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Notes by the Governor on Sir William Martin's Pamphlet entitled The Taranaki Question

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NOTES
BY THE GOVERNOR
ON
SIR WILLIAM MARTIN'S PAMPHLET
ENTITLED THE
TARANAKI QUESTION.

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[Text]

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"The present is a land quarrel."

This opening proposition has a direct tendency to mislead.

It is true that the dispute as to a piece of land at the Waitara has raised the present question. But it is only one of the many instances in which a matter, apparently small in itself, has unmasked important designs. It has proved what was before only suspected, that the Taranaki and Waikato Land Leagues are not combinations to obtain an object by peaceful means, but are armed coalitions to carry an object, when other means have failed, by rebellion itself.

The question raised in the original dispute with Wiremu Kingi was one of authority and jurisdiction, and not a question of the title to a particular piece of land. Since the intervention of the Waikato King party it is past all controversy, that the contest is not whether that piece of land belongs to Wiremu Kingi or Teira, but whether the Governor has authority to decide between the two, and power to enforce his decision. It is the pervading fallacy of Sir William Martin's argument, that he treats as a question of Title that which is in fact a question of Sovereignty, and is so regarded by the Natives themselves.

The practical issue now being tried is, whether the Natives are in future to trust to the justice of the British Government for the recognition of their rights, or to force of arms.

In the year 1854 the Taranaki Land League was formed at Manawapou, in the Ngatiruanui Country south of Taranaki.

"All the head Chiefs from Wellington to Waitara, a distance of nearly 300 miles, assembled. Five hundred were present, and much bad spirit was displayed. The result of it was, their determination to sell no more land to the Government, and to hinder any who felt disposed from doing so." (Rev. R. Taylor's New Zealand, 1855, p. 278.) – "A Confederation has been established for some years, which extends from Waitara at the north to Kaiwi near Wanganui, one of the laws of which is that any native offering land, although his own, shall suffer death." (Commissioner Rogan, Evidence before Native Board, 1856) – "It was not many months after this meeting [at Manawapou] that a Chief of New Plymouth did offer his land for sale [Rawiri Waiaua]; and when he went out to mark the boundaries he was shot with several of his tribe," (Rev. R. Taylor, ut sup.) – "This was the origin of the notorious Taranaki Land League, which evidently contains the elements of the present King movement; which has proved so fruitful a source of dissension among the tribes of that district, caused so much bloodshed, and brought about the present collision between Wiremu Kingi and the Governor." (Rev. Mr. Buddle, Origin of King Movement, p. 6.)

The Taranaki Land League was closely followed by the establishment of a similar League at Waikato.

"The present King movement has been initiated in the Waikato district..... In December, 1856, the first public meeting held to deliberate on the subject and to prepare some plan, was held at Taupo, at which several influential chiefs from various districts were present. Many proposals were made to adopt extreme measures: the most violent party advocated a clear sweep of all the Pakehas – Governor, Missionaries, settlers – all..... It was decided that Tongariro should be the centre of a district in which no land was to be sold to the Government, and Hauraki, Waikato, Kawhia, Mokau, Taranaki, Wanganui, Rangitikei, and Titiokura the circumference: that no prayers should be offered for the Queen, no roads be made within the district, and that a King should be elected to rule over the New Zealanders as the Queen and Governor do over the settlers." (Rev. T. Buddle, Origin of King Movement, pp. 6-8.)

The Waikato King party and Land League laid down a similar rule to that which had been established by the Taranaki League.

"The land thus given over to the King is not to be alienated without his consent. This might be all

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"very well if the party stopped here. But they resolve that no land shall be sold within their territory even though the owner may not have joined the League. Any man therefore attempting to sell a block of land would subject himself to summary proceedings at war. And any attempt to take possession of the purchased block by the Government would be resisted by force of arms as in the case of the land at Waitara." (Rev. T. Buddle, Ibid, p. 20.)

The insurrection at Taranaki is the direct result of these Leagues.

"The vital question with the Maori Kingites now is, whether the King or the Queen shall possess the mana of New Zealand. The Maori King Movement is the strength of the Taranaki war." (Rev. J. Morgan and Rev. J. Wilson; letters to Select Committee on Waikato affairs.) – "You must understand this: the war is not a struggle of the Maori with the Pakeha; it is not a war with the Missionary; it is not a war with the Magistrate; it is a war of the King with the Queen." (Wiremu Nera Te Awaitaia, a head Waikato Chief, speech to the Rev. J. A. Wilson.) "Friend, all this fighting and plundering would not have occurred had we not made a King. This is the root of the strife. It is Waikato who fight the cause of Taranaki; the men of the soil keep at a distance, they are but slaves: we fight their battles, we are the strength of the war." (Te Waru, a Waikato Chief, speech, ibid) – "The war was not merely a contention for the land at New Plymouth, but for the Chieftainship of New Zealand. Wherever the King's flag went they would follow." (Wetini Taiporutu, speech ibid.) – "I met one of the Waikato Natives and had a long quiet conversation with him; from which it appeared evident that the Waikatos in reality are not interested in William King's quarrel, but have only used it as a pretext of quarrel with the Government, and to commence carrying out their plan initiated nearly six years ago (to which I referred in my work), which is the organisation of a Native polity independent of ours and if possible subversive of it: that for this purpose they have been quietly preparing, increasing their stock of arms and ammunition by every means in their power. I have come to this conclusion from long and close observation, which my constant visits amongst them have given me every facility of making." – Rev. R. Taylor, Letter to the Governor, 19th December 1860. –

