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The New Zealanders and their Lands

Dandeson Coates

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THE NEW ZEALANDERS AND THEIR LANDS.

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THE REPORT
SELECT COMMITTEE OF THE HOUSE OF COMMONS,
ON
NEW ZEALAND,
CONSIDERED IN A
LETTER TO LORD STANLEY,

BY DANDESON COATES , ESQ.

LONDON:
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T. C. JOHNS, PRINTER, RED LION COURT, FLEET STREET,

THE NEW ZEALANDERS &c. &c.

THE NEW ZEALANDERS,

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&c. &c.

MY LORD,

IN the course of the present Session of Parliament, Mr. Aglionby, with your Lordship's concurrence, obtained the appointment of a Select Committee, "to enquire into the state of the Colony of New Zealand; and into the proceedings of the New Zealand Company." The Report of the Select Committee was presented to the House on the 29th of July, and ordered to be printed. The Report itself, with "the Minutes of Proceedings," is now before the public. It is within my knowledge that the tenour and recommendations of the Report, and the resolutions appended to it, have excited very strong feelings of solicitude and alarm in the minds of those friends of Christian Missions, who have become acquainted with the contents of these documents. The ground of this solicitude and alarm is, that the recommendations of the Select Committee's Report are considered as unjust and injurious to the Natives, with regard to their lands, and as involving a breach of the stipulations of the Treaty of Waitangi, under the sanction of which the sovereignty of the Island was ceded to the British Crown by the assembled Chiefs in 1840. Such

being the impression made by the Report of the Select Committee, I am persuaded that I need not apologize to your Lordship for examining how far there is any ground for it. The questions raised are closely connected with the welfare of the Natives of New Zealand, and with the honour and good faith of the country; and on these grounds call for consideration. My own long connexion with the CHURCH MISSIONARY SOCIETY, and by consequence with New Zealand, through its Missions there, may also be alleged as a vindication of myself for addressing your Lordship on this subject.

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I. The object of the Select Committee, in the course which they recommend, as fully developed in their Report, is to acquire for the Crown such a proprietary right over the lands of New Zealand, as may facilitate the advantageous colonization of the country by British subjects. In the prosecution of this object the Select Committee censure the recognition of the independence of New Zealand, and the Treaty subsequently entered into at Waitangi with the Native Chiefs, as the representatives of an independent and sovereign State, and attempt, as it appears to me unsuccessfully, to explain away and invalidate the engagements entered into with the Chiefs by the British Crown. The following passages from the Report of the Select Committee, and the Resolutions appended to it, will, I believe, correctly exhibit their views and reasoning: –

"The sovereignty over these islands had, at an earlier period, been formally disclaimed, and their independence had been distinctly recognized, both by the Crown and by Parliament. This course had been pursued because it was considered (and by no means upon light grounds) that it was not advisable to extend British dominion in these distant regions; but in adopting this policy it was overlooked, both by the advisers of the Crown and by Parliament, that it was impossible to check the tide of emigration which set so strongly towards

the shores of New Zealand, and that the regular establishment of British power was the only practicable mode of guarding against the evils which could not fail to follow from permitting a large number of Europeans to settle among its uncivilized inhabitants, without being subject to any legitimate authority or control. Looking back at what was then done, with the light to be drawn from subsequent experience, there is no room to doubt that it would have been far better if British dominion over these islands had been asserted as early as 1832, or even 1825; but a different policy having been at that time pursued, it was considered, in the year 1839, when Captain Hobson was sent out, that the difficulties which had thus been created could only be got rid of by obtaining from the natives their assent to the extension of the authority of the British Crown over New Zealand. Acting under the instructions he had received, Captain Hobson, therefore, immediately on his arrival in New Zealand, at the beginning of the year 1840, concluded, with a large number of the chiefs of the Northern-Island, a treaty known by the name of the Treaty of Waitangi, by which, in return for their acknowledgment of British sovereignty, they were promised protection, and guaranteed in the possession of all lands held by them individually or collectively. The evidence laid before Your Committee has led them to the conclusion that the step thus taken, though a natural consequence of previous errors of policy, was a wrong one. It would have been much better if no formal treaty whatever had been made, since it is clear that the natives were incapable of comprehending the real force and meaning of such a transaction; and it therefore amounted to little more than a legal fiction, though it has already in practice proved to be a very inconvenient one, and is likely to be still more so hereafter. The sovereignty over the Northern Island might have been at once assumed, without this mere nominal treaty, on the ground of prior discovery, and on that of the absolute necessity of establishing the authority of the British Crown for the protection of the natives themselves, when so large a number of British subjects had irregularly settled themselves in these islands, as to make it indispensable to provide some means of maintaining good order amongst them. This was

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the course actually pursued with respect to the Middle and Southern Islands, to which the Treaty of Waitangi does not even nominally extend; and there is every reason to presume that, owing to the strong desire the natives are admitted to have entertained for the security to be derived from the protection of the British Government, and for the advantages of a safe and well-regulated intercourse with a civilized people, there would have been no greater difficulty in obtaining their acquiescence in the assumption of sovereignty than in gaining their consent to the conclusion of the treaty; while the treaty has been attended with the double disadvantage, first, that its terms are ambiguous, and, in the sense in which they have been understood, highly inconvenient; and next, that it has created a doubt which could not otherwise have existed, and which, though not, in the opinion of Your Committee, well-founded, has been felt, and has practically been attended with very injurious results, whether those tribes which were not parties to it are even now subject to the authority of the Crown.

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"Your Committee have observed that the terms of the treaty are ambiguous, and in the sense in which they have been understood, have been highly inconvenient. In this we refer principally to the stipulations it contains with respect to the right of property in land. The information which has been laid before us shows that these stipulations, and the subsequent proceedings of the Governor founded upon them, have firmly established in the minds of the natives notions, which they had then but very recently been taught to entertain, of their having a proprietary title of great value to land not actually occupied; and there is every reason to believe that, if a decided course had at that time been adopted, it would not have been difficult to have made the natives understand that, while they were to be secured in the undisturbed enjoyment of the land they actually occupied, and of whatever further quantity they might really want for their own use, all the unoccupied territory of the islands was to vest in the Crown by virtue of the sovereignty that had been assumed.

"Your Committee have already mentioned, that it is one of the fundamental principles of colonial law and policy, which they believe to have been correctly laid down by Sir G.

Gipps, that 'the uncivilized inhabitants of any country have but a qualified dominion over it or a right of occupancy only; and that until they establish

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amongst themselves a settled form of government, and subjugate the ground to their own uses by the cultivation of it, they cannot grant to individuals not of their own tribe any portion of it, for the simple reason, that they have not themselves any individual property in it.' Unfortunately the original instructions given to Captain Hobson, when he was sent out for the purpose of establishing British dominion in New Zealand, were not sufficiently precise upon this most important point; they contained directions as to the manner in which he was to proceed in purchasing land from the natives, and they did not (as Your Committee think that they ought to have done) clearly lay down the rule that sovereignty being established, all unoccupied lands would forthwith vest in the Crown, and that, except in virtue of grants from the Crown, no valid title to land could be established by Europeans. This mode of framing the instructions seems to have led the first Governor into the error of acting throughout upon the assumption that no part of the extensive and unoccupied territory of New Zealand was to be considered as belonging to the Crown, or available under its authority for the purposes of settlement, until first regularly sold by the natives: this is not indeed distinctly stated in the treaty of Waitangi; had it been so, this treaty would probably have been attended with less injurious consequences than it actually has been, since in that case there can be little doubt that it would have been at once disallowed by Her Majesty's Government; at least it is clear that the treaty could not have been understood either by the Governor of New South Wales or by the Secretary of State, in the sense put upon it by Captain Hobson, since both expressed their approbation of it, though the former had previously laid down the very different principle upon this subject already quoted; and the then Secretary of State, Lord John Russell, after he had received and approved of the treaty, adopted in the most formal and authentic manner the views of Sir George Gipps. By the advice of Lord John Russell, in the month of December 1840, a Charter passed the great seal, by which New Zealand was erected into a separate and independent

colony; and this charter was transmitted, together with instructions under the Royal Sign Manual, to the Governor, Captain Hobson. In this charter and instructions, 'actual occupation and enjoyment' are clearly pointed out as alone establishing a right of property in land in the natives; and the rule is laid down that all other lands must be considered as vested in the Crown, in virtue of the sovereignty that had been assumed, and that they must be dealt with accordingly. The treaty of Waitangi (which had previously reached England and been approved), it may therefore fairly be assumed, must, when this charter and the instructions which accompanied it were forwarded to the colony, have been understood as bearing a meaning not inconsistent with the terms in which they are couched. The lands held 'collectively,' of which the possession was guaranteed to the aboriginal inhabitants of New Zealand, must, therefore, have been regarded as the lands actually occupied by them, and cultivated in common by a tribe, in the manner frequently practised, and the forests as those actually used for cutting timber.

"This is the interpretation which, consistently with the ancient and acknowledged principles of colonial law as laid down by Sir George Gipps, and consistently also with the terms of the charter of the colony and of the Royal instructions to the Governor, ought to have been put upon the treaty; had it been so, the most serious of the evils which have since arisen would have been avoided. If native rights to the ownership of land had only been admitted when arising from occupation, there would have been no difficulty in giving at once to the settlers secure and quiet possession of the land they required, and they would thus have been able to begin without delay and in earnest the work of reclaiming and cultivating the unoccupied soil. The proceedings of the Commissioners appointed to inquire into the claims to land would also then have been short and simple; they would have had to inquire merely whether lands actually occupied by natives had been fairly sold to settlers by the occupants, and with respect to wild lands, whether Europeans claiming to have purchased them had done so at such a price, or had incurred such an expense in respect of them, as to give to the supposed purchasers not a right to the lands (for they

could not derive a title from parties who did not themselves possess one), but a claim on the consideration of the Crown to have granted to them as an indulgence more or less, according to circumstances, of the lands they had nominally purchased. With respect to the New Zealand Company, as the extent of land to which they were entitled had been already settled by a special agreement with the Government and the award of Mr. Pennington, they would at once have been put in possession of all that very large proportion of the land on which they proposed establishing settlements which was previously wild and unoccupied; and the question to be determined by the Commissioners would have reduced itself to that of whether those inconsiderable portions of lands 'actually occupied and enjoyed' by natives had been fairly sold by the occupants, – a question the decision of which, one way or the other, would have been comparatively unimportant.

"To have proceeded in this manner, and to have assumed at once all unoccupied land to belong to the Crown as a right inherent in the sovereignty, would have been attended with no sort of injustice to the natives, and would have been conducive, to their real interests. The unoccupied land, previously to European settlement, was of no value to them; they were neither a pastoral people, nor one living, like the North American Indians, by the chase, and therefore requiring a great extent of country for their support; they derived their chief subsistence from the produce of the soil and agriculture, rude as it was, and, according to the witnesses who have been examined by Your Committee, hardly a thousandth part of the available land was thus made use of by them."¹

The following Resolutions are to the same effect: –

"2d. – That the conclusion of the Treaty of Waitangi by Captain Hobson with certain Natives of New Zealand, was a part of a series of injudicious proceedings, which had commenced several years previous to his assumption of the local Government.

