where it is used to impute *wrong-doing* to Mr. Parris and Te Teira; passages, for instance, in the letters of Hohepa Ngapaki and others, in Ritatona's letter of 5th December, 1859, and in Riwai Te Ahu's, of 23rd June, 1860. It would almost seem as if the force of the word varied in Sir W. Martin's mind, according to the person in connexion with whom it is used, and that what is only "*trouble*" in Kingi's case is "*wrong*" in that of his opponents.

## V.—THE RESORT TO FORCE.

91. What may be called the central position of the Pamphlet is that assumed in the Fourth section ("The Investigation") at p. 59. The argument is enforced throughout the rest of that section, and constitutes the substance of the chapter entitled "The Resort to Force"—to which indeed the topic seems more properly to belong. The author contends, that in the face of opposition from what he calls "adverse claimants," (see p. 73) the Governor was not justified in taking possession of the block without the judgment of a Court of Law. "At the Waitara," he says, "for the first time a new plan was "adopted. The Governor, in his capacity of land buyer, was now to use against subjects of the Crown "the force which is at his disposal as Governor and Commander-in-Chief. If this new principle was "to be adopted, a new practice also became necessary. Those subjects of the Queen against whom "force was to be used, had a right to the protection of the Queen's Courts before force was resorted to" (p. 59). The same doctrine is again prominently asserted in the 5th section at p. 73.

92. In taking Military possession of the block, the Governor must be considered rather as asserting jurisdiction over the question of title, in the only way in which it was possible to assert such jurisdiction, than as putting himself in possession of a property which he had acquired "in his capacity of land buyer." As has been already stated in a former part of this Memorandum (§ 9), the question between the parties in contention, *i.e.*, the Governor and Wiremu Kingi, truly viewed, was one of authority and jurisdiction, and not of the title to a particular piece of land.

93. An extreme, and not unnatural jealousy on the subject of the land question—a jealousy which Sir William Martin loses no time in arousing, for he strikes this key-note in his opening paragraph—blinds some persons to the intimate connexion of the land question in the Taranaki district with the maintenance of law. The unsettled land question has been notoriously the cause of the chronic feud which has rendered the place a constant source of anxiety to the Government, and of peril to the Colony. It has been the root of the lawlessness of the Natives. When the Governor addressed the meeting of March 1859, he spoke of maintaining law and repressing violence. The notion of acquiring land did not occur to the Governor's mind, or occurred only as a completely secondary matter. When he spoke of the land, it was to declare that he would admit of no violent interference with the just rights of property. This, however, of necessity involved His Excellency in the land question, and Teira immediately rising, in effect, called upon him to redeem his pledge, and to protect the exercise of lawful rights. In fulfilment of the engagement so publicly assumed, and in assertion of what His Excellency believed to be his rightful jurisdiction, he finally directed the movement of the troops.

94. The Governor's position is rendered still clearer by the fact, that up to the present moment no final determination has been come to as to the title to the whole block. On the payment of the first instalment to Te Teira's party, the District Land Purchase Commissioner publicly declared to the assembled Natives and Europeans (including Kingi and and his party) that *if any person could prove that he owned any part of the land within the boundaries of the block, as then read over, his claim would be respected, and he would be allowed to retain or sell the same, as he might think proper* (70). No claimant, therefore, is excluded by the Governor's action, though all are compelled to come into Court.

(70) *Parris, Report.* App. p. 38.

95. Sir William Martin is, however, at issue with the Government upon the point of the Crown's jurisdiction. Here, at last, he is at one with his clients, and takes very much their view of the subject. "Waitara is in my hand, I will never let it go," said Kingi. Sir William Martin, as a lawyer, would, it seems, have advised him to hold on. "You are *in*," he would have said. "No one,— "not even the Governor himself, can turn you out without the judgment of a Court of law. The "Governor is put to his writ of ejectment."

96. Were it desirable to discuss the question upon so narrow and artificial a basis, it might be argued that the Governor was duly put in possession by the occupants of the Block, and that the trespasser was Kingi, when, on the 15th March, his people built a Pa on the Block, and danced the war dance. Thus King endeavoured to fulfil his threat, "I won't let you have the land but *will take it* "and cultivate it myself." But such refinements on either side are perfectly absurd, and it is better to test the soundness of Sir William Martin's main position.

97. In his eloquent assertion (p. 62) of the principle that, not only the subject, but the Executive Government itself, is bound by the Law of the land, of which the Judges are interpreters, Sir William Martin overlooks one essential point. True it is, that the founders of the English Commonwealth "forbad the Executive Government to use its power against any man, the meanest in the State, "without due sanction of law." But it cannot be said that, in any but a technical sense, the Maori people are yet *within* the State. The State's relations with them, at least as respects their territorial rights, practically, are external, and not internal relations, foreign, and not domestic.