"It is, however, a very great error to suppose that the war has assumed its present proportions to support William King's title. Waikato cares nothing really about his title to the Waitara. Their object is to assert and support the mana of the Maori King's flag. William King's land brought matters to a crisis, nothing more. The Auckland Province was all but the seat of war, had Wiremu Nera [Te Awaitaia] persevered to sell, and the Government had purchased, the last block offered by him between Raglan and the Waipa. The Kingites were prepared to dispute the sale. The simple question with them is, not whether the parties who offered to sell are really the only owners, but that the King flag should be respected, and no land sold within defined Maori districts without the sanction of the King party: their policy being to prohibit sales." – (Rev. J. Morgan, Letter to the Governor, 26th December, 1860.)

It will, however, be satisfactory to see what Wiremu Kingi himself says on the subject. When the Waikato Chiefs and Wi Tako visited him to enquire into the truth of the matter, he said: – "The Pakeha wants our land, but this war is about your Maori King. Do not listen to the Pakeha, but bring your flag to Waitara. Go back and clear them out; send them all back to England." (Rev. T. Buddle, Origin of King Movement, p. 38.)

And in a letter just received, addressed by Wiremu Kingi on the 14th November, 1860, to Te Kuini Topeora and others at Otaki. he says: – "I am clothed with the dying injunction of Mokau [Rangihaeata] that is in regard to the redcoats: and this it is that I am carrying out now. This is a word to you; Let not the Chiefs of your Runanga come to make peace. Mother, peace will not

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be made. I will continue to fight, and the Pakehas will be exterminated by me, by my younger brother Te Hapurona, and by Waikato. I say to you therefore, let no man come to make peace or to insult me." – (Letter from Wiremu Kingi Whiti, copied and sent up by Tamihana Te Rauparaha.)

No view, therefore, of the Taranaki insurrection could be more erroneous, none more altogether calculated to mislead as tending to place the subject on the narrowest and most superficial grounds, than that with which Sir William Martin opens his examination of the question, in the words "the present is a land quarrel."

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"Every cultivator is a member".....

If Sir W. Martin means that a cultivator occupying a portion of land the property of the community, cannot deal with that land independently of that community, he may be right: if he means that no cultivator has land which he cannot deal with except with the consent of the community to which he belongs, he may not.

The Bishop of New Zealand, in his statement before the Board of 1856 on Native tenure, says: "In many, perhaps in most cases, there would at present be considerable difficulty in separating conflicting or joint claims upon the same pieces of property, they are so entangled; yet there are instances of individual claims independently of the tribal right; the difficulty is seen when the money given for the purchase of land comes to be distributed to the various claimants." The Bishop also says: "A case now occurs to me: an old Chief at Otaki was pointed out to me by Mr. Hadfield as having been almost the sole donor of a piece of land, about 500 acres, as an endowment for the native industrial school. I recollect another case at Waikanae, where an old kumara ground was wanted for the enlargement of the school yard, but was refused by an old man who had an exclusive right to it, he said, and this right was acknowledged by the other Natives. I suppose this individual claim is by inheritance. The Native deacon Riwai te Ahu holds land at Taranaki, which he describes as having been inherited from his father and other relations, though he himself has resided from his childhood at Waikanae..... I most cordially approve of the plan which Mr. McLean has carried out, of ascertaining individual claims to land by name. and not acting in the loose way we hear generally as "the Natives." The Rev. Mr. Taylor says: "Whatever piece of ground an individual cultivates for the first time, it becomes his own private property, if he be a claimant of the land in which it is situated; and when sold he only would be entitled to receive the amount." The Rev. Mr. Hamlin says: "In the Bay of Islands, where land purchases were first made, the Native of every degree of rank sold his land without reference to any other authority." Archdeacon Maunsell says, "Often, and more frequently, there will be several take (sources of title) and one of them will sell without consulting the others." The Rev. Mr. Wilson says: "According to the primitive usages originally existing in this country, such a law as positive personal right to land was acknowledged." Mr. Swainson says: "When any member of a tribe cultivates a portion of the common waste, he acquires an individual right to what he has subdued by his labour; and in case of a sale, he is recognised as the sole proprietor." Mr. C. O. Davis says: – "It may be asked can individual claims exist with such an entangled web as this? The New Zealander has no law, that I am aware of, by which he is debarred from asserting his individual right to land: it may be a small portion, nevertheless it is an individual right.

PAGE 2.

"It may be the whole tribe".....

It is to be regretted that the words "community," "tribe," "sub-tribe," "hapu," "family," "clan," "people," are so interchanged as they are throughout the pamphlet. But this interchange of terms shows the difficulty in treating with Natives for the purchase of land, and the reason why it is impossible to lay down any definite rule as to Native tenure. It is not disputed that the Native title is tribal rather than individual; this is "the necessary consequence of the existence of clans or tribes." But the question is always

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in every ease, how far is the title "tribal"? Is it in the whole tribe, or in a subdivision or family? This is not to be determined by any arbitrary rule: it depends wholly on the state of the Natives themselves in particular localities.