"3d. – That the acknowledgment by the local authorities

of a right of property on the part of the Natives of New Zealand, in all wild land in those Islands, after the sovereignty had been assumed by Her Majesty, was not essential to the true construction of the Treaty of Waitangi, and was an error which has been productive of very injurious consequences.

"6th. – That means ought to be forthwith adopted for establishing the exclusive title of the Crown to all land not actually occupied and enjoyed by Natives, or held under grants from the Crown; such land to be considered as vested in the Crown for the purpose of being employed in the manner most conducive to the welfare of the inhabitants, whether Natives or Europeans."²

II. In order properly to appreciate the principles and reasons embodied in the foregoing Extracts from the Select Committee's Report and Resolutions, it will be requisite that I should enter at some length into the history of the acknowledgment of the independency of New Zealand – the formation of the Treaty of Waitangi – and the acts and proceedings of the Home and Colonial Governments in reference to them.

I purposely omit all reference to the question of the expediency or in expediency of the colonization of New Zealand by this country – though my opinions on that question are unaltered – and shall limit myself to a consideration of the case as presented in the Select Committee's Report.

In 1831, a Letter was addressed to His late Majesty, King William the Fourth, by the Chiefs of New Zealand, assembled at Kerikeri, soliciting him to become their "friend and the guardian of these islands."³ In the reply to this Letter, Lord Goderich, then Colonial Secretary, June 14, 1832, informs the Chiefs that James Busby, Esq., was appointed to reside among them "as His Majesty's Resident;" and they were solicited to "render to the

Resident that assistance and support which" were "calculated to promote the object of his appointment, and to extend to" their "country all the benefits which it" was "capable of receiving from its friendship and alliance with Great Britain."⁴

Thus at the very outset of official intercourse with the Chiefs of New Zealand, their relation to Great Britain is described as an "alliance;" a term which distinctly recognises the national independence of New Zealand.

The Instructions of Sir Richard Bourke, then Governor of New South Wales, to Mr. Busby, April 13, 1833, proceed throughout on the principle that he was to occupy the position of "British Resident" with an independent and sovereign State. "It has been thought proper," he states to him, "to appoint a British subject to reside at New Zealand in an accredited character, whose principal and most important duty it will be to conciliate the good will of the native chiefs, and establish upon a permanent basis that good understanding and confidence which it is important to the interests of Great Britain and of this colony to perpetuate."⁵

In the year 1835, in consequence of an attempt on the part of Baron De Thierry to establish himself as "sovereign Chief of New Zealand" – on the ground of the invitation of some Chiefs, and purchases made by him of others – an assembly of "the hereditary Chiefs and Tribes of the northern part of New Zealand," took place at Waitangi, on Oct. 28, 1835, at which meeting the independence of their country was solemnly declared. The second Article of the Declaration of independence opens thus: – "All sovereign Power and Authority within the Territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary Chiefs and Heads of Tribes in their collective

Capacity." By the fourth Article, a copy of the Declaration was to be sent to His Majesty the King of England, and "they entreat that He will continue to be the Parent of their infant State, and that He will become its Protector from all Attempts upon its Independence." In the same Article they thank His Majesty "for his Acknowledgment of their flag,"⁶ which was a recognition of their national independence. Page 12

In 1838 the Home Government came to the determination "of appointing an officer, invested with the character and powers of British Consul, at New Zealand,"⁷ and Captain Hobson, R. N., was selected for the situation. It is almost superfluous to remark, that this designation implies the recognition of the national independence of New Zealand, and accordingly Captain Hobson received from Lord Palmerston "the General Instructions to Her Majesty's Consuls" for the guidance of his official conduct.⁸ This point, however, does not rest on inference. The recognition of New Zealand "as a sovereign and independent State" is explicit in the following extract from Lord Normanby's Instructions to Captain Hobson, August 14, 1839, on his appointment, and not less so the renunciation of "every pretension to seize on the islands of New Zealand."

"We acknowledge New Zealand as a sovereign and independent state, so far at least as it is possible to make that acknowledgment in favour of a people composed of numerous, dispersed, and petty tribes, who possess few political relations to each other, and are incompetent to act, or even to deliberate, in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen, in common with Her Majesty's immediate predecessor, disclaims, for herself and for her subjects,

every pretension to seize on the islands of New Zealand, or to govern them as a part of the dominion of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained."⁹ Page 13

Captain Hobson was authorized "to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any parts of those islands which they" might "be willing to place under Her Majesty's dominion."¹⁰ The British Government thus distinctly recognised and affirmed the obligation to keep national faith on their part, while fully aware of the difficulty on the part of the New Zealand Chiefs, in their actual circumstances, adequately to maintain the independence and sovereign rights which they were acknowledged to possess.

Captain Hobson reached New Zealand on the 29th of January, 1840. He immediately sought the co-operation of the Missionaries – Church and Wesleyan – in carrying his instructions into execution. Aided by their thorough acquaintance with the language and manners of the Natives, and not less so by their enjoying the entire confidence of the Natives, Captain Hobson entered into full communication with the Chiefs of the northern part of the Northern Island. The result was the Treaty of Waitangi, which was entered into on the 6th of February, 1840, and which received the signature of Captain Hobson and 512 New Zealand Chiefs. As this document is of very great importance in reference to the present question I copy it at length.

"Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, regarding with Her Royal favour the native chiefs and tribes of New Zealand, and anxious to protect their just rights and property, and to secure to them

the enjoyment of peace and good order, has deemed it necessary, in consequence of the great number of Her Majesty's subjects who have already settled in New Zealand, and the rapid extension of emigration both from Europe and Australia, which is still in progress, to constitute and appoint a functionary properly authorized to treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands. Her Majesty, therefore, being desirous to establish a settled form of civil government, with a view to avert the evil consequences which must result from the absence of the necessary laws and institutions, alike to the native population and to Her subjects, has been graciously pleased to empower and to authorize me, William Hobson, a captain in Her Majesty's Royal Navy, Consul and Lieutenant-governor over such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent chiefs of New Zealand to concur in the following articles and conditions: – Page 14

Article the First. – The chiefs of the confederation of the united tribes of New Zealand, and the separate and independent chiefs who have not become members of the confederation, cede to Her Majesty the Queen of England, absolutely, and without reservation, all the rights and powers of sovereignty which the said confederation or individual chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective territories, as the sole sovereigns thereof.

Article the Second. – 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 collectively 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 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 on that behalf. Page 15

Article the Third. – In consideration thereof, Her Majesty the Queen of England extends to the natives of New Zealand Her royal protection, and imparts to them all the rights and privileges of British subjects.

(signed) W. HOBSON.

Now therefore, we, the chiefs of the confederation of the united tribes of New Zealand, being assembled in congress, at Victoria, in Waitangi, and we, the separate and independent chiefs of New Zealand, claiming authority over the tribes and territories which are specified after our respective names, having been made fully to understand the provisions of the foregoing treaty, accept and enter into the same in the full spirit and meaning thereof.

In witness whereof, we have attached our signatures or marks at the places and dates respectively specified.

Done at Waitangi, this 6th day of February, in the year of our Lord 1840.

(512 Signatures.)¹¹

New Zealand being at that period a dependency on the Government of New South Wales, the Treaty was transmitted to the Home Government through Sir Geo. Gipps, the Governor of that Colony. In the Letter, 5th and 6th of February, covering the transmission of the Treaty, Captain Hobson thus describes the circumstances incident to the meeting of the Chiefs at Waitangi: –

"The business of the meeting then commenced by my announcing to the chiefs the objects of my mission, and the reasons that had induced Her Majesty to appoint me. I explained to them in the fullest manner the effect that might be hoped to result from the measure, and I assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's Government in the transaction. I then read the treaty, a copy of which I have the honour to enclose; and in doing so, I dwelt on each article,

and offered a few remarks explanatory of such passages as they might be supposed not to understand. Mr. H. Williams, of the Church Missionary Society, did me the favour to interpret, and repeated in the native tongue, sentence by sentence, all I said.

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"When I had finished reading the treaty, I invited the chiefs to ask explanations on any point they did not comprehend, and to make any observations or remarks on it they pleased. Twenty or thirty chiefs addressed the meeting, five or six of whom opposed me with great violence, and at one period with such effect, and so cleverly, that I began to apprehend an unfavourable impression would be produced. At this crisis the Hokianga chiefs, under Neni and Patawoni, made their appearance, and nothing could have been more seasonable. It was evident, from the nature of the opposition, that some underhand influence had been at work. The chiefs Rewewah and Jakahra, who are followers of the Catholic bishop, were the principal opposers, and the arguments were such as convinced me they had been prompted. Rewewah, while addressing me, 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.

"At the first pause, Neni came forward and spoke with a degree of natural eloquence that surprised all the Europeans, and evidently turned aside the temporary feeling that had been created. He first addressed himself to his own countrymen, desiring them to reflect on their own condition, to recollect how much the characters of New Zealanders had been exalted by their intercourse with Europeans, and how impossible it was for them to govern themselves without frequent wars and bloodshed, and he concluded his harangue by strenuously advising them to receive us and to place confidence in our promises. He then turned to me and said, 'You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!'"¹²

I earnestly entreat your Lordship's careful attention to these statements of Captain Hobson, disclosing, as they do, the views and feelings under which the Chiefs, on their part, entered into the engagements of the Treaty of Waitangi.

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The following extract of a Letter from Lord John Russell to Sir George Gipps conveys the entire approbation of Her Majesty's Government of the measures adopted in the establishment of the British authority in New Zealand; that establishment, be it remembered, being derived exclusively from the stipulations of the Treaty of Waitangi.

"I have received your despatches . . . reporting the measures which you had adopted in conjunction with Captain Hobson for giving effect to the intentions of Her Majesty's Government in establishing British authority in New Zealand, and transmitting the reports which you had received from that officer of his proceedings, on his arrival at the Bay of Islands.

"Her Majesty's Government entirely approve of the measures which you adopted, and of the manner in which they were carried into effect by Captain Hobson."¹³

On November 10, 1840, Lord John Russell, writing direct to Captain Hobson – New Zealand being then constituted an independent government – and referring to Captain Hobson's proceedings up to the 25th May, adds: – "As far as it has been possible to form a judgment, your proceedings appear to have entitled you to the entire approbation of Her Majesty's Government."¹⁴

The Treaty of Waitangi thus received the fullest approval and sanction of all the British authorities at home and abroad, and binds the faith and honour of the British Crown as strongly as any other Treaty with any foreign power whatsoever.

Such, then, are the obligations which the recommendations of the Select Committee seem to me to nullify or evade. A brief examination of the grounds on which those recommendations rest may suffice for this part of the subject.