98. In law, as well as in fact, their territorial rights and obligations are not subject to the interpretation of our Courts. These rights stand upon Treaty, of which the Crown itself is, rightfully, the sole interpreter. This is well put by Mr. Busby in his reply to the pamphlet :—

"The Native title is not known to the law, nor is it subject to, or entitled to be dealt with, by "law. It rests exclusively upon a Treaty entered into at the time between the British Government "(who had recognised the New Zealanders as competent parties to a Treaty) and the New Zealanders. "To maintain the faith of Treaties there exists no law. And I confess that, in the responsibility of the "Queen's Governor, acting in the name and on the behalf of the Queen, so long as he is not controlled "by what is called a Responsible Ministry, I see a greater security for the due fulfilment of the Treaty "than would be derived from any judicial tribunal which could be created for the purpose; could such "an anomaly exist as a tribunal to try the administrative acts of the Government in matters of so high

"an import as the fulfilment of a Treaty. The issue, as it appears to me, was not as Sir William Martin "puts it (page 75), whether 'the Governor has no more right to seize land upon the decision of his "'own agent than any other land buyer would have;' but whether he was maintaining the obligations "of the treaty in defending the rights of Teira against the interference of Kingi with those rights."

99. "Peace and growth," it is truly said, "cannot be where justice is not." In the execution of so high a duty as the maintenance of its treaty obligations towards the Native people, the Crown is, without doubt, bound to proceed "according to rules more clear, and methods more patient, than "those of political expediency." The Crown is bound to be absolutely just. But as respects the interpretation of its Treaty obligations, the Crown is not, nor can be bound by law in that limited sense in which the term is used by Sir Wiliam Martin, by the law of the land, that is, as interpreted by the Judges.

100. By the supremacy of the law alike over Sovereign and subject, "England has grown and thriven. Without this principle "New Zealand will not grow or thrive." This truly is the desideratum. But what is the obstacle to the supremacy of the law? Who can deny, that the sole obstacle lies in the will of the Native people? Sir William Martin's truths are two-edged swords. It is well that rights should be interpreted by law when obligations also can be so interpreted. The fallacies of the pamphlet are so well sustained, and so thoroughly believed in by the writer, that they assume almost the majesty of truth. Sir William Martin persists in ignoring that the Maories assume, of their own free will, a position outside the law. No man can have the benefit of a jurisdiction to which he refuses to submit. It is vain to reproach the Government with the non-application of principles which the Natives reject. It is exactly because they reject those principles that questions between them and the Government assume the aspect of questions of peace and war. Here then is the fallacy: at the present moment the *desideratum* is to bring the Maories within the pale of the law. Sir William Martin's argument assumes that they already are within it.

101. The existing machinery for the ascertainment of the ownership of Native lands is the Land Purchase Department. That department is the Crown's instrument for the interpretation of its Treaty obligations, or rather for the ascertainment of the facts upon which the Crown must proceed. So far as fair play to the Natives is concerned, there is no reason whatever to allege, that their claims receive less consideration, or are less openly and elaborately investigated by the Department than they would be in a court of law. There is, on the contrary, reason to think that the peremptory procedure of a regular Court would be far less satisfactory to the Natives, in their present condition, and would generally fail to bring out the true claimants. The Department, it may be observed, as dealing with subjects of Imperial interest, has always remained under the direct control of the Governor himself.

102. The writer of the Pamphlet appears to conceive that the Land Claims' Courts are essentially superior in their constitution and procedure, to the Land Purchase Department, and he make it a subject of strong complaint that the title to the Waitara Block was not submitted to investigation by such a Court. At p. 60 he writes as follows: "The matters in issue in this case were of the same kind precisely as those which have been in issue before the various Courts of Land Claims Commissioners which have been from time to time constituted by the Legislature of this Colony. All these Courts have acted on one plan; they have travelled from spot to spot, giving fair opportunities to all parties concerned of bringing forward their claims, taking evidence on oath, exercising the same powers, and protected by the same safeguards, as ordinary Courts of Law. There never was any difficulty in obtaining the attendance of the leading Chiefs before those Courts. Why was not the same thing done in this case?"

103. It is surprising that Sir William Martin should have ventured to cite the so-called Courts of the Land Claims Commissioners as instances of the satisfactory working of a jurisdiction over Native Territorial Rights. The Land Claims Courts are in fact mere Courts of Enquiry, without power to carry their judgments into execution. Neither in their Constitution, nor in their procedure, do they differ materially from the *quasi* Courts of Enquiry, held by the Land Purchase Commissioners.