In some localities the "community," as regards the title to land, may be the whole tribe: in others, it may be a group of hapus; in others, it may be a single hapu: in others, it may be the subdivision of a hapu; more rarely, the title is admitted to lay in individual proprietors.

Detailed illustrations of the different manner in which land is held by different tribes would be out of place in this note; for the present purpose it is sufficient to refer to the Ngatiawa.

From a period long anterior to the establishment of British sovereignty, it was a well known rule that the various sections of the Ngatiawa claimed their land separately, and that they admitted no overriding general tribal right. When they abandoned their ancient inheritance, either by migration or by the Waikato conquests, they were dispersed into several new localities, and were well known in each locality to act independently of each other and independently of any general right of the whole tribe. This is quite certain.

At a later period (after the establishment of British sovereignty) when the captives taken in the Waikato invasions were manumitted, and numbers of those who had voluntarily migrated to other places began to return to Taranaki, the proprietary right, with a right of alienation, was undoubtedly acknowledged to exist in separate small sections of the tribe without any reference to general tribal right. This was a necessary consequence of their returning as they did in parties of two or three at a time. The Tribe never returned, and has not returned to this day. Those families which remained in the new places where they had settled, were never admitted to exercise authority over those who returned, in the disposal by the latter of their own land. For the last eighteen years it has been acknowledged amongst themselves that even a family of three or four people were free to dispose of or to retain their property.

These well-known rules of tenure in the Ngatiawa tribe at Taranaki have been the foundation of every cession of territory there, without exception.

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"To make a sale thoroughly valid both chief and people."
So that in each particular purchase"

No doubt there was a necessity to ascertain this. But according to what principles was it to be ascertained?

The whole pamphlet is written to produce the impression that Wiremu Kingi was the Chief whose consent was needed in the Waitara purchase: but no proof whatever is offered of it. But if it be true that it has been an acknowledged usage among the Ngatiawa that their separate families had separate rights of alienation, then the principle on which the enquiry was to be made was not, whether according to some fanciful general rules of Native tenure laid down by Europeans the sellers of the Waitara block were to obtain the consent of Wiremu Kingi or any other Chief, but whether according to the usage in force among the Ngatiawa people themselves the sellers were such a "community" as had a right to dispose of the land they were in possession of at the time of the sale, and had had cultivations all over.

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"It is established by a singular concurrence of the best evidence"

The conflicting opinions of high authorities on many material points of Native tenure, which were submitted to the Secretary of State in the Governor's Despatch of 4th December, 1860, prove that no reliance can be placed on any definition which lays down a general rule applicable to all the tribes in reference to their title to land.

On the contrary, nothing is more certain than that there were no fixed rules of tenure. The Rev. Mr. Hamlin, one of the earliest missionaries of the Church of England, and admittedly one of the best authorities on the subject, says: "Tribal right, or any uniform course of action or general plan for their guidance in the management of their lands or other affairs, I have not found to exist among the Natives of this country, nor do I believe they have any such plan or general rule." Mr. Busby, who as British Resident for many years had great opportunities for forming a correct judgment, says, "It is certain they had no fixed rule to guide them in the disposal of their land." Chief Commissioner McLean, who has bought more than twenty millions of acres for the Crown, and whose experience extends over every district and every tribe in New Zealand, says, "The Natives have no fixed rule: the custom varies in different districts. No fixed law on the subject of their lands could be said to exist except the law of might." And Tamihana Te Rauparaha, a Chief well known in England, said openly at the Conference at Kohimarama, "We know very well that according to our customs might is right. Our Maori plan is seizure. We, the Maories, have no fixed rules."

The whole argument of Sir W. Martin's pamphlet is based on the rules laid down by himself. He says in the first lines of it "The present is a land quarrel. The points of it cannot be understood without some knowledge of the main principles of the Native tenure of land." If his rules do not apply to Ngatiawa, the conclusions may be quite incorrect.

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"At that time the alleged right of an individual member of a tribe to alienate a portion of the land of the tribe was wholly unknown."

Sir W. Martin assumes that the Waitara purchase was based on an improper admission by the Government of the individual right: and on this assumption his accusation against the Governor really rests.

In the first place it is quite certain that the Waitara purchase was not made from any individual, but from a group of families: but this may be left for the present, and the enquiry confined to the assertion, made without any qualification, that at the time of the Treaty of Waitangi the alleged right of an individual member of a tribe to alienate a portion of the land of the tribe was wholly unknown. No statement could have been made more inaccurate, as will be shown in the next note

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"The rights which the Natives recognised."
"This unknown thing."

The interpretation here attempted to be put on the terms of the Treaty requires particular examination.

The fact of the Maori version of the Treaty being different from the English text, though perfectly well known for many years, has never been officially alluded to by former Governors; but it will not have escaped any one who has read the Papers presented to Parliament from 1840 downwards, what anxiety has been shown, especially by the missionaries and by Sir W. Martin himself in the year 1846, that the Treaty should be carried out in the sense in which it was explained to the Natives. Notwithstanding the controversy which existed as to what this sense really was, or what were the respective rights of the Crown and of the Natives, no practical difficulty ever arose about the interpretation of the Treaty by the Government of New Zealand; for every successive Governor has been willing, without a critical enquiry as to the Maori and English versions of the Treaty, to adopt the doctrine that it ought to be executed in the sense in which it was understood by the Natives. So long as every one agreed that the sense of both versions was really the same, and that the rights guaranteed to the Natives by the Maori version were substantially what the English text assured to them, it was never worth while to enquire into the rather curious fact of the difference between them. The matter becomes for the first time of importance, when an attempt is made to give an interpretation of the Maori version at variance with the English text; still more, when an interpretation is given to the Maori version inconsistent with itself.