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The Report concedes that "the sovereignty over these Islands had, at an earlier period, been formally disclaimed, and their independence had been distinctly recognized, both by the Crown and by Parliament." "But," the Report affirms, "in adopting this policy it was overlooked, both by the advisers of the Crown and by Parliament, that it was impossible to check the tide of emigration which set so strongly towards the shores of New Zealand, and that the regular establishment of British power was the only practicable mode of guarding against the evils which could not fail to follow from permitting a large number of Europeans to settle among its uncivilized inhabitants, without being subject to any legitimate authority or control." What do the Committee mean by "the regular establishment of British power?" Do they wish that the House of Commons and your Lordship should infer that the antecedent recognition by the Crown of the independence of the Islands – so early as 1832 – should be violated to facilitate the flow of the tide of emigration toward the shores of New Zealand? This, however, is an inference which I venture to believe neither the advisers of the Crown, nor Parliament, will adopt. If this be not meant, how could "British power" be more regularly established than it was by the Treaty of Waitangi?

Again. "It was considered, in the year 1839," the Committee observe, "when Captain Hobson was sent out, that the difficulties which had thus been created could only be got rid of by obtaining from the natives their assent to the extension of the authority of the British Crown over New Zealand." Do the Committee intend,

my Lord, that it was erroneously considered obligatory on the British authorities to obtain "from the natives their assent to the extension of the authority of

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the British Crown over New Zealand" – when the British Crown, by the Committee's admission, had previously "distinctly recognized" its national independence?

The Committee refer to the Treaty of Waitangi, "by which," they state, "in return for their" (the Chiefs') "acknowledgment of British sovereignty, they were promised protection, and guaranteed in the possession of all lands held by them individually or collectively," and then pronounce the step thus taken to have been "a wrong one." Why? The only reason that I can perceive is, that this guarantee is a hindrance in the way of obtaining possession of the Natives' lands.

The Committee further remark: – "It would have been much better if no formal treaty whatever had been made, since it is clear that the natives were incapable of comprehending the real force and meaning of such a transaction." Again I ask, Is it meant that it would have been better for the British Crown to have assumed the sovereignty of the Island without regard to the consent or wishes of the Chiefs, after their independence had been "distinctly recognized," both by the Crown and Parliament? But it is said that "the Natives were incapable of comprehending the real force and meaning of such a transaction." And is this asserted after the affecting appeal of Neni to Captain Hobson at Waitangi – "You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!" – and when Nopera Parakaria, in his speech at the signing of the Treaty at Kaitaia, said, "The shadow of the land goes to Queen Victoria, but the substance remains with us?"¹⁵

An extract or two from Major Bunbury's Despatch to

Captain Hobson, June 28, 1840, will further illustrate the views and apprehensions of the Chiefs on this head. Writing from Cloudy Bay, he says – "The whole of these" (the Chiefs) "refused to sign the treaty, under the impression that if they did so their lands would be taken from them." Again, in the same Letter – "To show how much these people have been harassed about their lands, and how jealous they are in preserving this species of property, they all objected to receive presents after signing, least by some quibble I might construe it as a payment for its surrender, until they were again assured to the contrary."¹⁶ Surely, these are clear proofs that the Natives well comprehended "the real force and meaning" of the transaction.

It is farther said by the Committee, that "the sovereignty over the Northern Island might have been at once assumed," "on the ground of prior discovery." The claims of the British Crown to an interest in New Zealand, on the ground of prior discovery, as against a foreign power, may be conceded; but I do not perceive how such a claim, as against the Aborigines of the country, can be reconciled with the principles of honesty and justice, to say nothing of humanity and benevolence. But be that as it may, what is to be thought of the Committee's suggestions, when they had themselves recorded it as an undoubted fact that the Native sovereignty and the independence of the Island had been "distinctly recognized," both by the Crown and by Parliament?

But the Committee have a further fault to find with the Treaty. "Its terms are ambiguous." Allow me, my Lord, again to copy the terms of the second Article. "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 collectively or individually possess, so long as it is their wish and desire to retain the same in their possession." I cannot discern the ambiguity ascribed to this language. It explicitly "confirms and guarantees to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof," – what? "the full, exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties which they may" "possess" – how? "collectively or individually" – how long? "so long as it is their wish and desire to retain the same in their possession." To me, my Lord, the language appears studiously large and full, and to constitute an effectual guarantee – so long as national faith shall be kept – against the Natives being wrongfully dispossessed of their lands.

But before I quit this point, I would remind your Lordship that it is an established principle in construing a document of this kind, if the terms of it be really ambiguous, that that construction should be against the party using such ambiguous words. On this ground, therefore, even were the terms of the treaty ambiguous – which, however, I think I have shown they are not – the legitimate construction of them would establish that right of the Natives to their land, for which I contend.

The Committee further charge it upon the Treaty, that "the sense in which they" (its terms) "have been understood," has been "highly inconvenient." Now, my Lord, in what sense have the terms of the Treaty been understood? They have been understood by Captain Hobson and by the Natives, the immediate parties to the Treaty, and by the Government, which confirmed it, as absolutely securing to the Natives "the full, exclusive, and undisturbed possession of their, lands and estates, forests, fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession;" that is, until their lands shall be alienated by themselves on terms which they

deem equitable. As to these terms being considered "highly inconvenient," I do not understand how such can be the case, so long as it is not sought to acquire the lands of the Natives on other than such terms as they deem fair and equitable. If the Natives have demanded terms immoderately high, it has been probably occasioned by the too rapid influx of emigrants. At all events the inconvenience, if it be one, is not to be rectified by the violation of a Treaty to which the national faith is pledged.

The Committee proceed a step further, and declare that the Treaty "amounted to little more than a legal fiction." What! an instrument which they themselves describe as a "formal treaty?" Yes, my Lord, such is the language applied by the Select Committee to this "formal treaty," entered into with a declaredly independent and sovereign State by an officer of the Crown duly authorized to act in its behalf by one of the King's principal Secretaries of State, and which was subsequently confirmed and ratified by that high functionary. Surely, my Lord, language like this must have been employed without due consideration. I cannot bring myself to believe that the noblemen and gentlemen constituting the majority which adopted this Report, could deliberately intend to explain away and nullify the force of an instrument, to which the national faith and honour are pledged, by language like this. At all events, I am persuaded that your Lordship will not regard any "inconvenience" which may flow from adhering to the stipulations of the Treaty, as a warrant for treating it as "a legal fiction."

I must detain your Lordship by a reference to one other passage of the Report. "By the advice of Lord John Russell, in the month of December 1840, a Charter passed the great seal, by which New Zealand was erected into a separate and independent colony; and this charter was transmitted, together with instructions under the Royal Sign Manual, to the Governor, Captain Hobson." In this Charter, and the Instructions which

accompanied it, the right of the Natives to land "actually occupied or enjoyed by such natives," is recognized and received. The terms of that clause of the Charter to which the Committee refer are these: –

"Provided always, that nothing in these our letters patent contained shall affect or be construed to affect the rights of any aboriginal natives of the said colony of New Zealand, to the actual occupation or enjoyment in their own persons, or in the persons of their descendants, of any lands in the said colony now actually occupied or enjoyed by such natives."¹⁷

It is with very great pain that I proceed to remark on this part of the Report.

I beg it may be remembered, my Lord, that the Committee admit that the Articles of the Treaty of Waitangi were framed by Capt. Hobson, "upon the assumption that no part of the extensive and unoccupied territory of New Zealand was to be considered as belonging to the Crown, or available under its authority for the purposes of settlement, until first regularly sold by the natives." They admit that these "stipulations" (of the Treaty,) "and the subsequent proceedings of the Governor founded upon them, have firmly established in the minds of the natives "the conviction that they possessed an universal proprietary right in the lands of New Zealand, and that this right was secured to them by the Treaty. They admit that "the then Secretary of State, Lord John Russell," "had received and approved of the treaty" – and that too after he was in full possession of Capt. Hobson's construction of the Article in question – previously to granting the Charter which contains the above clause. They admit that Mr. Spain, who was sent out from this country by Lord John Russell to investigate land-claims in New Zealand," in common with the Governor and the other

colonial authorities, adopted the conclusion that no land could be considered as vested in the Crown which could not be shown to have been fairly purchased from the natives." They then assert that "after" (the Committee's own italics) Lord John Russell had thus "approved of the treaty," he "adopted in the most formal and authentic manner the views of Sir George Gipps" – one of which was that "the uncivilized inhabitants of any country have but a qualified dominion over it or a right of occupancy only" – and then they say, in the words already quoted, "In this charter and instructions 'actual occupation and enjoyment' are clearly pointed out as alone establishing a right of property in land in the natives; and the rule is laid down that all other lands must be considered as vested in the Crown, in virtue of the sovereignty that had been assumed, and that they must be dealt with accordingly." In other words, the Committee would appear to represent Lord John Russell as attempting, by a clause in the Charter constituting New Zealand a British Colony, to set aside the stipulations of a Treaty antecedently formed by a duly authorized Agent of the Government – a Treaty which, after it had been made, was formally approved and sanctioned by Lord John Russell himself! I trust, my Lord, the House of Commons will not adopt these views of their Committee, and sanction such doctrine as this, and by their influence, as a branch of the legislature, force them upon the Executive Government. The doctrine of the Committee seems to me to be this. A Treaty is entered into with a power admitted to be sovereign and independent. A certain construction is put upon one of the Articles of the Treaty, by the party who framed it and the parties who acceded to it, and the working of this Article being thought to be practically "inconvenient," the party who is subjected to the supposed inconvenience is at liberty, by its own separate act, to discharge itself of the obligation to observe the Treaty: in effect, with

regard to a most important stipulation, to reduce it to a nullity; or rather, by such act, to turn the execution of it into a positive wrong! The only principle on which such a proceeding can be rested is – that Great Britain is powerful, and New Zealand is weak. I cannot believe that reasoning like this would have been ventured upon in order to invalidate the plain sense of a Treaty in any discussion of a similar kind between this country and France, the United States, or any other powerful nation, and I earnestly hope it will be rejected by the House of Commons and by your Lordship.

I would further remark that the Charter is silent as to any lands being vested in the Crown. It guards the right of the Natives to lands "actually occupied or enjoyed by such natives;" but it does not limit protection to such lands. If it did (1), the Charter could not alter the Treaty antecedently formed and ratified, and must be construed so as not to affect any right, thereby secured to the Natives; (2), the word "enjoyed" must receive an interpretation more extensive than "actual occupation." I may "enjoy" unenclosed ground, if it be only that on which my neighbour has no right to build or enclose without my leave, though at present I make no use of it myself.

With regard, however, to the terms of the Charter – "actual occupation or enjoyment" – they cannot be fairly construed in the sense which the Committee have put upon them. They seem to assume that "occupation" and "enjoyment" are synonymous terms. It is, however, unquestionable, as just stated, that in all countries a proprietary right in land is enjoyed where in many cases the land is not actually occupied for agricultural, mining, or other purpose. The right to change the site of residence, or of cultivation; to fish in this or that river, or part of a river; or to roam over a wide tract of country at pleasure; is a species of "enjoyment," if not, in strictness, of "occupation." And this right the

Charter, concurrently with this Treaty, guarantees to the Natives.