104. Land Claims Commissioners are appointed by, and hold office at the pleasure of the Governor; Land Purchase Commissioners are appointed in the same manner, and hold office by the same tenure. Land Claims Commissioners are authorised to hear only such claims as are referred to them by the Governor; Land Purchase Commissioners negotiate only for the purchase of such Land as the Governor approves of. Land Claims Commissioners hear and examine, and for that purpose travel "from spot to spot, giving fair opportunities to all parties concerned of bringing forward their claims;" Land Purchase Commissioners follow precisely the same plan. Land Claims Commissioners have no power to determine, but only report for the confirmation of the Governor; Land Purchase Commissioners do precisely the same thing. Land Claims Commissioners, it is true, are empowered to administer oaths, and Land Purchase Commissioners are not. But then the former act in cases where both Europeans and Natives, and the latter in cases where Natives, only, are examined as witnesses. Evidence on oath has rarely been taken by the Land Claims Commissioners in any cases where conflicting rights of ownership of several natives have been in question. Commissioners of neither class possess the powers of ordinary Courts of Law, and protection by "the same safeguards as ordinary Courts of Law" is a phrase without meaning when applied to the procedure of Land Claims Commissioners Courts in contradistinction to that of Land Purchase Commissioners.*

105. It is not true that there never was any difficulty in obtaining the attendance of the leading Chiefs before the Land Claims Commissioners' Courts. Attendance has sometimes been peremptorily refused, and has never been enforced; it has more frequently been purchased at a high price. As a

* These remarks apply, as do, Sir W. Martin's, to the former Land Claims Courts. Recent legislation has conferred more extensive powers on the present Commissioner.

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rule, Land Purchase Commissioners have been quite as successful in procuring the attendance of necessary persons as Land Claims' Commissioners.

106. Sir William Martin's concluding query, why was not "the same thing done in this case?"—that is, why were not Wiremu Kingi's claims investigated by a Land Claims Court—is easily answered. More has been done in his case than in any other. His claims have been fully investigated by both a Land Claims Commissioner and a Land Purchase Commissioner, and both have reported against him.

107. The statement that the Natives of New Zealand are not, even in ordinary civil affairs, amenable to the jurisdiction of English Courts, needs no proof to those who have any acquaintance with the country. Were it not that the Natives have, coupled with their strong love of gain, a natural sense of obligation, and some shrewd appreciation of the necessity of maintaining good faith in commerce, the evil would be intolerable. As it is, it is very great. They perfectly understand the advantage of resorting to our Tribunals for the assertion of their own rights. But the enforcement of the rights of the European creditor is a thing scarcely heard of. Against a Chief of any standing it would be impossible without war.

108. The records of the Northern division of the Supreme Court perfectly bear out this assertion. From the foundation of the Colony down to the 1st January, 1860, eleven writs have been issued against Maories. Only one case proceeded further than the issue of the writs. There has been an instance of the refusal of a Writ of Injunction applied for by one Native Chief against another. The Judge asked "Of what use will my writ be?"

109. The following extract from a petition not long since presented to the Governor by a person who had recovered judgment against Natives for a large sum in the Supreme Court, illustrates this state of things. After a preliminary statement, showing that he had recovered judgment, the petitioner proceeds as follows :—"Your Excellency is aware, in Courts of Law in England the decision would have been "final, and I hoped the same might have been the case here. But I am sorry such is not the "case. * * * I have now no other alternative but to appeal to your Excellency that you may be "pleased to order an investigation of the matter, so that I, one of Her Britannic Majesty's subjects, "and a poor man, may be entitled to that right and justice of which my country boasts her supremacy "throughout the world. I have now for some twelve months past devoted my whole time, neglecting "all other things, to obtain that right and justice. I find myself more placed in difficulties than "I was before I commenced the proceedings. I have travelled far and wide, through all states of "weather and all exposures, to obtain that right. I have claims against myself which I am anxious "to pay. I have, with difficulty, maintained my wife and child, depending all on the settlement of my "claim—not to say the settlement now, but the payment. If the payment is not made me by the "Government authorities, the consequences will be I shall be proceeded against by my fellow-country-"men, and the consequences will be, I shall become, perhaps, the inmate of a Gaol. The Maori is "never troubled with such an unpleasant alternative as the European in many instances is. Trusting "your Excellency may give this your consideration, I beg to remain, your Excellency's most obedient, "humble servant, &c." The Government declined to interfere. The petitioner's fears that he might become the inmate of a gaol proved prophetic, for, within a twelvemonth, he was arrested for debt, at the suit, not as he anticipated of one of his fellow countrymen, but of a Maori Chief.