It must be remembered that the Maori is a translation from the English, not the English a translation from the Maori. At the time the Treaty was in contemplation Governor Hobson was ill onboard H. M. S. "Herald," and the Treaty was prepared by Mr. Busby, who for seven years before had been British Resident in New Zealand. Who it was who rendered the English into Maori has never, it is believed, been officially stated. However difficult it may have been to render correctly into the Maori language English expressions meaning things of which Maoris were absolutely ignorant, and which had therefore no Maori words to represent them, it is admitted that the two ideas which were the basis of the Treaty were such as could be made perfectly clear. One was, that the Maoris placed themselves under a new and paramount authority; the other, that they retained whatever rights of property they had in their lands.

But while Sir William Martin so far correctly states what the well understood intention was, he falls into the error of wanting to prove too much; and in

order to effect this, he omits material passages. In the first paragraph above quoted, he says, "We called them [the rights ceded to the Crown] 'sovereignty' the Natives called them 'Kawanatanga,' (Governorship.)" In the second paragraph he says, "To themselves they retained what they understood full well, the 'tino rangatiratanga' (full chiefship) in respect of all their lands."

It is unfortunate that Sir W. Martin should have quoted only the words which were necessary to sustain the distinction he evidently meant to draw. Immediately after the word "Kawanatanga" are the words "o o ratou whenua." The thing ceded in Article II. was "te Kawanatanga katoa o o ratou whenua" the whole Governorship of their lands: the thing retained in Article III was "te tino rangatiratanga o o ratou whenua," the full chiefship of their lands.

Whatever idea it was then, which was meant to be expressed by the words "Kawanatanga" (governorship), and "rangatiratanga" (chiefship) respectively, it is clear they both related to the same thing, "o ratou whenua," (their lands). Those persons who made the translation of the Treaty into Maori, chose, as they were of course bound to do, the words which gave in both Articles the nearest approach to the English meaning. That this meaning was not very clear to the Maoris, is not to be wondered at if the thing represented had no existence among themselves; but if the thing existed, they knew what they were surrendering or retaining. That there was an intention to insert anything in the Maori version expressing an idea contrary to the meaning of the English text, is an imputation on the good faith of the translators, which the Government at any rate will not make.

What then is the state of the matter as regards Articles II. and III. of the Treaty?

If the Chiefs ever possessed any right to exercise dominion over the other members of the tribe, any right such as is now claimed under the designation of "seigniorial right" to forbid the sale of land by its rightful owners, then they surrendered it knowingly. If the words used did not surrender it, that is the best proof that it had no existence as a right.

In another part of the 3rd Article Sir W. Martin unfortunately omits the most material words in the Maori version, taking only those which suit the inference he desires to draw. He says, "To themselves they retained what they understood full well, the 'tino rangatiratanga' (full chiefship) in respect of all their lands."

No one could fail to infer from this manner of quoting the Article, that this "full chiefship" was reserved to the Chiefs. Sir W. Martin does not say so, but the reader in England is left to infer it. This inference, however, would be quite untrue. The right is reserved "Ki nga Rangatira" (to the Chiefs), "Ki nga Hapu" (to the families), "Ki nga tangata katoa o Nui Tireni" (to all the men of New Zealand). The words "full chiefship" will thus be seen to have a meaning quite different from that which it is assumed they have. The words "tino rangatiratanga" were chosen, not in order to confer any right on the Chiefs which was not enjoyed by all the members of the tribe, but to express what the English text guaranteed, the "full, exclusive, and undisturbed possession" of their lands to all. If, then, no right existed in the Chiefs which was not also enjoyed by the people, the words of the treaty did not create it; if each Native had not the same proprietary rights in the tribal land as a Chief, those words could not have been used.

But the intention of the Maori version is further shown by the remaining words of Article 3, to which again Sir W. Martin avoids any allusion. The words relating to the Queen's pre-emption are "ka tuku ki a te Kuini te hokonga o era wahi whenua e pai ai te tangata nona te whenua," (yield to the Queen the buying of those pieces of land which it shall please the man to whom the land belongs to sell. If there had been any intention to limit the right of sale to Chiefs or

families, the use of the singular must have been avoided, and terms chosen quite different from any which so expressly recognize the right in separate individuals to separate pieces of land. If, then, separate rights of property really existed at that time, they were preserved: if the individual right of property was unknown, the words in the Maori version would not have been used. The preceding observations are made in order to show that in Sir W. Martin's argument he has omitted most material passages in the Treaty, and only quoted such as really give an incorrect view of it. But it is better to leave the argument and come to facts.