But waving, for a moment, this extent of claim on behalf of the Natives, it is admitted on all hands that rights of some kind or other the Natives have in the lands of New Zealand. It is, therefore, the plain dictate of justice, altogether apart from the obligations contracted by the Treaty of Waitangi, that those rights should be ascertained, and, when ascertained, held sacred.

I do not overlook the constant denial in the Report of those proprietary rights to the lands of New Zealand claimed by the Chiefs, and adopted by Captain Hobson as the basis of the Treaty of Waitangi. My reply is, that the uniform and unvarying testimony of the Missionaries is affirmative of the proprietary right of the Natives to the whole of the lands of New Zealand. The long residence of the Missionaries in the Island, their thorough acquaintance with the language of the Natives, and their close and constant intercourse with them, give peculiar weight to their opinion on this subject; and their testimony to the effect just stated has been repeatedly given. It is within my knowledge that the assumption 'that there are certain tracts of land in New Zealand which do not of right belong to any Chief or Tribe,' was brought under the notice of the Missionaries about twelve months since; and that the reply of one of them – the only reply at present received – was, The assumption "is without foundation. We have not been able to ascertain a single case of the kind."

An illustration of this fact, extracted from the Journal of the Rev. A. N. Brown, is recorded in the Church Missionary Gleaner for December 1842. In a journey into the interior he came into the vicinity of Tongoriro, a snow-capped mountain, probably 6000 feet high, and its summit an unextinguished crater. At Te Rapa Mr. Brown fell in with Captain Symonds and Dr. Dieffenbach, who were exploring the neighbourhood

for scientific purposes. Leaving these gentlemen, who had been to Tongoriro, Mr. Brown the next day proceeded thither himself, and states: – "Captain Symonds and his party were very anxious to ascend the mountain-top; but the Natives opposed it, on the ground of its having been made sacred by their forefathers; and that if the tapu were violated, some evil would befall them. 'They offered us gold,' remarked the old Chief to me: 'had they brought some Testaments, we would have consented to their going up the mountain. Tell the strangers, when you see them again, that if they return in the summer, and bring Testaments with them, the tapu shall be removed from the mountain.'"¹⁸ I do not now dwell upon the evidence which this passage incidentally affords of the value which the Natives set upon the Scriptures, and their strong desire to obtain copies of them. I adduce it as affording a strong presumption of the universal ownership of land in New Zealand by some Chief or Tribe; for if the crater of a volcano, on a mountain covered with snow, be private property, it is difficult to suppose any spot on the island which is not so.

Before I lay down the Report of the Committee, there are some passages in it bearing on another subject, to which I beg your Lordship's attention. The Committee say: "It appears to us that there has been a want of vigour and decision in the general tone of the proceedings adopted towards the natives." Again: "It is necessary to

observe that the policy we recommend requires for its safe adoption, in the present state of affairs, that the Governor of New Zealand should have at his disposal more power than he now possesses of enforcing obedience to his authority." And yet, while adopting this language, and seeming to apprehend resistance on the part of the Natives, they coldly remark, "We have no doubt that civilization and intelligence, in the event of a struggle, would maintain their accustomed superiority." The Committee add: "Your Committee cannot offer these recom-

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mendations, tending to what may be thought a more severe enforcement of authority over the natives, without, at the same time, expressing their strong sense of the duty incumbent upon the Government of adopting the most effective measures for their welfare and improvement." These, my Lord, are portentous and alarming sentences. A recommendation deliberately recorded by a Select Committee of the House of Commons tending to "a more severe enforcement of authority over the natives!" My hope for the Natives is, that your Lordship is too well aware of the terrible consequences which have ensued from the "severe enforcement of authority over the natives" of colonised countries, and that you have a too just appreciation of the responsibility of your own position, and feelings of humanity and a sense of justice too strong, ever to adopt so imprudent and dangerous a recommendation.

III. One other circumstance connected with the Report must not pass unnoticed. It is, I think, clear that it does not express the views of your Lordship on the important topics on which I have been reasoning. Mr. G. W. Hope, Parliamentary Under Colonial Secretary, was appointed a member of the Committee, and, as was to be expected, took a leading part in its proceedings. I think, therefore, I am not mistaken in assuming that in the Committee he expressed your Lordship's sentiments. What was the result? Fourteen divisions of the Committee are recorded. In ten of those divisions Mr. Hope was in a minority; and in another, which took place in Mr. Hope's absence, those members who had supported his views in the other divisions, were again defeated. These divisions, moreover, did not turn upon minor points, but upon principles fundamental to the questions at issue. I will instance two of them. The Chairman, Lord Howick, brought forward the Resolutions which, in all material points, were afterward adopted. Mr. Cardwell, who had uniformly voted with Mr. Hope,

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proposed for the consideration of the Committee a set of counter Resolutions. These Resolutions support generally those views, with regard to the Treaty of Waitangi, and the Natives' lands, which I have brought under your Lordship's notice in the preceding pages. I quote the following: –

"That from the time of the discovery by Captain Cook to the beginning of the year 1840, the independence of New Zealand had never been questioned by this country, and in 1832 was recognized by the British Government in a very peculiar and formal manner.

"That the urgent applications made by private individuals from time to time to the Colonial Office for the adoption of these Islands as a British Colony, were reluctantly acceded to by the Government in 1839, with a view of preventing the evils arising and apprehended from irregular and unauthorized settlement.

"That this adoption was effected in the early part of 1840, by an agreement called the "Treaty of Waitangi," made by Captain Hobson with upwards of 500 Chiefs and other natives, claiming, and admitted on the part of this country, to represent the whole population, so far as regarded the Northern Island; while the other Islands, which contained no population capable of entering into anything resembling a civil contract, were assumed to the British Crown by the right and title of discovery.

"That this treaty was made by Captain Hobson in pursuance of instructions previously received from home, and that his proceedings obtained the subsequent approbation of Government.

"That the natives ceded to the Queen the sovereignty of the Northern Island, and the Crown secured, in return, '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 collectively and individually possess, so long as it is their wish and desire to retain the same in their possession.'

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"That this Treaty is binding, in conscience and in policy, on the British Government, and is highly valued by the native tribes.

"That although the laws and usages of the natives, with regard to the possession of and title to land, are very obscure and complicated, yet evidence has been adduced to the Committee, showing that these laws and uses are in some sense recognized by the natives, as well among themselves as in reference to European purchasers; and many instances have been proved in which they have voluntarily and fully recognized the validity of European titles.

"That while it appears highly probable that much of the soil of New Zealand will ultimately vest in the British Crown, as land to which no proprietary title of any kind can be established by an individual, or by any tribe, yet it is impossible, by any fair construction of the Treaty, to limit the native claims either to the Pahs, or to grounds in actual cultivation by the natives at any particular time.

"That any attempt to carry out in practice any such construction must alienate the natives from every feeling either of confidence or affection towards the British Government, and would probably lead to conflicts of a sanguinary character, or even to an exterminating warfare between the races, for which the British power in these Islands is at present wholly inadequate and unprepared.

"That it is not expedient to increase the military force in the Colony, at great expense, for a purpose unjust in itself, and tending to retard the peaceful settlement of the Colony and the civilization of the native race."

Though Mr. Cardwell's Resolutions were supported by Mr. Hope, they were rejected, on a division, by seven to six.

Toward the close of the Committee's proceedings, Mr. Hope proposed for the adoption of the Committee a Draft Report, taking the same general line as the Resolutions of Mr. Cardwell had done. It was rejected

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without a division! Mr. Hope's repeated defeats having, I presume, deterred him from dividing the Committee upon it.

From Mr. Hope's Draft Report, I beg leave to quote the following passages. Though they are long, they are important as expounding, by fair inference, the views of your Lordship and of Her Majesty's Government, in opposition to those of the Select Committee. They are important, also, as affording strong ground of encouragement, that by these principles your Lordship will abide in the future administration of the affairs of this important Colony.

"On examining the different documents which have been laid before Your Committee, the history of those transactions appears to them briefly as follows: –

"From the time of the discovery of the islands by Captain Cook to the beginning of the year 1840, their independence had never been questioned by this country; and in the year 1831 a letter to King William the Fourth, from 13 of the chiefs, was transmitted to Lord Goderich, praying the protection of the British Crown against the neighbouring tribes residing in the Islands. In the year 1832, Lord Ripon despatched Mr. Busby, as British Resident, with a letter to the chiefs, in

which his late Majesty addressed them as an independent people, and reminded them of the benefits they would derive from the friendship and alliance of Great Britain. Urgent applications were from time to time made to the Government to proclaim the Islands to be a British Colony; but the Government thought that the increase of national wealth and power, promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which (it was then considered) must be inflicted on the kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and the sovereignty was indisputable, and had been solemnly recognized by the British Government.

"In order, however, to check the evils arising and apprehended from a system of irregular and unauthorized settlement, in the

year 1839 the Government were very reluctantly obliged to interfere, and they then resolved to adopt measures for establishing in the Islands a settled form of civil government. For this purpose, Captain Hobson, who was appointed Her Majesty's Consul, was commissioned by Lord Normanby to treat with the Aborigines for the recognition of Her Majesty's sovereign authority over the whole or any parts of the Islands which they might be willing to place under Her dominion. Accordingly, on the 6th of February 1840, a Treaty was signed at Waitangi, on the Northern Island, by Captain Hobson, on behalf of the British Government, and 500 chiefs and other natives claiming, and admitted on the part of this country, to represent the whole population, so far as regarded the Northern Island; and which Treaty was afterwards confirmed by tribes in a small part of the other Islands; while the greater part of the latter, which contained no population capable of entering into anything resembling a civil contract, were annexed to the British Crown by the right and title of discovery.

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"The Treaty ceded to The Queen the sovereignty of the Northern Island; and in the following words the Crown guaranteed, in return, '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 collectively and 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 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 on that behalf.'

"This Treaty no doubt was considered to extend only to the Northern Island, in which alone the New Zealand tribes had been recognized as an independent nation. The title of the Crown to the Middle and Southern Island, as before observed, was asserted in part only, on the ground of prior discovery. As regards the right of property, however, Your Committee do not consider this distinction material. The main cause of the

Middle Island being dealt with throughout in a manner different from the Northern, was, the assumption that no natives, or but few claiming any rights of property, were to be found there. But should such not be the case, Your Committee think that whatever rights were secured by Treaty to the natives on the northern side of Cook's Straits, must, in equity, be conceded by the Crown to those on the southern side; and for practical purposes, therefore, they do not propose in this Report to draw any distinction as regards the title to land, between the Northern and the other Islands.

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"Your Committee does not consider it necessary to enter upon any discussion of the propriety of the different steps which have from time to time been taken in reference to the occupation of New Zealand, nor of the soundness of the policy which dictated the terms of the Treaty of Waitangi.