110. In the Courts of inferior jurisdiction the case is the same. The European plaintiff is compelled to trust to the sense of right or of interest in the Native debtor. Cases have occurred in which proceedings have been instituted against influential Natives, not in any expectation that the judgment of the Court could be enforced, but as a mode of bringing pressure upon the Government. To avoid the danger of attempting a levy upon the goods of the Native defendant, the Government has, in some cases, paid the demand. The Resident Magistrates have occasionally taken upon them to refuse the issue of a summons in civil cases. A civil summons against Wiremu Kingi himself was, some years since, refused to a New Plymouth settler. In order to get rid of the improper pressure upon Government which has been above adverted to, it was provided by "The Resident Magistrate's Court Act, 1858," that "it shall be lawful for any Resident Magistrate to delay, so long as he shall deem it "expedient to do so, the enforcing of any judgment obtained in such Resident Magistrate's Court "against an aboriginal Native." This power was acted on in a recent case although the defendant was in the town of Auckland.

111. Such being the degree of obedience to the decisions of Courts of Law, on purely civil questions, which it is found practically possible to exact from the Natives of New Zealand, it will readily be supposed that in cases of crime, whether committed by Natives against Europeans, or by Europeans against Natives, they are not very tractable. In cases of the former class, the surrender of the offender, if obtained at all, is invariably a matter of negociation. In cases of the latter class, the Natives always evince, more or less, a desire to take the law into their own hands, and to use violence both towards the offender (or supposed offender) himself, and towards his unoffending countrymen. Cases of murder or homicide cause very great excitement. Native custom requires that life shall pay for life, and is not particular as to the victim. It is sufficient to mention, as instances of such occurrences as are referred to in this paragraph, the case of the Kawau powder robbery, Sutton's case, Marsden's case, and the late case of the death of a Native, by means unknown, in the neighbourhood of Auckland.

112. Least of all are the Maories inclined to endure any judicial, or other interference, with questions of territorial claims. This fact is noted by the first Governor of New Zealand, in a despatch, of which an extract appears in the Appendix (71). Captain Hobson intimates his fear, with reference to this very Taranaki question, that Te Wherowhero "will not be governed by abstract rights, but

(71) *Governor Hobson*, App. p. 15.

will rather take the law into his own hands." The case is not altered in the least since Governor Hobson's time.

113. The present administration, perceiving, what no one can fail to perceive, the danger of such a state of things, but at the same time fully aware of the difficulties, proposed, in 1858, a tentative and flexible measure by which a regular jurisdiction in such cases might by degrees be established through the co-operation of the Natives themselves. For this purpose it was proposed to enact that "any question of, or affecting the Native title to, or right of occupancy over, lands comprised in "any Certificates issued under the Act, may be determined by the Governor in Council, or otherwise "as the Governor in Council shall appoint." It was intended that the Executive Council should act through the medium of the Native Circuit Courts, established by an Act of the same Session. The Bill was reserved for the signification of Her Majesty's pleasure, who was advised to withhold Her assent.

114. In communicating this determination to the Governor, Lord Carnarvon, in his despatch of the 18th of May, 1859, expressed himself as follows:—"It is no doubt most desirable that the disputes "of the Natives respecting the right to land should no longer be settled by arms;" but, "I am bound "to ask myself whether, in case the decisions of the Governor in Council on titles to land should be "resisted by the Natives, the British Government are prepared to promise such a Military force as "may be sufficient to enforce them." "If, as is the case, no such expectation can be held out, it is "more than questionable whether the moral influence of the European Government would not suffer "by the issue of certificates of title, which the Natives would be at liberty to disregard with "impunity."

115. A jurisdiction impracticable elsewhere in New Zealand was certainly not practicable in New Plymouth. The state of the district before the commencement of the present insurrection, is notorious, and the cause is notorious. Speaking of a temporary lull in the feud, between those Natives who desired to sell, and the opposite party, Dr. Thomson in his late work on New Zealand, observes, "The feud, however, is not settled. The cessation of hostilities is more an armistice than a peace, "and its permanence will only be secured by the Government purchasing the disputed lands." (72.)

(72) *Story of N. Z., by A. S. Thomson, M.D.* vol. ii. p. 259.

116. The animosity of the parties at feud was inveterate, and their cruelty horrible. The greatest atrocities were practised under the eyes of the settlers, and in the midst of their farms. In this respect there was nothing to choose between the two Native factions. It isnot proposed to enter upon any lengthened detail of occurrences, but a sample shall be given which will show the spirit by which either faction was animated. In the first extract an European eye-witness describes the fate of Katatore and his party, when waylaid by Tamati Tiraurau, brother of Ihaia.