Sir W. Martin says, that at the time of the Treaty, "the alleged right of an individual member of a tribe to alienate a portion of the land of the tribe was wholly unknown." Now there were some 700 claims to land under purchases made from the Natives prior to the establishment of British Sovereignty. Out of these there are at least 130 cases in which the land was sold by one, or two, or three natives. In more than 50 instances the land was sold by only one individual member of the tribe. One instance may be worth noting separately. Mr. George Clarke, who was appointed Chief Protector of Aborigines on the establishment of British Authority, had several claims. These claims arose out of no less than 36 separate purchases. Eleven of his deeds were signed by only one Native; eight were signed by two Natives; eleven were signed by three Natives: only six deeds were signed by more than three. Sir W. Martin's assertion, then, falls completely to the ground. It may perhaps be said in answer that the consent of the tribe was implied. But it will not do to assume this. If the consent of the tribe was a necessary incident to give validity to a sale, it was of course requisite that such consent should be proved before the Commissioners. The deeds executed by only one, or two, or three individuals, were either complete transfers without the tribe, or when the completeness of those transfers was matter of investigation, the concurrence of the tribe had to be shown.

In these remarks only the sales made in the time prior to the establishment of British Sovereignty are alluded to, because it is to that time that Sir W. Martin's assertion refers. It would be still easier to show that in the sales under the waiver of the Crown's right of pre-emption, sales were often made by individual natives without interference either on the part of the tribe, or of the chief men of the tribe.

"For through the tribes".....

The embarrassing uncertainty of Sir W. Martin's definitions is here apparent. If he had used his first term "community," there would have been no real objection to the paragraph as applicable to the purchases made from the generality of tribes, but even then the Ngatiawa would have had to be excepted, and the word "power" as applied to Chiefs rejected. But if, as a reader in England would naturally suppose, the use of the word "tribe" here meant the whole tribe (iwi), he could come to no more inaccurate conclusion. "Such a position," (as is stated in Ministers' Memorandum of 28th December, 1860) "could not for a moment be maintained, because it is notorious that almost all the land purchases of the Government in New Zealand have been made of sections of tribes without any reference to the tribe at large, or even a notion on the part of any person concerned that such a reference was necessary."

"About the year 1827."

It may be so. It is probable that some part of the tribe went to Kapiti for purposes of trade. But it was not quite fair in Sir William Martin to omit all allusion to the fact, that most of the migrations took place for purposes not of trade but of conquest. This was distinctly asserted by the Protector of Aborigines and by Governor Fitzroy so far back as 1844, as was shown in the Governor's Despatch of 4th December, 1860.

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"But it is quite certain that such intention was never carried out. The Waikato invaders did not occupy or cultivate the Waitara Valley."

It is not said on what authority Sir William Martin makes this statement. There is no doubt of its inaccuracy. "At the time of the conquest," says Chief Commissioner McLean, "many acts of ownership over the soil had been exercised by the Waikato. The land was divided among the conquering chiefs, the usual customs of putting up flags and posts to mark the boundaries of the portions: claimed by each Chief had been gone through." – "I know," says the Rev. Mr. Buddle, "that a large party of the Waikato people belonging to the Ngatimaniapoto tribe under Niutone Te Pakaru, went to Waitara several years ago, and cleared a large piece of land there for cultivation in order to exercise their rights." – "I am decidedly of opinion," says the Rev. Mr. Whiteley, "that Archdeacon Hadfield is wrong and that Mr. McLean is right. Certainly the Ngatimaniapoto came to Waitara and had a kainga and cultivations there." "The title of the Waikatos [to Taranaki,]" said Chief Protector Clarke in 1844, "is good so far as they have taken possession." – "The land is ours," said the Waikato Chiefs in 1844; "we claim it by right of conquest, and some part of it by possession." – "But as some of the Waikato," says Mr. White, "under Rewi and others, were still cultivating in the vicinity (but only for the crops then in the ground) this was given as an excuse by Wiremu Kingi (1848) for asking Teira and Ihaia to be allowed to come over to the South side of Waitara river."

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"Another instance occurred about the year 1842"

This assertion is evidently made on the strength of a statement by the Rev. Riwai te Ahu, in his letter to the Superintendent of Wellington (page 41). But it is quite incorrect. Niutone Te Pakaru (see note page 11) certainly had a large clearing at Waitara, as well as others of the Waikato invaders.

The true cause of the return of these people to Waikato was not that "William King sent a deputation to warn them off:" it is given in the following extract from a Despatch of Acting Governor Shortland, dated 24th September, 1842: "At Kawhia several Chiefs were introduced to His Excellency, among whom were the leaders of a recent expedition to Taranaki, at which place their presence had created some alarm. On being asked what were their objects and intentions, they explained that reports of the high prices given to the Natives of that place for provisions and labour had reached them, and that considering the country theirs by conquest, they had resolved to settle in the neighbourhood of the Europeans; but that since Te Wherowhero had sold the land to the Queen, and they understood the Governor was not willing that they should remain, they had returned."

[Parl. Pap. 1844, Appendix to Report of Select Committee, p. 189.]

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"On the 3rd August, 1844." "The Governor formally and officially."

Sir W. Martin here shows a complete misconception of Governor Fitzroy's decision. This is the first time in which it has been formally attempted to be maintained that a general right in the Ngatiawa was allowed by Governor Fitzroy. It is true that the Governor disallowed Mr. Spain's judgment, which awarded a grant for 60,000 acres to the New Zealand Company: but he certainly did not recognise a general tribal right in the Ngatiawa, for this would have given them rights which they had not before the Waikato conquest. The question then is, what he meant by allowing "in all their integrity" the claims of the Ngatiawa.