"However interesting the question whether that Treaty was or was not consistent with sound colonial policy, they do not consider it one directly in issue in the present inquiry. They think that Treaty, whether wisely made or not, binding on the faith and honour of the Crown. It appears from the papers presented to them, and has been distinctly proved by witnesses called before them, that whatever confusion may exist in the minds of the natives as to the meaning of a cession on their part of the sovereignty of the Island, they clearly understand and fully rely upon the guarantee which the Treaty gives of their proprietary rights; nor is it pretended by any of those acquainted with their feelings and habits that an infringement of those rights (even were the Crown to attempt it) would be submitted to without a most determined resistance. Your Committee, therefore, consider that the question of the extent to which the rights of Natives in land in New Zealand are to be recognized, is no longer one to be determined by reference to the general prerogative of the Crown, or to sound principles of colonization, but that it must be tried and decided upon the true construction of the Treaty only; and in considering the question, it is to that point that they have directed their attention.

* * * * *

"Your Committee has had under its consideration much evidence, both oral and written, on the rights of the natives in land. There appears no doubt that since the making of the Treaty of Waitangi, and the increasing resort of British settlers to New Zealand, they have, together with increased and (misled by particular sales) exaggerated notions of the value of their land, acquired also more definite ideas of ownership; and, in consequence, have put forward more extensive claims to uncultivated land than it appears probable they would have done at a former period; but at the same time, although the usages which seem to have always regulated their rights to land appear to be obscure and complicated, they are admitted and acted on among themselves; and not among themselves only, but have been so in the numerous transactions which for years previous to the declaration of the Sovereignty of Great Britain took place as to the sale of land from themselves to Europeans."¹⁹

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Such was the character of this Draft Report, brought forward by Mr. Hope. Though it was rejected by the Committee without a division, I think it may be safely inferred that it places on record the views of your Lordship on the important topics to which it refers.

Mr. Hope further observes in his Draft Report, "Even could no such rights" (thus claimed "by natives to the whole wild lands in the Islands") "be shown to have existed previously to the resort of Europeans to their shores, the exercise of ownership by transfers to settlers may, in fact, be considered to have created them to a degree which would make it unsafe to deny them altogether; nor do Your Committee think it would be prudent or right to give any decisive opinion on their extent, without a much fuller investigation, not only than that already instituted by themselves, but than it would be possible to institute anywhere except in New Zealand itself."

These are weighty considerations. Adverting, therefore, to the principles and feelings which have hitherto guided the Government in the course which they have pursued toward New Zealand – to your Lordship's personal character, large views, and experience as Colonial Minister – and to the indications which I gather of your Lordship's opinions on the topics touched upon in this Letter, from the course pursued by Mr. Hope in the Select Committee – I feel the strongest encouragement to hope that those recommendations of their Report on which I have dwelt, will not receive your Lordship's countenance or sanction.

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IV. I would, however, place before your Lordship a few Extracts from the Instructions and Despatches of successive Secretaries of State, expressive of the deep interest which they have taken in the Native population, and the strong solicitude which they have felt to protect their rights and promote their welfare. These Extracts, too, show the clear perception which the Home authorities had of the dangers to which the Native race would be exposed by the colonization of the country.

In Lord Normanby's Instructions to Captain Hobson, on his appointment to the Government of New Zealand, he thus writes, August 14, 1839: –

"We have not been insensible to the importance of New Zealand to the interests of Great Britain in Australia, nor unaware of the great natural resources by which that country is distinguished, or that its geographical position must in seasons, either of peace or of war, enable it, in the hands of civilized men, to exercise a paramount influence in that quarter of the globe. There is, probably, no part of the earth in which colonization could be effected with a greater or surer prospect of national advantage.

"On the other hand, the Ministers of the Crown have been restrained by still higher motives from engaging in such an enter-

prise. They have deferred to the advice of the Committee appointed by the House of Commons in the year 1836, to inquire into the state of the Aborigines residing in the vicinity of our colonial settlements; and have concurred with that Committee in thinking that the increase of national wealth and power, promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself, by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government. We retain these opinions in unimpaired force; and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance."²⁰

With reference to the contemplated Treaty for the cession of the sovereignty of the Island, his Lordship thus considerably writes: –

"I am not unaware of the difficulty by which such a treaty may be encountered. The motives by which it is recommended are, of course, open to suspicion. The natives may, probably, regard with distrust a proposal which may carry on the face of it the appearance of humiliation on their side, and of a formidable encroachment on ours; and their ignorance even of the technical terms in which that proposal must be conveyed, may enhance their aversion to an arrangement of which they may be unable to comprehend the exact meaning, or the probable results. These, however, are impediments to be gradually overcome by the exercise, on your part, of mildness, justice, and perfect sincerity in your intercourse with them. You will, I trust, find powerful auxiliaries amongst the missionaries, who have won and deserved their confidence, and amongst the older British residents who have studied their character, and acquired their language."²¹

With regard to the acquisition of land from the Natives, his Lordship's Instructions are just, liberal, and kind: –

"It will be your duty to obtain, by fair and equal contracts with the natives, the cession to the Crown of such waste lands as may be progressively required for the occupation of settlers resorting to New Zealand."²²

This, my Lord, is a very important passage. It is explicit as to Lord Normanby's views and intentions, that even "waste lands" were not to be acquired by "the Crown," but on "cession" by the Natives, and "by fair and equal contracts with" them. Acting under Instructions like these, what other meaning can be put on the Treaty of Waitangi than that adopted by the Chiefs, Captain Hobson, and other Government Authorities?

Again: –

"All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty's Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this, – will be one of the first duties of their official protector."

But his Lordship's views extended to the religious welfare of the Natives, as well as to the protection of their proprietary rights: –

"There are yet other duties owing to the aborigines of New

Zealand, which may be all comprised in the comprehensive expression of promoting their civilization, – understanding by that term whatever relates to the religious, intellectual, and social advancement of mankind. For their religious instruction, liberal provision has already been made by the zeal of the missionaries, and of the missionary societies in this kingdom; and it will be at once the most important, and the most grateful of your duties to this ignorant race of men, to afford the utmost encouragement, protection, and support, to their Christian teachers. I acknowledge, also, the obligation of rendering to the missions such pecuniary aid as the local Government may be able to afford, and as their increased labours may reasonably entitle them to expect."²³

The Instructions and Despatches of Lord John Russell to Captain Hobson breathe the same spirit. In his Instructions to him Dec. 5, 1840, he writes: –

"And it is our further will and pleasure that you do to the utmost of your power promote religion and education among the native inhabitants of our said colony, or of the lands and islands thereto adjoining, and that you do especially take care to protect them in their persons, and in the free enjoyment of their possessions, and that you do by all lawful means prevent and restrain all violence and injustice which may in any manner be practised or attempted against them, and that you take such measures as may appear to you to be necessary for their conversion to the Christian faith, and for their advancement in civilization."²⁴

Again in a Despatch, bearing date, Dec. 9, 1840, are the following important passages: –

The aborigines of New Zealand will, I am convinced, be the objects of your constant solicitude, as certainly there is no subject connected with New Zealand which the Queen, and every class of Her Majesty's subjects in this kingdom, regard with more settled and earnest anxiety. At the same time you

will look rather to the permanent welfare of the tribes now to be connected with us, than to their supposed claim to the maintenance of their own laws and customs. When those laws and customs lead one tribe to fight with, drive away, and almost exterminate another, the Queen's sovereignty must be vindicated, and the benefits of a rule extending its protection to the whole community must be made known by the practical exercise of authority. Yet amongst the many barbarous tribes with which our extended colonial empire brings us into contact in different parts of the globe, there are none whose claims on the protection of the British Crown rest on grounds stronger than those of the New Zealanders. They are not mere wanderers over an extended surface, in search of a precarious subsistence; nor tribes of hunters, or of herdsmen; but a people among whom the arts of government have made some progress; who have established by their own customs a division and appropriation of the soil; who are not without some measure of agricultural skill, and a certain subordination of ranks; with usages having the character and authority of law. In addition to this, they have been formerly recognized by Great Britain as an independent state; and even in assuming the

dominion of the country, this principle was acknowledged, for it is on the deliberate act and cession of the chiefs, on behalf of the people at large, that our title rests. Nor should it ever be forgotten, that large bodies of the New Zealanders have been instructed by the zeal of our missionaries in the Christian faith. It is, however, impossible to cast the eye over the map of the globe, and to discover so much as a single spot where civilized men brought into contact with tribes differing from themselves widely in physical structure, and greatly inferior to themselves in military prowess and social arts, have abstained from oppressions and other evil practices. In many, the process of extermination has proceeded with appalling rapidity. Even in the absence of positive injustice, the mere contiguity and intercourse of the two races, would appear to induce many moral and physical evils, fatal to the health and life of the feebler party. And it must be confessed, that after every explanation which can be found of the rapid disappearance of the aboriginal tribes

in the neighbourhood of European settlements, there remains much which is obscure, and of which no well-ascertained facts afford the complete solution. Be the causes, however, of this so frequent calamity what they may, it is our duty to leave no rational experiment for the prevention of it unattempted. Indeed, the dread of exposing any part of the human race to a danger so formidable, has been shown by the Marquess of Normanby, in his original instructions to you, to have been the motive which dissuaded the occupation of New Zealand by the British Government, until the irresistible course of events had rendered the establishment of a legitimate authority there indispensable."²⁵

I cannot forbear pointing out to your Lordship, that in this passage Lord John Russell avows that the New Zealanders had "established by their own customs a division and appropriation of the soil" – had "established" "a division and appropriation of the soil!" Surely this language concedes the proprietary rights of the Natives in the lands of New Zealand.

The Despatch continues: –

"Amongst the practical measures which you can adopt, or encourage, for the protection of the aborigines, the most important are, the support of the missions and the missionaries established for their conversion to the Christian faith, and for their instruction as Christians; the assigning officers charged with the duty, and, as far as may be, provided with the means of protecting them in the enjoyment of their persons and their property; the enactment and enforcement of such laws as can be devised for preventing and punishing any wrongs to which their persons or their property may be exposed; and the encouragement of the education of their youth.

"The missions to the aborigines of New Zealand have been established by Christians of many different denominations. With the most absolute toleration to every form of Christian worship, you will afford support and countenance to all Chris-

tian ministers engaged in this benevolent work, dissuading, as far as your influence may extend, the exhibition of those mutual jealousies and discords which unhappily so often accompany differences of judgment on subjects of this nature, but resolutely opposing any practice by which the peace of society and the freedom of religious worship might be invaded. As far as the means at your disposal will admit, you will aid, from the public revenue, the efforts of the missionaries to educate and instruct their proselytes; considering that we owe to the aborigines of the country a debt which will be best discharged in proportion as we can thus promote these their highest interests. The missions must, of course, continue chiefly dependent on the voluntary zeal of the people of this country in supporting the various societies by which they have been founded; and it is gratifying to know that on that zeal we may rely with the utmost confidence for raising the supplies requisite for this purpose. The contributions of the Government can only be subsidiary to this principal resource.