"The ambuscade fired a volley . . . . One of them presented a gun at Rawiri's heart, and fired. "He was badly wounded, rolled from his horse, struggled with his enemy for a short time, and was "seized by his hair and tomahawked in an awful manner. It was a sickening sight to see the poor "fellow imploring mercy, the blood streaming down his face in torrents, and the ruthless savage pro- "tracting his agony by a pause between the blows. Katatore dismounted, and fled up the road; he "was shot down about 800 yards off and his head fearfully beaten with a gun; he was also "tomahawked." (73.) This scene took place on the high road in the Bell Block.

(73) *Hollis, Taranaki Herald.* 16 Jan. 1858.

117. The next specimen is a speech addressed by Wiremu Kingi to the Taranaki tribe, who were then assisting him against Ihaia.

"Men of Taranaki be strong! Be brave, and capture Ihaia, Nikorima, and Pukere as payment "for the *tapu* of Taranaki and the Umuroa. Then we will stretch out their arms and burn them with "fire. To prolong their torture let them be suspended over a slow fire for a week, and let the fire "consume them. Like the three men of old whom Nebuchadnezzar commanded to be cast into the "fiery furnace, even as Shadrach, Meshach and Abednego, shall it be with Ihaia." (74.)

(74) *Ib.* 17 Apr. 1858.

118. There can be no doubt as to the reality of the intention thus announced by Kingi. When Mr. Fenton, late Resident Magistrate of the Waikato District, was on one of his circuits in Waikato, letters came up from the Natives at Taranaki, which he read himself, in which it was stated that it was intended to roast alive Ihaia and his men, who were then invested in the Karaka Pa by Wiremu Kingi. Ihaia and his people contrived to escape; but, as an index of the fate which would have befallen human occupants of the Pa, all the animals taken within it were burnt alive.

119. Is it credible that a man, still, in all respects, an essential savage, varnished over with the thinnest coating of Scripture phrases, who had defied Governor after Governor, whose power, supported by violence, had long been steadily on the increase—that such a man would have voluntarily submitted to any possible jurisdiction in the matter of his territorial pretensions that could have been proposed? To affect, with Sir William Martin, a judicial caution in answering this inquiry (p. 61) is absurd. It is plain he would not.

120. Kingi's preparations for armed resistance, long before the commencement of hostilities, are undeniable. He did not need to accumulate warlike stores, having always been well provided with arms and ammunition. But he prepared his pa in the bush, so that he might be ready for hostilities at any moment—ready, as he threateningly said to Mr. Parris, "to go to the mountains" (75). So far back as April, 1859, his *runanga* wrote to the Waikato King party for support (76), and his emissaries were despatched in various other directions. His old allies, the Taranakis and Ngatiruanuis, were fully prepared to support him in enforcing his and their determination, that the Pakeha's boundaries should be Waitaha and Okurukuru. Surely it must be evident, even to the writer of the pamphlet, what were the arguments Kingi was prepared to adduce, and in what forum he meant to contend. He meant, it is plain, to make good his own words, and to show to all his adversaries that "land-selling brings death."

(75) *Teira's Letter. Gen. Ass. Papers,* 1860. E. 3, p. 7.

(76) *Ibid,* p. 8.

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121. As so much pertinacity has been displayed in asserting the practicability of dealing with the question of King's pretensions according to regular judicial modes of procedure, it has seemed desirable fully to expose the absurdity of such a view. This, however, is more than was needed to establish the conclusion in favour of the Governor's jurisdiction arrived at on grounds already stated. If trial by a Court, independent of the Executive Government, had been as easy as it was impracticable, the circumstance would not invalidate this conclusion. But if the Governor had jurisdiction, he was justified in asserting it in the only practicable mode, viz., by force; in other words *the Governor being of right sole judge of questions respecting Native Territorial rights was justified in enforcing his jurisdiction in the only practicable mode, viz., by military occupation.*

122. The second part of the fourth, and last, of the Government propositions takes a partially distinct ground, and vindicates the taking possession of the Block for the Crown in its capacity of purchaser. It will be recollected to be as follows:—*The taking possession of the Block was lawful on the further ground that the rights of the apparent owners, (after due enquiry) had been ceded to the Crown.*

123. It is believed that this is a perfectly sound position, needing no separate defence or explanation. It will be remembered that the Crown's possession was expressly declared (*ante* § 94) *to be without prejudice to the rights of any who might afterwards come forward.* Such persons could have nothing to complain of, as long notice had been given of the pending inquiry.