This is conclusively shown by the speech he addressed to the Natives themselves on the 3rd August, and which he caused to be published in the official Maori Gazette of September, 1844. He there distinctly recognised the individual right of each man, woman or child to land; desired each to point out his position; ordered schedules of the individual ownership to be prepared; gave as a reason for these schedules that they would prevent future mistakes; advised them to be careful each to sell his own property, in order that he might receive the payment himself; and expressly pledged himself to buy any individual rights when they should be offered on reasonable terms.

If Governor Fitzroy had intended to recognise a general tribal right in the whole Ngatiawa tribe, he would not have recognised the sale of 1840 at all. Assuming the view of the tribal right taken by Sir W. Martin, it is clear that the 70 people who executed the deed of 1840 could have no right whatever to sell: whereas Governor Fitzroy recognised their right, and reserved a similar right to those who were not parties to the deed; that is to say, the right of each section or family or individual of the Ngatiawa tribe that returned to the district, to sell without the interference of any one not being a part owner.

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"The boundary line."

Sir W. Martin's quotation of this "boundary line" would imply that the Waitara was intentionally excluded by Governor Hobson. It is necessary to show that this is a complete misconception.

When the original arrangement was made by Governor Hobson with Colonel Wakefield in September 1841, as to the right of selection to be exercised by the New Zealand Company, the New Plymouth Settlement was described as follows: "50,000 acres more or less, to be surveyed and allotted by the Company in the neighbourhood of New Plymouth, the boundaries whereof are as follows: – The Coast line from Sugar Loaf Point, extending in a northerly direction ten miles in direct distance; from thence a line at right angles with the coast line, eight miles; from thence by a line parallel with the Coast line, ten miles; and thence by a line parallel with the northern boundary to the sea coast at Sugar Loaf Point."

These "ten miles" came close up to the Waitara, but just left out the river. On the 15th October 1841 Mr. Carrington pointed out the injury this would be to the Settlement. On the 5th November 1841, Colonel Wakefield wrote to the Company: "I am about to apply to the Governor for an extension of the Block at Taranaki to the amount of 30,720 acres." On the 25th April 1842, Governor Hobson wrote to the Resident Magistrate at Taranaki: – "I have I purchased Te Whero Whero's claims, as well to your block of land as that which extends thirty miles to the north of what Colonel Wakefield pointed out to me as your northern boundary..... I

have permitted them to settle near you, but by no means to infringe upon you. They will locate on your northern frontier..... Have the goodness to point out to Mr. Whiteley your boundary line, and to inform him on behalf of the Natives where they may go without interfering with the settlers."

PAGE 16.

Page 18

"On the block stood two pahs"

One of these pahs was built by the permission of Tamati Raru, Te Teira's father. This was perfectly well known to Sir W. Martin, and should have been alluded to when he says that Wiremu Kingi and his people had been residing there for years: but the reference to these pahs, in immediate juxta-position to the account of Wiremu Kingi's speech to the Governor when Te Teira made his offer, appears as if it was intended to show that Wiremu Kingi had a proprietary right in all the land which Teira offered. But it was always known that Wi Kingi had some claims on the south bank, and his property was carefully left out of the survey.

PAGE 17.

Page 19

"It does not appear"

On the contrary, it is maintained that this was just the time and place to do it. There is little doubt that it is a custom among the New Zealanders that if a person present at the offer of land does not put in his claim at the time, he is held to be barred. The Rev. Riwai Te Ahu, in his Evidence before the Board of 1857, said: "I think that if claimants do not come forward at the proper time, they should forfeit their claims." It was this which caused the cry which arose among the Natives at the meeting, "Kua riro a Waitara" (Waitara is gone). The Governor had just declared that while he would buy no man's land without his consent, he would not permit any one to interfere in the sale of land unless he owned part of it. Wiremu Kingi was bound distinctly to say, then, whether he claimed a proprietary right, or was merely repeating the determination, he had constantly expressed before, of prohibiting the further sale of land even by the rightful owners. He did not say it, and the Natives cried out "Waitara is gone."

PAGE 17.

"Even now it is not easy to gather."

There was no doubt or ambiguity in this at all. The point contended for by the Governor was, that in accordance with precedents the sellers, as proprietors of land, should be allowed to sell it, and that Wi Kingi should not be allowed to prevent them. The point contended for by William King was, that he should be permitted to carry out the determination of the Land League, that no land should be sold by the rightful owners thereof even though they should not have joined the League. It was laid down by the League that any man attempting to sell land should be put to death. This was distinctly stated by Mr. Rogan, in his Evidence before the Board in 1856. – (See Note, p. 1.)

Pages 17, 18.

"There is a remarkable difference between the two."

On the contrary, the Government view of the case has been perfectly consistent throughout. The Government relied, 1st, on the cession of the whole Taranaki district from the Waikato Chiefs in 1841; and 2nd, on the uniform decisions of successive Governors which entirely denied the general tribal title, of the Ngatiawas to have been revived since that cession.