"The official protection of the aborigines will be committed to one principal officer, with such subordinate assistance as may be found necessary. The general duty of the protector would be to watch over the execution of the laws, in whatever concerned more immediately the rights and interests of the natives; and, to reduce this general principle into a definite form and practical usefulness, it would be necessary that laws should be framed, investing the principal protector and his officers with every power of prompt and decisive interference which it may be found convenient and practicable to confer. In such a case, the analogies of the law of England, as administered amongst Englishmen, whether at home or abroad, will, in many respects, be found to fail. A magisterial authority, more prompt than that of our justices of the peace, and less fettered with technical forms and strict legal responsibilities, will probably be indispensable. I should also anticipate the necessity of providing some method by which the protector might, under proper legal advice, have at all times immediate access to a court of criminal justice, the duty of which should be to give immediate attention to all prosecutions instituted

under his orders. In the protector should also be vested a summary jurisdiction, for arbitrating on all questions controverted between the European and the native settlers, with, perhaps, a right of appeal in the more weighty cases to the ordinary tribunals of the colony. In the same way, questions disputed among the natives themselves should fall under the cognizance of the protector, – so far as this might be compatible with a due regard to any native customs, not in themselves immoral, or unworthy of being respected.

"Amongst native customs, there are some which it will be the duty of the Government not to tolerate. Of these, the chief are cannibalism, human sacrifice, and infanticide. With such violations of the eternal and universal laws of morality no compromise can be made, under whatever pretext of religious or superstitious opinion they may have grown up. On the other hand, there are customs, which, however pernicious in themselves, should rather be gradually overcome by the benignant influence of example, instruction, and encouragement, than by legal penalties. And, finally, there are customs which, being rather absurd and impolitic, than directly injurious, may be borne with, until they shall be voluntarily laid aside by a more enlightened generation. It is important to advert distinctly to this topic, because, without some positive declaratory law, authorizing the executive to tolerate such customs, the law of England would prevail over them, and subject the natives to much distress, and many unprofitable hardships. It will, of course, be the duty of the protectors to make themselves conversant with these native customs, and to supply to the Government all such information as may from time to time be required on that subject.

"I have insisted on this subject at great length, and have thus brought together the most material suggestions which have occurred to me respecting it, rather from the deep sense which, in common with all ranks of people in this country, I entertain of its importance, than from any considerable hope

that it would be in my power, at this distance, to guide your deliberations on a question at once so arduous and obscure. It is necessary that you should possess, and it is far from my wish to withhold from you, an unfettered freedom of judgment as to the choice of the most effectual means for promoting the ends respecting which there can be no difference between us. Those ends are, the protection of the aborigines from injustice, cruelty, and wrong; the establishment and maintenance of friendly relations with them; the diversion into useful channels of the capacities for labour, which have hitherto been lying dormant; the avoidance of every practice towards them tending to the destruction of their health or the diminution of their numbers; the education of their youth; and the diffusion amongst the whole native population of the blessings of Christianity. If the experience of the past compels me to look forward with anxiety to the too probable defeat of these purposes, by the sinister influence of the many passions, prejudices, and physical difficulties with which we shall have to contend, it is, on

the other hand, my duty and your own to avoid yielding in any degree to that despair of success which would assuredly render success impossible. To rescue the natives of New Zealand from the calamities of which the approach of civilized man to barbarous tribes has hitherto been the almost universal herald, is a duty too sacred and important to be neglected, whatever may be the discouragements under which it may be undertaken."²⁶

Again, on the 28th of January, 1841 – more than two months, be it observed, after the date of the Charter – Lord John Russell thus addressed Captain Hobson: –

"Her Majesty, in the Royal instructions under the sign manual, has distinctly established the general principle, that the territorial rights of the natives, as owners of the soil, must be recognized and respected, and that no purchases hereafter to be made from them shall be valid, unless such purchases be effected by the governor of the colony on Her Majesty's behalf."²⁷

V. The part taken by the Missionaries, in the obtaining of the cession of the sovereignty of New Zealand to the British Crown, must not be overlooked in an inquiry into the interpretation of the second Article of the Treaty of Waitangi, respecting the Natives' proprietary rights. In Lord Normanby's Instructions to Captain Hobson, quoted above, it will be seen that he was directed to call for the services of the Missionaries in his negotiations with the Native Chiefs for the cession of the sovereignty of the Island. Though the Committee of the Church Missionary Society had been strongly opposed to the colonization of New Zealand, yet when Her Majesty's Government were induced to sanction that proceeding, they considered it to be their duty to give such support and assistance to Captain Hobson, in prosecution of the object confided to him, as was compatible with their character as a Missionary body. Instructions to that effect were, therefore, addressed to the Missionaries. Without their agency as interpreters, and the information communicated by them to Captain Hobson, it is not easy to conceive how his Mission could have been conducted to a satisfactory issue. On the 23rd of March, 1840, Captain Hobson addressed a Letter to the Rev. H. Williams, senior Missionary of the Church Missionary Society in New Zealand, from which the following is an Extract: –

"Availing myself of your kind offer, and fully authorized thereto by Her Majesty's instructions, conveyed to me by Her principal Secretary of State, I hereby authorize you to treat with the principal native chiefs, in the southern parts of these islands, for their adherence to the treaty which was executed at Waitangi, on the 6th February 1840. I have the honour to enclose a copy of the treaty, which I have signed; and to request you will obtain the signatures thereto of such high chiefs as may be willing to accede to its conditions, first explaining to them its principle and object, which they must clearly understand before you permit them to sign."

In a note to that Letter, Captain Hobson states: –

"This is in substance the same as the instructions issued to other gentlemen who were deputed to treat with the native chiefs."²⁸

To Lord John Russell, Captain Hobson wrote on the 25th of May, 1840. –

"I commissioned Captain Symonds, of the British army, and the following gentlemen of the Church Missionary Society, namely, the Rev. Mr. Henry Williams, the Rev. Mr. Brown, the Rev Mr. Maunsell, and the Rev. Mr. William Williams, to secure the adherence of the chiefs of their respective districts to the treaty of Waitangi. For this purpose, I furnished to each a signed copy of that treaty, with instructions, the copy of one of which I have the honour to transmit.

"The districts in which these gentlemen were requested to act comprise the whole of the Northern Island, with the exception of the northern extremity called Kaitaia, to which I despatched Mr. Shortland, the Acting Colonial Secretary, with a suite of two gentlemen of the government, and the Rev. Mr. Taylor, of the Church Missionary Society, to secure the allegiance of the chiefs of that quarter, who are some of the most powerful in the island, and I am happy to report to your Lordship that Mr. Shortland succeeded to the fullest extent.

* * * * *

"On the 16th instant I received a report from Major Bunbury, dated on board the Herald, 4th May, in Coromandel Harbour, in which he informs me that the principal chiefs of that place had signed the copy of the treaty; and I assembled here, on the 15th instant, the chiefs of Kaitaia, who gave their signatures without hesitation.

"At various periods subsequent to the sailing of the Herald, I received from Captain Symonds, Mr. Maunsell, and lastly from the Rev. Messrs. Williams, reports of the entire success of their respective missions."²⁹

The services of the Missionaries were thus acknowledged by Captain Hobson, in a Letter to Mr. H. Davis, the then Secretary of the Missionary body, dated May 29, 1840: –

"The period having arrived for proclaiming the sovereign authority of Her Majesty over these Islands, it accords no less with my public duty, than it gratifies my personal feelings, to acknowledge, in the most ample manner, the efficient and valuable support I have received from the resident members of the Church Missionary Society, in carrying into effect with the Native Chiefs the views and objects of Her Majesty's Government.

"As the official organ of that body, I beg you will accept, and convey to every member of the Mission in New Zealand, my cordial and hearty thanks for the very zealous and effective assistance they have rendered me in the execution of this duty."

To the same effect Lord John Russell expressed himself, in a Letter to Captain Hobson on the 30th of March, 1841: –

"I have received your Despatch, No. 7, of the 15th of October last, enclosing reports from the various gentlemen whom you had commissioned to treat with the native chiefs, for the purpose of effecting their adherence to the treaty of Waitangi.

"I have to convey to you the approval of Her Majesty's Government of the measures which you adopted throughout these negotiations, and to request that you will express to Major Bunbury and to the other gentlemen employed by you, the acknowledgments of the Government for their exertions in executing this service."³⁰

I beg also to call to your Lordship's notice the following passage of the Address of Captain Hobson to the Legislative Council, on its being opened December 14, 1841: –

"Whatever difference of opinion may be entertained as to the value and extent of the labours of the missionary body, there can be no doubt that they have rendered important services to this country, or that, but for them, a British Colony would not at this moment be established in New Zealand."³¹

It is proper that I should observe, that the Missionary body spoken of by Captain Hobson includes the Missionaries of the Wesleyan as well as of the Church Missionary Society, though in this Letter I have limited my statements to those of the Church Missionary Society.

But though the Missionaries thus promptly and effectively aided the Government in the acquisition of the sovereignty of New Zealand, they did so under a deep sense of the responsibility in which it involved them. This sense of responsibility is strongly expressed by the Rev. R. Maunsell, in an official Letter to Captain Hobson, under date April 14, 1840, reporting the adhesion to the Treaty of the principal men in the Waikato District, wherein he carried on his Missionary labours:

"In forwarding the accompanying document, I would beg to observe, in reference to ourselves, that cordially as we desire to co-operate with Governor Hobson in all measures consistent with our principles, we cannot but state, that we feel strongly the responsibility in the eyes of the natives, by the steps we are now adopting.

"I would beg therefore with all deference to add, that having put ourselves thus prominently forward in obtaining an acknowledgment of the sovereign power of The Queen on the part of the natives, so we trust, that that acknowledgment will never be made, even apparently, the basis of any measure that may hereafter result in their prejudice.

"The steps we have taken have been taken in full dependence on the well-known lenity and honour of the British Government, and we rest assured, that we shall never hereafter find ourselves to have been in these particulars mistaken."³²

Your Lordship will feel the force of Mr. Maunsell's remarks, connecting them, as you will do, with the stipulations of the Treaty of Waitangi – the construction put upon the second Article of the Treaty, respecting the Natives' lands, by Captain Hobson and the Chiefs – and with the views of the Missionaries, as to the extent of the proprietary rights of the Chiefs over the entire area of the Island. Should these rights, recognized and confirmed as they have been by the approval of the Treaty by the Home Government, be violated under the sanction of the recommendations of the Report of the Select Committee, the position of the Missionaries will be rendered most difficult and painful. They have acquired the confidence of the Natives as their friends and benefactors. In virtue of that confidence the Chiefs were induced by them to sign the Treaty of Waitangi; understanding, as the Missionaries also understood, that their proprietary rights to the whole lands of the Island, not alienated by themselves, were secured to them. How can the Missionaries remain among them under the imputation of having deceived and betrayed them? – under which imputation they would lie, should the recommendations of the Select Committee with regard to their lands be adopted and acted upon by your Lordship. That this is no ungrounded apprehension is apparent from the following passage in a Letter from one of the Missionaries, dated the 22nd December last: – "Even now the Missionary is accused of having persuaded them to lay aside their arms, in order to facilitate the occupation of the soil by his own countrymen, and is looked upon with suspicion as an emissary of the settlers." If such jealousy and suspicion have been excited among the Natives, by the state of things around them nine months ago, I leave it to your Lordship to judge what will be their feelings, when the Report and recommendations of the Select Committee shall become known to them.