124. There is one question which the preceding observations must necessarily suggest. It may be asked, "if the Natives of New Zealand are unwilling to submit to any authoritative settlement of "their territorial rights, was it expedient, in the New Plymouth case, to attempt interference?" Sir William Martin takes something like this position at p. 59, and again at p. 73. But he goes on to argue that it was not *lawful* for the Governor to take the course he did, whereas the only real question is as to the expediency. This question of the expediency of the proceedings which resulted in the present war, even more clearly than the question of the justice of those proceedings, belongs to the past, and it is not proposed to enter upon it here. In order to a correct understanding of what is involved in the question, it must not be forgotten, that the enforcement of law amongst the Natives of Taranaki involved the assertion of jurisdiction in their land quarrels, as the great source of disorder. And perhaps it may be thought that, in the very midst of a British settlement the enforcement of law was an inevitable duty. Sir William Martin himself appears to think so (p, 107). Certainly as regards Natives whose presence in the district was only due to British moderation, and who had themselves sought the shelter of the British flag, such a course was perfectly just.*

125. In March, 1859, the settlement of Taranaki presented the New Zealand difficulty in an aggravated form. The absolute intermixture in that district of the two races, and the assertion of the Maori nationality, in its purely evil form, as a bar to the further progress of European colonisation (for this was Kingi's real posture) produced a state of things to which measures, elsewhere applicable for the gradual introduction of Civil government amongst the Natives, did not apply. The diet and regimen of health are not remedies for acute disease. It may be said that the remedy attempted, in the announcement of the Governor's determination to enforce law, was imprudent. Perhaps the imprudence (if there has been imprudence) was of older date, and was committed when the settlement of Taranaki—or even when the Colony of New Zealand—was founded. If so, there was no real imprudence, but rather wisdom, in anticipating an inevitable struggle.

## VI. THE CONSEQUENCES.

126. In this section of the Pamphlet, the author, conceiving himself to have demonstrated the injustice of the Governor's proceedings in Taranaki, enlarges upon the evil results. "A number of "persons" he says (p. 112) "saw *that which they could not doubt to be their own land*, taken from "them by force. That which the best disposed amongst the Natives had refused to believe possible, that "which the worst disposed had foretold, and made a subject of agitation, had now taken place. Was 'it possible that such a state of things should exist without producing the worst effects on the minds "of such a people as this? The inevitable result of the course pursued in this matter was to weaken "indefinitely every influence for good which was at work amongst the Natives, and to strengthen "indefinitely every influence for evil. An immense impetus in the wrong direction was given to the "schemes of Maori agitators, an impetus which they could not have acquired in any other way."

127. The writer, it will be observed, has passed from mere doubt, as to the title of the selling Natives (which was his state of mind at p. 63,) to certainty, at p. 112, that they are not entitled; for he declares that their opponents "could not doubt" that the land occupied by the troops was "their own." It will be recollected that Sir William Martin, by a similar leap in his logic, effected the transition from "title in the community" at page 2 *et seq.* to "tribal right" at page 33. A fore-gone conclusion is a snare which catches the most cautious writers.

128. To those who reject the author's prior conclusions, the section now under review will prove nothing. Portions of the Native population are in a state of insurrection, other portions greatly excited, and disaffection upon the increase. Still, it cannot fairly be inferred that the Governor has been unjust. There are other sufficient causes for all, and more than all, that we witness.

(77) App. p. 41.

129. The speeches of the Natives at the Ngaruawahia meeting (77) suffice to shew what was the

* How completely the repression of crime involved the Land-question, appears from Mr. Reimenschneider's letter (*ante* § 78). Land holding is but the means, Native independence is the end.—See § 132.

true source of the strong resentment felt in Waikato at the course pursued in Taranaki. It was that the Governor should have dared to purchase land in a district where the Maori King's flag had flown, and still more that he should have ventured to assert the rights of the Crown and of the selling Natives, by force of arms. Even with those who adopted the most modest and friendly tone (the Chief Ruihana for example) it was a subject of complaint that the Governor had acted without reference to the King's *runanga*, "The Governor ought," said they, "to have informed *us* before he went to Taranaki; but "he went first, and informed us after."

130. These Chiefs did not pretend to come to a conclusion as to the relative rights of TeTeira and Wiremu Kingi, having, as it seems, less proficiency than some of their European friends in the learning of tribal title. But they were full of alarm and resentment at the assertion of British authority. Unfortunately, the vigour and success of the Military operations in Taranaki did not vindicate, in the only way which would have been recognized in Waikato, the Governor's right to rule the country. Disaffection spread—not because injustice had been done, but because authority had been asserted—because authority had been asserted, and resistance had not been effectually put down.

