

a portion of its subjects. The previous acts of the Crown may now very fairly be used as evidence by adverse claimants. Moreover, we doubt very much whether the doctrine expressed is a good doctrine even in politics; certainly, in courts of law, in matters of right affecting the Crown, it must be held to be a bad doctrine.

The Court therefore sees no reason for departing from the rule which was acted upon in the case of the Oakura Block. We exclude from compensation all persons who, having been expelled by force from this block of land previously to the year 1840, have never re-occupied, excepting such of them as have been recognized as owners by the Government or its officers.

We find the block called Waitara South divided into two distinct portions, the Puketapu and the Waitara. The Puketapu portion of this block is part of a larger estate, comprising originally in addition the Bell Block and all the land as far as the Waiwakaiho River, owned by a clearly defined set of people called the Puketapu. When the Bell Block and the other portion of this estate were sold, certain of the absentee claimants were recognized by the Government as owners, and received portions of the purchase money. We feel ourselves bound, then, to recognize the rights of these persons over the remaining portion of this estate now taken under the Settlements Acts. The persons, then, admitted are as follows. [Then follow the names of forty-two claimants.] Rawiri Whatino will also be admitted, he having produced an undertaking signed by Mr. McLean that his claims at Waiongana should be recognized whenever that land was purchased; also, Riwai Te Ahu, for the reason stated below.

The only absentee whom we find to have been distinctly recognized by Government in the Waitara portion is Ropoama te One. But, in addition, we sanction the claims of Riwai te Ahu and Piri Kawau over this block; although they have never actually repossessed themselves of any portion of their land since the expulsion of the tribe by the Waikato. We think this exception may justly be made, because their absence from Maori kiangas has been caused by their adoption of civilized employments, one in the Church, and one in the Government, which absolutely prevented their returning to their tribes and re-occupying their land in Maori fashion.

A considerable number of claimants now absentee have also maintained their rights by having returned and cultivated the soil between 1840 and the present time. These persons will be admitted as resident owners, and will appear amongst that class.

The claims disallowed for non-appearance, and other similar claims, amount to 149.

The claims disallowed for non-possession, or occupation for a time insufficient to warrant the belief in a domiciliary intention, are 238.

We were proceeding with the evidence on the side of the claimants when the Crown Agent announced that negotiations were being undertaken, and the Court adjourned to give the parties time and opportunity to agree.

Ultimately an arrangement was made, and the claims were all withdrawn to our satisfaction.

The Court did not think it its duty to inquire what were the terms of the agreement, but it appeared on the document withdrawing the claim that the rights of the Maoris (*inter se*) were to be settled by the Native Land Court at some future time.

As the case for the Crown had not commenced I am unwilling to enter upon the question of merits. Indeed I am unable to do so. We have no judicial knowledge of any Military Settler having been placed on this block.

I wish to add that the conduct of the Natives during the sitting of the Court was decorous in the extreme. The number attending I estimate at 400.

I beg, in conclusion, that it may be remembered, that in order to save the mail I have been compelled to write this statement in great haste, and have been unable to revise it. Some expressions may therefore require explanation, which I shall be happy to render when called upon.

1st August, 1866.

F. D. FENTON.

P.S.—I adjoin an extract from Burns' admirable chapter on the maxim "Salus populi," &c. The whole chapter should be read in connection with this question.

Extract from *Burns' Legal Maxims*: "Salus populi suprema lex."

"In the familiar instance likewise of an Act of Parliament for promoting some specific object or undertaking of public utility, as a turnpike, navigation, canal, railway, or paving Act, the Legislature will not scruple to interfere with private property, and will even compel the owner of land to alienate his possessions on receiving a reasonable price and compensation for so doing. But such an arbitrary exercise of power is indulged with caution: the true principle applicable to all such cases being that the private interest of the individual is never to be sacrificed to a greater extent than is necessary to secure a public object of adequate importance.

"The Courts therefore will not so construe an Act of Parliament as to deprive persons of their estates, and transfer them to other parties without compensation, in the absence of any manifest or obvious reason of policy for thus doing, unless they are so fettered by the express words of the Statute as to be unable to extricate themselves, for they will not suppose that the Legislature had such an intention; and as was observed in a recent case, where large powers are entrusted to a company to carry their works through a great extent of country without the consent of the owners and occupiers of land through which they are to pass, it is reasonable and just that any injury to property which can be shown to arise from the prosecution of these works, should be fairly compensated to the party sustaining it, and likewise it is required that the authority given should be strictly pursued and executed."

No. 2.

Copy of a Letter from Mr. W. S. ATKINSON to the Hon. NATIVE MINISTER, New Plymouth.
New Plymouth, 29th June, 1866.

SIR,— I have the honor to enclose for your information the answer of Mr. Parris, Native Agent, to my letter of this date, offering certain terms to the Native claimants in the Oakura Block, and also forward my reply to same.

The Honorable the Native Minister,
New Plymouth.

I have, &c.,
W. S. ATKINSON,
Crown Agent.