And if in an evil hour Her Majesty's Government should adopt those recommendations, resistance, collision, and bloodshed, must be looked forward to as the certain consequences. How, my Lord, could the Missionaries remain among the Natives under those circumstances? On the other hand, should the Missionaries quit the ground, as possibly they might, in such an event as that adverted to, think themselves bound to do in proof to the Natives of their sincerity and uprightness, the event to the Natives themselves might be still more disastrous. I am sure neither your Lordship nor the British Public will endure that such calamitous events should be risked in order to give effect to the unrighteous recommendations of the Select Committee, in furtherance of schemes for facilitating emigration. As little will either your Lordship or the British Public endure that the progress of Christianity among the New Zealanders, which may be safely characterized as one of the most signal displays of the power of the grace of God in modern times in subduing to its influence a savage and barbarous race, should thus be checked and stopped in its progress.

VI. I will not occupy your Lordship's time by details in evidence of the truth and extent of the prevalence of Christianity among the New Zealanders. That evidence is abundant, not only in the published records of the Church Missionary Society, but in the spontaneous testimony of many impartial and intelligent persons, in nowise connected with the Missionary bodies, who have visited the Island. The simple fact, that out of a population in the Northern Island – and of that alone I speak throughout this Letter – little exceeding 100,000 souls, there should be found 35,000 attendants on public worship in the Church Missionary Society's Mission alone; upward of 15,000 Scholars in the Schools; nearly 300 Native Teachers; and more than 2850 Communicants; demonstrates the extent to which the power of the Gospel,

under the teaching of the Holy Spirit, has prevailed over this barbarous people. I will, however, place before your Lordship the testimony borne by two Prelates of our Church, to the wonderful progress of the Gospel in New Zealand. The first is that of the Bishop of Australia, who, in 1839, visited the Mission at the instance of the Committee of the Church Missionary Society. He went thither in the beginning of 1839, and, on his return to New South Wales, he thus expressed his views of the Missionaries and of the Converts in a Letter to the Committee dated the 28th March 1839: –

"First, with regard to the Missionaries of the Society, I must offer a very sincere and willing testimony of their maintaining a conversation such as becomes the Gospel of Christ, and the relation in which they stand to it as the professed guides and instructors of those who are, by their agency, to be retrieved from the service of sin. Their habits of life are devotional: they are not puffed up with self-estimation; but appeared to me willing to learn, as well as apt to teach: and among themselves, they appear to be drawn together by a spirit of harmony, which is, I hope, the sincere effusion of their hearts; prompted by that Spirit, of which love, gentleness, and goodness, are among the most delightful fruits. It is upon the continuance of this spirit among themselves that I raise my principal expectations of their continued success among the Natives. Without unanimity, there can be no successful combination of their exertions; nor is any blessing upon them to be hoped for, such as has hitherto visibly attended them, and in a very ample measure.

At every Station which I personally visited, the Converts were so numerous, as to bear a very visible and considerable proportion to the entire population; and I had sufficient testimony to convince me that the same state of things prevailed at other places, which it was not in my power to reach. As the result of my inspection, I should state, that in most of the Native villages, called Pas, in which the Missionaries have a footing, there is a building containing one room, superior in

fabric and dimensions to the Native residences, which appears to be set apart as their place for assembling for religious worship, or to read the Scriptures, or to receive the exhortations of the Missionaries. In these buildings generally, but sometimes in the open air, the Christian classes were assembled before me. The grey-haired man and the aged woman took their places, to read and to undergo examination, among their descendants of the second and third generations. The Chief and the Slave stood side by side, with the same Holy Volume in their hands; and exerted their endeavours each to surpass the other, in returning proper answers to the questions put to them concerning what they had been reading. These assemblages I encouraged on all occasions; not only from the pleasure which the exhibition itself afforded, but because I was thus enabled, in the most certain and satisfactory way, to probe the extent of their attainments and improvements.

The experience thus acquired, has induced me to adopt the habit of applying the term "Converts" to those alone (for many such I found there were) who, in the apparent sincerity of their convictions, and in the sufficiency of their information, compared with their opportunities of acquiring it, may be considered Christians indeed.

The other testimony, three years later, is from the Bishop of New Zealand. It is extracted from a Sermon preached by his Lordship at Paihia, June 26, 1842, and subsequently published by him in the Island: –

"Christ has blessed the work of His ministers in a wonderful manner. We see here a whole nation of Pagans converted to the Faith. Cod has given a new heart and a new spirit to thousands after thousands of our fellow-creatures in this distant quarter of the earth. A few faithful men, by the power of the Spirit of God, have been the instruments of adding another Christian People to the family of God. – Young men and maidens, old men and children, all with one heart and with one voice praising God; all offering up daily their morning and evening prayers; all searching the Scriptures,

to find the way of eternal life; all valuing the Word of God above every other gift; all, in a greater or less degree, bringing forth and visibly displaying in their outward lives some fruits of the influences of the Spirit. Where will you find, throughout the Christian world, more signal manifestations of the presence of that Spirit, or more living evidences of the kingdom of Christ."

Such, my Lord, is the state of the question, relative to the rights of the Natives of New Zealand with respect to their lands, arising out of the Report of the Select Committee, which awaits your decision. The important consequences of that decision cannot be exaggerated. Should it be, as I have confidence in your Lordship that it will be, in accordance with the principles of justice and humanity, of national honour and good faith, the New Zealanders may happily advance in the path of civilization and social comfort, and in the participation and enjoyment of those richer blessings which flow from the reception of the Gospel and an interest in the redemption which is by Christ. If, on the other hand, through any sinister influence, a contrary course should unhappily be pursued, the result may be another monument to the destructive progress of European colonization, by its sweeping the Aborigines of New Zealand from the face of the earth.

One word more, and I have done. Should doubt, after all, rest on your Lordship's mind as to the extent of the proprietary rights of the Natives, I would implore you not at once to decide against them, but to pursue the course suggested in the passage of Mr. Hope's Draft Report quoted above, and institute in New Zealand itself an investigation of the whole question by competent persons, in whose character and principles the Natives could be reasonably expected to confide. The very fact that they must sink before British power, if that power be turned against them, is a conclusive reason why every means

should be employed to arrive at a clear discovery of the facts of the case, in order that such a terrible alternative may be averted; for, I repeat, a desolating conflict with the Natives must, I fear, be regarded as inevitable, should the recommendations of the Select Committee be adopted and acted upon.

I have the honour to be
Your Lordship's
Most Obedient Servant,
D. COATES.
SALISBURY SQUARE,
August the 11th, 1844.

P.S. The Resolution recorded by the Select Committee in reference to the afflicting collision at Wairau, occasioned much surprise to those who possessed, as they conceived, authentic information on the subject. While these sheets have been passing through the press, New Zealand Newspapers have reached this country, containing the details of an interview between Captain Fitzroy, the Governor, and the Chief Rauparaha and other Natives, respecting it. Rauparaha, it will be recollected, was one of the chiefs principally concerned in the conflict at Wairau. The account is long, but well deserves attentive consideration.

On Monday, the 12th of February, 1844, His Excellency Governor Fitzroy, accompanied by Sir Everard Home, Captain of H. M. Ship North Star, Major Richmond, Mr. Commissioner Spain, Mr. Hamilton, Mr. Forsaith, and several Officers belonging to the North Star, landed at Waikanae.

His Excellency and suite were received on shore by the Reverend Octavius Hadfield, Messrs. Symonds, and Clarke, and a large body of natives, who, to the number of four hundred and upwards, soon assembled in a large open enclosure within the pah.

His Excellency commenced by reading the following address: –

"I salute you, Chiefs and Elder Men. Health to you. Peace be among you. I am glad to see you. I rejoice to meet you here. I have much to say to you – many important things. I have heard of all that has been done, – some things good, but some very bad. When I see your Church, the work of your own hands, and when I hear from your true friend, Mr. Hadfield, what progress you have made in Christian knowledge, I rejoice greatly; but when I hear of the evil that has been done by some, I can hardly believe it can have been done by the same people; so bad is it in my sight.

"I have heard of all that happened at the Wairau, according to the English account, and it has grieved my heart exceedingly. I now ask you to tell me your story, that I may compare the two and judge fairly. When I have heard your account of that dark day, I will reflect, and then tell you what I shall do. The bad news I have heard about killing the English so cruelly at the Wairau, after they had ceased fighting, and had trusted to your honour, has made my heart very dark, has filled my mind with gloom. Tell me your story, that I may compare it with the English and know the whole truth.

"When I first heard of the death of my friends, of the English who fell at Wairau, I was very angry, and thought of hastening here with many ships of war, with many many soldiers, and several fire-moved ships (steamers.) Had I done so, your warriors would have been killed, your canoes would have been all taken and burnt, your houses and paha would have been all destroyed, for I should have brought with me from Sydney and other places, an irresistible force.

"But these were hasty, angry, unchristian thoughts, they soon passed away, – I considered the whole case, I saw that the English had been very much to blame, even by their own account, and I saw how much you had been provoked. Then I determined to put away my anger, and come to you peaceably. Let me now hear your story."

Rauparaha then rose, and several voices from among the crowd of his countrymen urged him to speak out that they might all hear. He said: –

"There was evil intended in the commencement of this affray. Land is the foundation of all our troubles. The Europeans say it is theirs, but who says so besides themselves?

"The Tory came to Port Nicholson, and that was the commencement of the evil. We heard of the sale of that place by Warepori and

Puni. Warepori was smoking his tobacco and wearing his blankets alone, we never agreed to it, payment was made, but we never received it; thus grew the seeds of evil. Who authorized Warepori to receive his payment? Who authorized him to do it privately? Why did he not call the people together and pay them all?

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"The Tory anchored off Kapiti, Colonel Wakefield wanted to buy all the land," (here Rauparaha mentioned the names of several places), "but all which I sold was Blind Bay and Massacre Bay.

"I and Tungia sold these places, and Warepori and Puni sold Port Nicholson. The land which I sold to Colonel Wakefield, I sold myself, I did not consult any body. Colonel Wakefield then went to Taranaki, and when he returned he laid claim to all the land, nothing was said concerning Wairau, until now he claims it.

"There was sufficient payment made, all I received was" (here he commenced enumerating articles, but was told that he need not go into those details) Rauparaha continued, "I wished to enumerate them, because Colonel Wakefield says, the Maories are holding back the land which I have been paid for. Porirua also is claimed by Col. Wakefield, but Rangihaeata will never consent to sell it. Now I come to Wairau. Wairau was taken away by Thompson and Wakefield (meaning Captain Wakefield.) When we heard they were surveying the land, we went to Nelson to forbid them doing so. We went to Captain Wakefield's house; he said, 'I must have Wairau;' I said, 'No.' He replied, 'I must have it.' I answered, 'No, you shall not have it;' he said, 'if you do not give it up, you shall be tied in this manner.' (Here Rauparaha to explain his meaning of the threat held out by Captain Wakefield, put his hands in the position of a person handcuffed) "Rangihaeata said, 'I will not give up Wairau, neither will I be taken prisoner by you.' Captain Wakefield then said, 'we will shoot you.' 'Well, what matter if you do, we shall lose our life, but Wairau shall not be taken.'

