

## OPINION OF THE ATTORNEY-GENERAL AS TO THE LEGAL STATUS OF THE MAORIS NOW IN ARMS.

THE opinion of the Attorney-General was requested, by direction of the Hon. the Colonial Secretary, on 23rd June, 1869, in the following terms:—"The concluding paragraph of Earl Granville's despatch "No. 30, of 26th February, 1869, implies that the Maoris now in arms against the Government are a "foreign enemy, or, at all events, 'belligerents,' with whom 'the usual laws of war' must be observed. "The Attorney-General is requested to state his opinion how far this is true, and to define the legal "position of the Maoris according to the existing law."

I am required, as I understand, to state whether, in my opinion, the Maoris now in arms are to be treated as belligerents, with whom the usual laws of war must be observed; or whether they are to be treated as criminals guilty of treason in levying war against the Sovereign; and secondly, to define the legal position of the Maori inhabitants of New Zealand, particularly with a view to the question, whether they are bound to obey the laws of the land, and are liable to punishment for the infraction of such laws equally with the white population of New Zealand?

The second question seems to be properly considered before the first. There can be no doubt that Her Majesty the Queen is Sovereign over the whole of New Zealand. Questions were at one time raised on this subject, even by those whose opinions were undoubtedly entitled to great consideration. I do not think it necessary or expedient to argue this question. It seems to me that I shall best serve the object with which the question is put to me, if I state what the doubts were which at one time were raised, and the manner in which those questions have, for all practical purposes, been disposed of.

In the years 1842 and 1843 this question was much debated. Mr. Swainson, the then Attorney-General for New Zealand, argued that only those Maori tribes which had actually acknowledged the Queen's sovereignty over them, could be deemed British subjects, or be held amenable to our law. At page 474 of House of Commons Papers on New Zealand, vol. iv., is printed a copy of an opinion by Mr. Swainson on a matter in which he considered that this question arose. He says, "I have elsewhere "given my opinion that those tribes only which have acknowledged the Queen's sovereignty can be "deemed British subjects, and are amenable to our laws. Whether the Native Tangaroa is so amenable "for any act he may have committed depends upon the circumstance whether the aggressor and the "suffering party belong to tribes acknowledging the Queen's authority, and whether the scene of action "was within the British Dominion."—(27th December, 1842.)

The opinion the Attorney-General refers to as having been given by him elsewhere, is referred to in the Minutes of the Executive Council of New Zealand, held at about the same period (29th December, 1842), and the opinion is said to be annexed and marked J. K. That opinion is not, I believe, to be found; but the Attorney-General, at that meeting of the Executive, was called upon by the Officer administering the Government to express his opinion on the subject, and did so. The Minutes, so far as they bear directly on the question, are as follows:—

His Excellency requested that the Executive Council would give their opinions on the following questions:

1. "Are the Islands of New Zealand British territory?"

The Colonial Treasurer: "I consider the whole of the Islands of New Zealand British Territory."

The Attorney-General: "No."

"2. Whether the whole of the aboriginal race of New Zealanders are British subjects and amenable to British law?"

The Colonial Treasurer: "I consider they are all British subjects, and amenable to British law."

The Attorney-General: "I consider that the title of Great Britain to the sovereignty of New Zealand rests partly upon discovery, partly upon cession, partly upon assertion, and partly upon occupation: that from these sources conjointly, as against all other nations, and as to British subjects, I think Great Britain has a title to the sovereignty over the whole of New Zealand, and that she "possesses the right of pre-emption of territory from the Natives, and has the power to regulate "trade and commerce with other Nations; but as to those tribes who have never ceded the sovereignty "and who refuse to acknowledge the Queen's authority, I think that Great Britain has not the right, "nor would it be consistent with good faith, to impose upon them her penal code."

In acknowledging the Despatch communicating these opinions, the Secretary of State, Lord Stanley, writes as follows:—"It appears to me, however, indispensable to advert, with the least possible "delay, to the opinions maintained by the Attorney-General of New Zealand regarding the extent of "Her Majesty's dominion in the Island of New Ulster.

"Mr. Swainson, if I rightly recollect his meaning, draws the following distinction:—He appears "to hold that the Queen's sovereignty over the New Zealand Islands cannot be controverted on behalf "of any foreign country, or by Her Majesty's subjects of British birth, but that it is impossible to assert