

The claims of the Maori owners of adjoining lands stand on a better basis. Such claims have been tacitly admitted in practice to have some force. (See Mr. Williamson's and Mr. Mackay's evidence.) Their equitable value is not inferior to that of the claims to *terra firma* recognized by "The Native Lands Act, 1862." The Treaty of Waitangi, which is supposed to cede all prerogative rights to the Crown, cannot with wisdom or policy be insisted on, in the face of that Act, for the purpose of establishing any proprietary or usufructuary rights on the part of the Crown or the Colony. It would be inconsistent with past practice reaching back to a period long before the passing of "The Native Lands Act, 1862," and impolitic with a view to the early and peaceful extension of the gold fields and of colonization generally, to insist on any such rights in the present case. At the same time the prerogative rights, however fictitious, may be binding on the Courts of Law. I therefore propose the following as Resolutions to be adopted by the Committee:—

1. That it is expedient that the Legislature should avoid any action purporting to regulate the occupation of or mining in land between high and low water-mark, such land being probably subject to special prerogative rights and jurisdiction.

2. That no obstacle should be interposed to the enjoyment of the usufruct of such land by the Native owners of the adjoining lands, or such other Natives as by Maori custom would be entitled thereto.

3. That the Government should accordingly be requested to exercise the powers vested in them under "The Gold Fields Amendment Act, 1868," by issuing annual prospecting licenses to such persons as may have entered into *bonâ fide* agreements with the persons who according to Maori custom would be owners of such land, and by enforcing the penalties of the 5th section of the Act against all others who shall mine thereon.

4. That for the purpose of ascertaining who would, according to Maori custom, be such owners, a Commission of Inquiry be issued to one of the Judges of the Native Lands Court.

5. That a case should be prepared by Government and submitted to the Secretary of State for the Colonies, reciting the terms of the Treaty of Waitangi, if any, which are supposed to cede prerogative rights to the British Crown; the other grounds, if any, for supposing that such rights exist; the nature of the legislation in the Colony on the subject of Native lands; the existence of royal metals in many places on such lands; and the particular circumstances connected with the auriferous sea beach of the Hauraki Gulf which now raise the question of prerogative rights. That the Secretary of State be requested, if it shall appear that such prerogative rights exist, to lay the matter before Her Majesty, and with her approval to submit proposals to Parliament for renouncing such rights within the Colony of New Zealand, or for empowering the Colonial Legislature to deal effectually for regulating the administration thereof.

J. C. RICHMOND.

3. By the Chairman.

In the preamble of the Bill the prerogative of the Crown is declared. This is traversed by the claims of the Natives. They claim surface rights, such as fishing, &c., and also the right to the gold beneath the surface. Query: Have such claims ever been admitted in the Colony? Would the Native Lands Court recognize such claims?

Whether, considering the assertion of prerogative rights in the preamble of the Bill, the rights proposed to be determined in clause 2 can be said to have any existence, clause 9 of "The Gold Fields Act Amendment Act, 1868," notwithstanding?

The prerogative rights of the Crown being indisputable, whether the rest of the Bill (clauses 3 to 7) is not *ultra vires*?

Supposing it to be decided by the Committee that legislation in the direction indicated in the Bill is, notwithstanding the above considerations, desirable, how will the Native, mining, and other interests be affected by the Bill as proposed?

As to the Native claims, it is proved in evidence that a claim is set up, by the owners of the land above high water-mark, to the surface rights of the fore-shore, and also to the gold lying beneath it. If, for the sake of peace and good-will to the Natives, this claim be admitted, it does not appear that sufficient provision is made in the Bill for the satisfaction of such claim.

As to the mining interest, it is not judicious to allow mining on auriferous lands outside the limits of proclaimed gold field. The evidence, or the opinion of all the witnesses who were examined on this point is in opposition to clause 6 of the Bill, which proposes such a course.

The position of parties who have pegged out ground on the fore-shore, and now hold it under miners' rights, or under registration of mining companies:—These claims are pegged out in contravention of law, and the parties concerned have no legal claim to the ground.

The undersigned is therefore of opinion that all action should be stayed with respect to the fore-shore in question, and the Proclamation of reserve made in January of this year be maintained until such time as an Imperial Act can be obtained, permitting the Colonial Legislature to deal with all questions of this description. This will appear the more necessary when we consider that the Native Lands Court not having jurisdiction over the land in question, no Native claiming to be an owner could be legally recognized, and agreements made by such Native could not be recognized by the Supreme Court.

As to the mode of dealing with the land in question, and other lands in the same position which may in future have to be dealt with, when legislation can be properly applied to them, it is suggested—

- 1st. All dealings with Natives by private parties should be absolutely prohibited.
- 2nd. All lands known to be auriferous should be proclaimed within the limits of a gold field, and subject to mining regulations.
- 3rd. The surface rights between high and low water-mark should be held as a reserve or endowment for the gold field.
- 4th. No surface rights should be sold or otherwise alienated.
- 5th. No mining rights should be leased by auction or otherwise disposed of, but the ground thrown open under the Gold Field Acts