"to the term of Terra Regis or Crown Land. Antiquaries inattentive to this change of language, have "bewildered themselves among copy-holds and commons in search of the folcland of their ancestors."

The view thus taken by the Imperial Government of the respective rights of the Crown and of the Aboriginal subjects in the territory of the Colony, is clear and distinct; but it was objected to by the Natives, and was never carried into practice, and in fact could not have been, in a peaceful manner.

By the 10 and 11 Vic. c. 112 the several provisions relating to the settlement of the Waste Lands of the Crown contained in the 13th chapter of the said Instructions (of 1846) except such as relate to the registration of titles to land, the means of ascertaining the Demesne Lands of the Crown, the claims of the Aboriginal inhabitants to land, and the restrictions on the conveyance of lands belonging to Natives, unless to Her Majesty, were suspended in New Munster.

The proceeds of land sales were, amongst other things, to be applied in and about the compensation to be made to the Aboriginal inhabitants of New Zealand for the purchase or satisfaction of their claims, rights, or interests in the *said demesne lands*.

The additional instructions of 1850 speak of Crown lands to be settled by Pensioners and by Aboriginal Inhabitants. Further additional instructions of 1850 direct an account to be kept of the proceeds of land sales and the expenses of management of the demesne of Her Majesty in right of Her Crown.

14 and 15 Vic. chap. 84, empowers Her Majesty to make or to authorize the Governor to make, regulations for the disposal of the demesne lands of the Crown in Wellington, New Plymouth, and Nelson.

It thus appears that a gradual change took place in the interpretation put by the English Authorities on the territorial rights of the Aborigines between the years 1846 and 1851, and the Constitution Act clearly contemplates the practical exclusion of land in which the Native interest is still unextinguished, from the category of "Waste Lands." Thus, from being considered as the demesne lands of Her Majesty in right of her Crown, subject or not to a certain payment to be made, the unoccupied territory of the Colony in the hands of the Aborigines has come to be regarded as their distinct and admitted property, but inalienable to any person other than the Crown—presenting another curious point of resemblance to the folcland of the Saxons. An interest in land of this nature must be considered of a high character, although not cognizable by an English Court of Law in such a way as to confer a valid title to the Elective franchise as averred by the Law Officers of the Crown in England. An interest in land may be, and in this case is, valuable, although unknown to the ordinary law of England, and in fact all that can be said on this subject may be summed in this: that if the Crown having entered into a treaty to acknowledge and protect this interest, whatever be its exact character, finds the existing law does not enable it to carry out its treaty and guarantee, it is absolutely necessary that the requisite power should be conferred by Legislation, so that the Crown may fulfil its obligations.

Having then a valuable interest in land required for an undertaking greatly beneficial to the public at large, can the Natives be deprived of their interest in such land without their consent, *i.e.*, can the land be compulsorily taken, and if so by what authority?

The consideration for the cession of Sovereignty by the Maoris was expressed in two items, although the first is, in law, included in the second. 1. The guarantee of the territorial rights. 2. Their admission in the Empire as British subjects with all their "rights and privileges." These rights are succinctly stated by Blackstone as "the right of personal security, the right of personal liberty and the right of private property;" because, as there is no other known method of compulsion or of abridging man's natural free will but by an infringement or diminution of one or other of these important rights, the preservation of these inviolable, may justly be said to include the preservation of our civil immunities in their largest and most extensive sense. The right of private property being one of the rights which the Maoris now hold under the sanction and guarantee of the law of England, can clearly neither generally nor in a specific case be diminished or interfered with by any other authority than that which has the power of dispensing with or altering the law, that is, the Sovereign power of the Empire. But this Sovereign authority is competent to destroy a private interest when public necessity requires such a step to be taken. "By the right called *dominium eminens* (which is a part of the Sovereign authority and one of the *jura magistratis*) the State has a power over all property within it in cases of necessity and where such power is required for the public welfare; but where, in the exercise of this power, private property is taken or injured, compensation must be made by the State or otherwise." (Bowyer Pub: Land.) "It, (the Imperial Parliament) has Sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, revising and expounding of laws concerning matters of all possible denominations, ecclesiastical or temporal, Civil, Military, Maritime, or Criminal; this being the place where that absolute despotic power, which must in all Governments reside somewhere, is entrusted by the constitution of these Kingdoms. All mischiefs and grievances, operations and remedies that transcend the ordinary course of the laws, are within reach of this extraordinary tribunal. . . . . It can in short do everything that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament." Bl. 1. 175.

The power of legislating for a dependency acquired by conquest or cession is to a certain extent, and only until provision is made for the constitution of a Local Legislature, vested in the Crown; but from the time that a Local Legislature is established, this power of the Crown ceases, and cannot be revived. (Clarke, Chitty, &c.)

Whilst then legislation is necessary before this extraordinary power can be exercised, the Crown is shut out by the many Charters and Acts of Parliament which have been made during the time that this Colony formed part of New South Wales, and since 1840 and ultimately, and most conclusively by the Constitution Act. As a distinct power, therefore, the Crown will only appear in this enquiry, in its Executive character, and the case will now appear thus:—The Crown or its delegate being unable to exercise the power suggested by its own authority, it follows that the interposition of the Imperial Parliament or its delegate is required to create the necessary power.

It will be simpler to treat the matter in the first place, as between the Crown and the Parliament of the Empire, and afterwards to enquire whether they, or either of them, have delegated such authority to any person or body in the Colony, as may enable such person or body to exercise the required function.

The principal of English law is clear, that a subject may not be disseized of his land (including in that term any and every interest in land) except by operation of the law, or under the authority of an Act of Parliament specially made.

"Even for the general good of the whole community, no unnecessary violation of the rights of "property is in any instance allowed by our law. If a new road, for example, is to be made through the "ground of a private person, in a case where it would be extremely beneficial to the public, the Legisla-