131. There is not much to object to in Sir William Martin's account of the Waikato King movement. It is not a revolt. It cannot be, for British rule has never been established. Therefore, there can be no need that we should reproach ourselves with the rise of a determination to "cast off our govern-"ment" (p. 116). It is clear that the promoters of the King movement, viewed as a Land League, which was always its principal aspect, sought from the beginning, and still seek, as their primary object, the maintainance of the Nationality of the Maori race. Even Sir William Martin is compelled to admit (p. 90) that one object of the promoters of the King Movement was the maintenance of the Maori Nationality "*against the Pakeha.*" Now let all credit be given, and not a little is due, to the more intelligent Chiefs for their moderation and good sense; but it does not require much knowledge of human nature in general, or of Maori character in particular, to perceive, that such an object as the maintenance of their Nationality cannot possibly have been subordinate, in the general mind, to an enlightened desire for the establishment of Law and order; or have been consistent with any very profound feeling of friendship for the Pakeha, the adversary *against* whom the Maori Nationality was to be upheld, and who is described to them by some of their advisers, as "the flood which is to drown New Zealand."

132. The King party saw, indeed, "that they needed some government, and that the Pakeha could not, or would not supply it." But who will say that they desired that the Pakeha should supply the needed control? Some of them would have accepted advice and guidance, but none were willing to submit to rule. They were, on the contrary determined that the British power should not be established, and as the only effectual means to this end, they resolved on the prohibition of the further cession of Territory. This is admitted on all hands. "This restriction of land sales" says Sir William Martin, (p. 90) "is no "doubt intended partly as a means of securing their own nationality against the Pakeha, and of se-"curing a fair field for the operation of the new system."

133. The opposition of the King party to the Governor upon the Waitara question is therefore perfectly intelligible, They were bound to fight for the King's flag which had been carried to Waitara, and for the sovereignty (mana) of New Zealand; they were bound to support all opposition to the extension of the European Territory. Sir William Martin's implied assumption that nothing but injustice would have arrayed them against the Government is therefore perfectly gratuitous. Proofs of this from the declarations of the King party might be indefinitely multiplied, but no further proof can be wanted.

134. Considering what was the retrograde state of the New Plymouth district, as described by himself (p. 110), it is singular that the author should represent the action of the Governor as assailing "a recent and imperfect Christianity and a commencing civilization" (p. 115). Surely he does not contend that the Governor attacked the King movement when he determined to control the disorder of the Ngatiawa. Waikato is plainly the aggressor in the existing war.

135. In what the Author says respecting the aroused distrust of "men amongst the Natives "of a more considerate nature, men who can estimate the largeness of the peril, and calculate the "consequences both ways," (p. 113) there is, doubtless, some truth. The Natives spoken of have close relations with gentlemen who, unfortunately, share Sir William Martin's views. It cannot be supposed that the conduct and motives of the Government have been placed before these Chiefs in any light which would allay their apprehensions. The time, no doubt, is critical; for the leading minds amongst the Natives now perceive how great a change awaits their race. Many things may lead them to fear a social and a moral degradation as the result of our advance. It is not wonderful that they draw back from closer contact with us, and are alarmed to see our power put forth. The fears of the Natives can be calmed, and the peace of the country secured, only by a Policy which sincerely seeks, not their's, but them. In this one thing there is agreement (whatever he may think,) between Sir William Martin and the Governor's Advisers.

136. It is impossible to follow the writer of the Pamphlet throughout his whole disquisition upon the general policy of Government towards the Natives. Time only allows the notice of a few prominent points.

137. At p. 104, the author seems to glance at the abandonment in the Waikato District of the attempt to follow out the policy of the Native Acts of the Session of 1858, which were intended to introduce a species of Local self-government amongst the Natives, under the guidance of an European

Magistrate. Whether the course taken were or were not a wise one, it is material to observe, that its motive was the apprehended jealousy of the older Native Chiefs, and especially of Potatau. It was no supineness on the part of the Governor, but a real or supposed indisposition on the part of the Natives to receive the new institutions, which was the cause of failure.

138. At p. 117 the Conference of Chiefs with the Governor, held at Kohimarama, near Auckland, is described; and it is represented, that the persons invited were, with few exceptions, such as were known to be friendly to the Government. This is contradicted by the Native Secretary, who asserts the fact to be, that the Chiefs were selected with reference to their position and influence in the country, and fairly represented the leading Tribes. The meeting can, with no kind of truth, be represented as packed. At p. 118 the writer asserts that the statement made to the meeting by the Native Secretary, in justification of the proceedings of the Government, "was not complete, nor in all points accurate." It is impossible to reply to so indefinite an assertion. On the same page it is, stated, that the assent of the meeting to the statement was *invited,* and the author goes on to say "This was an unfortunate use to make of such an Assembly." The Native Secretary denies that any such invitation was given, and declares that the explanatory statement referred to was not made until it had been repeatedly asked for by the Chiefs themselves.