For the present purpose it may be conceded that "according to Maori usage the conquered tribe was held to be justified in doing their utmost to recover possession if possible of their fathers' land, and that nothing hut their inability to do that made the title of the conquerors complete." But there was not the shadow of a doubt that up to the time of the establishment of British Sovereignty in 1840, it was utterly out of the question for the Ngatiawa to attempt the reconquest of their territory from the Waikato. Does Sir William Martin mean that after the establishment of our sovereignty the Ngatiawa might have made the attempt? If so this would be a curious argument from the late Chief Justice of the Queen's Court; yet the sentence is not clear (in its application to Ngatiawa) except on that interpretation.

The cession of sovereignty to the Queen by the Treaty of Waitangi of course

Page 18 – Continued.

Page 20

finally fixed the relations between any contending tribes at the point at which they stood in February, 1840, The Ngatiawa not having been able (according to Maori law of Might) to reconquer their territory from the Waikato up to 1840, and the law of Might having been abrogated by the cession of sovereignty, it follows that in 1840 any right which formerly existed in the Ngatiawa was determined, and that according to Sir W. Martin's formula there remained that "utter inability to recover possession" which made "the title of the conquerors complete."

This title it was then, complete according to existing Maori right at the time of the Treaty, and not subject to be altered afterwards by resort to force, which Governor Hobson acquired by his purchase in 1841. The then Chief Protector of Aborigines himself negotiated the purchase: and in accordance with what was the real state of the case at the time, the deed of sale which he drew out did not purport merely to surrender a claim on the part of Waikato, it proceeded, in the terms always used in cases of absolute alienation, to sell and convey the land.

The Government might have rested from the first on this title. That Governor Fitzroy as a matter of policy suffered the Ngatiawas to bring in a claim afterwards, in no way altered or modified the completeness of the original purchase from Waikato. The same thing has been done over and over again: for instance in the case of the territory of the Rangitane tribe in the Middle Island, the land was bought from the conquerors, but afterwards payment as a matter of grace was made to the conquered Rangitane also: but no one ever pretended that the Rangitane reverted to their original rights before the conquest.

PAGE 20.

Page 21

"That which Potatau really possessed."

What possible right of the sort could Potatau possess after the establishment of the Queen's sovereignty? The Waikato had completely driven off the Ngatiawa years before, and at the time of the cession of sovereignty held that absolute right in the soil which, according to Maori usage, was vested in conquerors who had succeeded in displacing the original owners: and that right they sold. But, though they could have no power or right of the sort stated by Sir W. Martin, it is true that they frequently threatened to renew their war on the Ngatiawas if they presumed to return to the district. The principal reason for no compensation being awarded to the Ngatiawa by Commissioner Spain in 1844, was that the Protector of Aborigines specially charged with the maintenance of their interests himself declared, that if any payment were made the Waikatos would certainly come down and take it from them.

PAGE 20.

"He could not possibly doubt the title of his Tribe."

This argument could not be admitted even if there existed any doubt as to the occupation by the invaders. But whatever weight it might have had if the fact had been as here stated by Sir W. Martin, it must certainly fall to the ground if the assumption on which it rests is untrue. The occupation, cultivation, and possession by the invaders has been shown above (Note, p. 12). But further, as was shown in the Governor's despatch of 4th Dec. 1860, Wiremu Kingi asked and obtained the permission of Waikato to return. He knew very well, no one better, that it was not enough to get the consent of Sir George Grey – even when obtained by a distinct promise (which he broke) of settling on the north bank of the Waitara – without ensuring the sanction of Potatau. The Maories know too well that the British Government has hitherto allowed them to fight out their own land quarrels in all parts of the North Island, to expect any safety on account, of the Queen's sovereignty, against their Maori enemies.

PAGE 20, 21.

"Why was this claim, so long abandoned, set up again?"

It does not appear on what authority Sir W. Martin states it was abandoned. It is certain that he is completely misinformed. The Government have never given up the rights they had under the Waikato cession. So far from this, in his manifesto of February 1860, (before hostilities had commenced, and while it was yet believed that William King would not resort to force for the maintenance of the land-league claim), the Governor especially warned the Native people that he claimed under the transfer from Waikato, and that the mana was not with William King.

Page 21.

Page 22

"It was recognised by the Government itself."

It has been shown that the Government might have rested from the first on the Waikato cession; and they would very probably have done so, if they alone had been concerned. It was on the strength of that cession that Governor Hobson fixed the limits of occupation by the Waikatos at Urenui, some miles north of Waitara, so as not to interfere with the European settlement. But the case was complicated by the two purchases made by the New Zealand Company – one in Nov. 1839, from Wiremu Kingi himself and other absentee Ngatiawa Chiefs, the other in February 1840, from the few resident Ngatiawas at Taranaki. It was these purchases which Commissioner Spain investigated, – it was his judgment upon them that Governor Fitzroy refused to confirm. When, therefore, Governor Fitzroy stepped in to disallow the Commissioner's judgment, he, no doubt, admitted the Ngatiawas to a position which up to that time had been denied to them. But that position, as has been shown, certainly did not recognise their tribal title at all; and it was, as shown in the Governor's Despatch of the 4th December 1860, the extreme limit of the Ngatiawa right. Where the case is perverted is this: – The Government never pretended that, after Governor Fitzroy's proceedings in 1844, they could claim the Waikato cession in bar of the separate rights of the Ngatiawa families and individuals: they have admitted Teira's proprietary right as they would admit William King's. Where the Waikato cession is good against William King is that it absolutely precludes such a right as he claims to prevent Teira and the others of his party from selling their own land: it would equally preclude Teira from preventing any one else from selling his.