"After this interview at Nelson, Captain Wakefield sent over more surveyors, amongst them was Mr. Cotterell. We heard that the survey of the Wairau was nearly finished; Puaha went to tell them to desist, but they would not. Puaha returned to Porirua, and told us so. We then arose. The Chiefs and old men went on board a schooner, and the young men in canoes to Cloudy Bay; we staid at Totara-nui, (Queen Charlotte's Sound) some time, and then went to Wairau, we pulled up until we saw Mr. Cotterell, we then brought all their goods, &c, down to the mouth of the river. Our slaves and the Europeans were engaged in moving the things. Then we pulled up to the wood and saw Mr. Barnicoat; told him we had come to fetch him, he had no boat; so we took him and his things on board my canoe, and conveyed them to the mouth of the river, having burned the buts which they had erected.

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"The Europeans then left Wairau for Cloudy Bay, thence to Nelson; we were up the river planting. After this, Mr. Tuckett arrived with some people to survey, I sent to him and said, 'Come Mr. Tuckett, you must go!' He said, 'I must survey the land.' I replied, 'No, you shall not,' and brought him down to the mouth of the river. I asked Mr. Barnicoat to remain with me till the boat came for him; the boat with Mr. Tuckett had gone to Nelson; we continued our planting, till one morning we saw the Victoria, (Government brig); then were our hearts relieved, for we imagined that Mr. Spain and Mr. Clarke had come to settle the question of our lands. Being scattered about at different places on the river, we took no further notice, expecting a messenger to arrive from Mr. Spain and Mr. Clarke, but a messenger came up to say, that it was an army of English, and that they were busily engaged cleaning their arms, and fixing the flints of their guns. They met Puaha and detained him prisoner. They said, where are Rauparaha and Rangihaeata? Puaha said, 'up the river.' They answered, 'let us go.' Puaha was glad to hear them say this, as he was afraid they would kill him. He afterwards watched his opportunity, and ran away and came to us. A messenger had before come to tell me that Puaha and Rangihaeata had been caught by the Europeans. Afterwards Puaha and Rangihaeata arrived, and we consulted what we should do. I proposed going into the bush, but they said, 'No, let us remain where we are; what have we done, that we should be thus beset?'

"The Europeans slept some distance from us, and after they had breakfasted, came on towards us in two boats. We remained on the same spot, without food, we were much alarmed. Early in the morning we were on the look-out, and one of our scouts who caught sight of them coming round a point, called out, 'Here they come, here they come!' Our women had kindled a fire and cooked a few potatoes that we had remaining, and we were hastily eating them when they came in sight. Cotterell called out 'where is Puaha?' Puaha answered, 'here I am, come here to me.' They said again, 'where is Puaha?' Puaha again saluted them. Cotterell then said, 'where is a canoe for us to cross?' (Rauparaha here described the manner of their sitting down, some on one side, some on the other). Thompson, Wakefield, and some other gentlemen, crossed over to us with a constable to take me, but the greater number stopped on the other side of the creek.

"Thompson said, 'where is Rauparaha?' I answered 'here.' 'Come, you must come with me,' I replied, 'where?' He said, 'on

board the ship.' I replied, 'what for?' He answered, 'to talk about the houses you burnt down.' I said, 'what house was it I burnt? was it a tent belonging to you, that you make so much ado about it. You know it was not, it was nothing but a hut of rushes; the materials were cut from my own ground, therefore I will not go aboard, neither will I be bound; if you are angry about the land, let us talk it quietly over, I care not if we talk till night and all to-morrow, I will settle the question about the land.' Mr. Thompson said, 'will you not go?' I said, 'no,' and Rangihaeata who had been called for, and who had been speaking, said so too. Mr. Thompson then called for the handcuffs, and held up the warrant, saying, 'see this is the Queen to make a tie Rauparaha.' I said, 'I will not listen either to you, or to your book.' He was in a great passion; his eyes rolled about, and he stamped his foot. I said, 'I had rather be killed than submit to be bound.' He then called for the constable, who began opening the handcuffs, and to advance towards me. Mr. Thompson laid hold of my hand. I pushed him away, saying 'what are you doing that for?' Mr. Thompson then called out, 'fire!' he called out once, and then Thompson and Wakefield called out together 'fire!' "On being asked which of the gentlemen it was who gave the command to fire, Rauparaha answered, 'Thompson gave the word of command, but Wakefield recommended him to do so.' The Europeans began to cross over the creek, and as they were crossing, they fired one gun. The women and children were sitting round the fire. We called out, we shall be shot. After this one gun, they fired a volley, and one of us was killed, then another, and three were wounded. We were then closing fast. The English guns were levelled at us." (here he described by comparison, the distance between the contending parties) "I and Puaha cried out, 'Friends, stand up and shoot some of them in payment.' We were frightened, because they were very close, we then fired, and three of the Europeans fell. They fired again, and killed Rongo, the wife of Rangihaeata. We then bent all our energy to the fight, and the Europeans began to fly. They all ran away, firing as they retreated. The gentlemen ran too. We pursued them and killed them as we overtook them. Captain Wakefield and Mr. Thompson were brought by the slaves who caught them, to me. Rangihaeata came running to me, crying out, 'What are you doing? Your daughter is dead. What are you doing I say?' Upon which, some heathen slaves killed them." (Rauparaha here particularly mentioned that those who killed the prisoners were, to use his own literal expression, devils, not missionaries, meaning heathen natives, at the instigation of Rangihaeata, neither Puaha nor the Christian natives being present.)

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"There was no time elapsed between the fight and the slaughter of the prisoners; when the prisoners were killed, the rest of our people were still engaged in the pursuit, when we arrived at the top of the hill, Mr. Cotterell held up a flag, and said, 'that is enough, stop fighting.' Mr. Thompson said to me, 'Rauparaha spare my life!' I answered, 'A little while ago I wished to talk to you in a friendly manner, and you would not, now you say 'save me.' I will not save you.'

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Rauparaha continued: –

"It is not our custom to save the chiefs of our enemies; we do not consider our victory complete, unless we kill the chiefs of our opponents; our passions were much roused, and we could not help killing the chiefs."

Rauparaha then sat down. His Excellency the Governor said, "I thank you for the relation you have given me, I shall now calmly consider the whole matter, and give my decision in a short time."

After a silence of about half an hour, His Excellency rose and addressed the natives as follows: –

"Now, I have heard both sides, I have reflected on both accounts, and I am prepared to give my decision.

"I, the representative of the Queen of England, the Governor of New Zealand, have made my decision, and it is this: Hearken O chiefs and elder men to my decision:

"In the first place, the English were wrong, they had no right to build houses upon lands to which they had not established their claim, upon land, the sale of which you disputed, on which Mr. Spain had not decided. They were wrong in trying to apprehend you, who had committed no crime. They were wrong in marking and measuring your land in opposition to your repeated refusal to allow them to do so, until the Commissioner had decided on their claim.

"Had you been Englishmen you would have known that it was wrong to resist a Magistrate under any circumstances, but not understanding English law, your case was different. Had this been all, had a struggle caused loss of life in the fight, wrong and bad as it would have been in the sight of God, – I could not have blamed you so much as the English.

"The very bad part of the Wairau affair, that part where you were so very wrong, was the killing men who had surrendered, who trusted to your honour as chiefs.

"Englishmen never kill their prisoners; Englishmen never kill

men who have surrendered. It is the shocking death of those unfortunate men, that has filled my mind with gloom; that has made my heart so dark; that has filled me with sorrow.

"But I know how difficult it is to restrain angry men, when their passions are roused. I know that you repent of your conduct, and are now sorry that those men were killed.

"As the English were very greatly to blame, and as they brought on, and began the fight, and as you were hurried into crime by their misconduct, I will not avenge their death.

"In future let us dwell peaceably, without distrust. I have told you my decision, and my word is sacred. I will punish the English if they attempt to do what is unjust or wrong. Your chiefs must help me to prevent the natives from doing wrong, so that we may live happily in peace, helping and doing good to one another, no man injuring or encroaching on his neighbour, but buying and selling freely as each may desire, with the consent of the other, but not unwillingly. By such measures, we shall receive mutual advantages. The natives must not interfere with Englishmen who have settled on land fairly purchased; the English shall not encroach upon land which the natives have not fairly sold.

"No pah, nor cultivation, nor burying ground, shall be taken or encroached upon, by any Englishman, except by the general desire of the natives to whom it belongs. Where there is any mistake or doubt about boundaries of purchase, appeal must be made to the law. The law will see justice done, and I will be responsible for its execution by properly qualified persons.

"Recommending you to the advice of your best friends, the Missionaries, the Protectors, and Officers of Government, I now bid you farewell, and wish you all health, and the blessing of God."³³

Such was the deliberate judgment of Captain Fitzroy, after a careful examination of the whole matter on the spot, with every advantage for a full and searching investigation into all the facts connected with it. His decision, thus pronounced, must, therefore, be considered as setting this very painful question at rest, and as exonerating the Natives from being the aggressors.

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¹ Report from the Select Committee, pp. 4-7.

² Report from the Select Committee, pp. 12, 13.

³ Parliamentary Papers (New Zealand), 1840, p. 7.

⁴ Parliamentary Papers (New Zealand), 1840, pp. 7, 8.

⁵ *Ib.* p.4.

⁶ Lords' Committee on New Zealand, 1838, p. 245.

⁷ Parl. Papers (New Zealand), 1840, p. 3.

⁸ *Ib.* p. 36.

⁹ Parl. Papers (New Zealand), 1840, pp. 37, 38.

¹⁰ *Ib.* p. 38.

¹¹ Parl. Papers (New Zealand), 1841, p. 9.

¹² Parl. Papers (New Zealand), 1841, p. 8.

- [13](#) Parl. Papers (New Zealand), 1841, p. 10.
- [14](#) Ib. p. 19.
- [15](#) Parl. Papers (New Zealand), 1841, p. 58.
- [16](#) Parl. Papers (New Zealand), 1841, p. 108.
- [17](#) Parl. Papers (New Zealand), 1841, p. 32.
- [18](#) Page 143.
- [19](#) Report from the Select Committee, pp. 25, 26.
- [20](#) Parl. Papers (New Zealand), 1840, p. 37.
- [21](#) Ib. p 38.
- [22](#) Parl. Papers (New Zealand), 1840, p. 39.
- [23](#) Parl. Papers (New Zealand), 1840, pp. 39, 40.
- [24](#) Ib. 1841, p. 42.
- [25](#) Parl. Papers (New Zealand), 1841, p. 27.
- [26](#) Parl. Papers (New Zealand), 1841, p. 27-30.
- [27](#) Ib. p. 52.
- [28](#) Parl. Papers (New Zealand), 1841, p. 17.
- [29](#) Ib. pp. 15, 16.
- [30](#) Parl. Papers (New Zealand), 1841, p. 112.
- [31](#) Parl. Papers (New Zealand), 1842, p. 199.
- [32](#) Ib. 1841, p. 99.
- [33](#) The New Zealand "Southern Cross," Auckland, March 23, 1844.

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