139. The author is quite wrong in representing, at p. 122, that the Native Offenders' Bill was a measure levelled at the King Movement. Such a notion appears to have been actively propagated by agitators amongst the Natives, and this circumstance made the Government less unwilling to acquiesce in the rejection of the Bill; but the opinion was unfounded. The measure was originally introduced in the Session of 1856, on occasion of the Kawau powder robbery, before alluded to. Its purpose was (1) to provide means of enforcing the law against Native offenders, it being impossible to send a Military force into their districts, and (2) to establish, in cases of actual insurrection, a blockade of the rebellious district. The House rejected the Bill in 1856, and, in 1860 it was again introduced. It was not directed, or intended to be used, against the King movement, but against actual, open, rebellion. The declaration of a district as in a state of insurrection is the proper function of the Crown, and not of any judicial body. This is recognised in British legislation. (78) The author comments upon the unconstitutional character of the measure, and treats the Bill as if its severities were reserved for Natives. The fact is that the penalties of the Act were, as is manifest on perusal, more for Europeans than for Natives. The principal penalty, in the case of the Natives, was the restraint of trade, and the enforcement of non-intercourse with Europeans. Such a measure is in entire conformity both with the practice of Blockade, and with the Native usage of *tapu,* as is established by many witnesses, European and Native. The measure was, and is, approved of by many whose knowledge of the Natives is unsurpassed.

(78) 43 *Geo.* 3, *c.* 117. 11 & 12 *Vic.*, *c.* 2

140. At p. 125, Sir William Martin, still on the subject of the Native Offenders' Bill, expresses himself as follows:—"Strange, also, it was to hear that constitutional rights, and the fundamental maxims "of English law were to be simply dismissed as having no bearing upon the question; and that by persons "who had professed emphatically and repeatedly that the Native people should be subjected in all "things to one equal law with ourselves; as though those principles and maxims were merely local and "conventional rules, accidentally applicable to *one time* and *one state* of society, and not to *all times* "and *all states,* so long as human nature shall remain the same." If Sir William Martin means to contend that in a *state* of civil war and in *times* of rebellion, it is practicable, with due regard to the public safety, to maintain all the usual constitutional rights and privileges of Englishmen, it is not necessary to waste a word in refutation of such an opinion. If, on the other hand, in the sentence cited the word "times" is used as an equivalent for "ages," and "states of society" is understood as not including the state of anarchy, or of civil war, the sentiment is in the main a just one, but does not help the author's argument against the Native Offenders Bill. That the Natives should be subjected "to one equal law with ourselves," is what every one desires, but no one thinks, or has pretended, to be yet possible.

141. It is characteristic of one who, for sixteen years, held the chief judicial office in New Zealand without an effort to supply those Institutions with the absence of which he now reproaches the Government, that he makes no practical suggestion for the termination of the present difficulties. The sole apparent purpose of the last fifty pages of the pamphlet is to enforce the necessity of a just and honest policy. No doubt the writer sincerely believed that so simple a lesson was needed. In this he has not done justice to his opponents, but has allowed the blind spirit of controversy to master a naturally impartial mind. There are no politicians in New Zealand who maintain, as he alleges (p. 129), that the Natives can only be governed by demonstrations of physical force, and that justice in our dealings with them may be dispensed with, as a needless refinement. Sir William Martin may safely be challenged to make good his words. He may be challenged to adduce one single act, or declaration, of any man of standing in the Colony which would justify his imputations. No one can seriously maintain that any Government, more especially one which, if it does its duty, must hold in check the passions of two such races as have met in New Zealand, can wholly rely upon moral influence. Sir William Martin himself appears to stipulate for "a moderate force." This is all which any one has ever asked for.

142. None desire to place exclusive trust in Force, but there are not a few who hold that without it our justice will never be believed in; that without it our moderation will continue to be mistaken by the majority for weakness; that without it our "plain promises" cannot be "plainly kept"; that the weak will continue to be the prey of the strong, and those who are ready for friendly union be overborne by a savage horde which forbids escape from the barbarism of tribal life; that

without force, our policy cannot become, what it should be, "perfectly open, and friendly, and straightforward," but will remain timid and shifty; that we can never "deal with the Natives as our fellow subjects" until they become such, not in name only, but in deed.

143. If the hope of such a consummation is not to be abandoned, the Governor must be enabled to maintain the just and safe position which he has assumed upon the Waitara question, and a mistaken enthusiasm must not be suffered to compass the ruin of the Colony, and the ultimate destruction ot the Maori people. To have saved and civilized the Native Race, would, deserve to be reckoned amongst the highest achievements of a Christian civilization. Sir William Martin assumes that success in this great work lies in our power. It may be so. This, at least, is certain, that success will require the exercise of the active, as much as of the passive virtues, and that acquiescence in the anarchy of a Race which we have undertaken to govern, may be as selfish, and almost as shameful, as tyranny itself.

C. W. RICHMOND.