PAGE 21.

The right or might of the conqueror was wholly outside the Tribe."

The argument as here put forward appears complete. It is, nevertheless, incorrect in some respects. No one well acquainted with Native tenure can be ignorant that a conquered tribe seldom was allowed to return to the ancient possessions from which it had been driven out by conquest, without some conditions which clearly brought out the relative positions of conquerors and vanquished. It was a frequent practice for the conquered party to be under the obligation of paying tribute for some years in the shape of produce of the soil, before they were permitted to resume full possession of the land as their own. There is not the slightest doubt that this was very commonly done in the case of the manumitted Ngatiawa captives. It was specially done by Taonui, the head chief of Ngatimaniapoto, when he liberated Orowhatua, the father of Rawiri Waiaua: who carried his tribute up to Mokau River to present to Taonui and his tribe. Even in cases of sale of their land to the Crown, the Ngatiawa have repeatedly sent up portions of the payment to Waikato as an acknowledgment of the permission to return; and this was really necessary, for (as the Protector of Aborigines and Commissioner Spain stated in 1844) the Waikatos often openly threatened that, if the Ngatiawas presumed to receive any further payment themselves, they would undoubtedly come down and take it from them. This is not consistent with Sir W. Martin's declaration that "if the Tribe returned, they returned to all the rights they possessed before the invasion." Even if there had not been numerous cases of the same kind among other Tribes, in the conquests whereby the lands of the New Zealanders so constantly changed hands before the establishment of British sovereignty, there

Page 21 – Continued.

Page 23

was indisputable evidence before Sir W. Martin that in the case of the Ngatiawas they most certainly were never allowed to "enjoy their own again as of old."

The imposition of conditions on a vanquished Tribe in allowing them to return to their land was practically an exercise of the right of mana in the conquerors. Now the Waikato cession transferred to the Government whatever right of mana the Waikatos possessed at the time of the Treaty of Waitangi. Governor Fitzroy was acting in strict accordance with the usages and rights which were vested in the conquerors prior to 1840, when he stipulated with the Ngatiawas in 1844 that they should set out their separate portions of land; Governor Grey acted in strict accordance with those usages and rights when he stipulated with Wiremu Kingi

in 1843 that he should settle on the north bank of Waitara.

PAGE 22.

Page 24

"The point then on which the Government relied."

It is quite true that the point maintained by the Government was, that the Native cultivators and occupiers of the block could make a title without the consent of the whole tribe. This was quite plain from the very first. The error is, in supposing that it was anything which Governor Browne contended for at Taranaki, instead of being that which had been established by Governor Fitzroy, adopted by Governor Grey, and as a matter of fact been the foundation on which every block of land at Taranaki without exception had been acquired, It is one of the pervading fallacies of the argument, to treat that as a "new policy" which is sixteen years old, and had always been pursued before the establishment of the land league,

PAGE 24.

Page 25

"That which was darkly intimated."

There never was any "dark intimation" whatever by the Governor. His declarations were publicly made, and perfectly well understood by all those who for five years had been slaying each other in disputes about land. The Rev. Richard Taylor, a Church Missionary, admits that the murder of Rawiri Waiaua was the first fruit of the establishment of the land league, which had been formed by many tribes at the general meeting at Manawapou in the Ngatiruanui country. The Ngatiawas perfectly well knew what the Governor meant when he said he would no longer suffer the existence of anarchy and bloodshed in the settlement, and that he would no longer tolerate the tyranny of the land league by which they had been caused. Every one of the feuds which had occurred were founded on disputes about land. Nearly all were the result of resistance to the mandates of the land league, by loyal Natives like Rawiri and Ihaia, who claimed the guarantee of their proprietary rights under the Treaty of Waitangi, and the fulfilment of the pledges given by Governor Fitzroy and Governor Grey. It was because Wiremu Kingi had broken his distinct engagement to settle on the north bank of the river that these disputes occurred: and there was not a single Native present at the meeting of March, 1859, who was not perfectly well aware that the Governor's declaration was in strict accordance with the promises of former Governors, and inaugurated no new system of land purchase whatever.

PAGE 24.

They [the proceedings of the Government] were seen to be aimed against the rights of the tribe itself, and against the interference of the Chief in the affairs of his own tribe."

This is surely an extraordinary statement. What was the cause of the Governor's declarations? Simply that for years past various sections of the Ngatiawa had engaged in internecine feuds, marked by a ferocity of which there had been hardly a parallel since the foundation of the Colony. In the celebrated speech which was made by Wiremu Kingi when investing Ihaia in the Karaka pa, he declared his will that the latter was to be roasted alive on a slow fire. This was his speech on the occasion: – "Men of Taranaki be strong! Be brave," and capture Ihaia, Nikorima, and Pukere as payment for the tapu of Taranaki" and the Umuroa. Then we will stretch out their arms and burn them with fire. To prolong their torture let them be suspended over a slow fire for a week, and let the fire consume them. Like the three men of old whom Nebuchadnezzar commanded to be cast into the fiery furnace, even as Shadrach, Meshach and Abednego, shall it be with Ihaia." – This would be incredible (especially in a man who not long after was assuring Archdeacon Hadfield "that he was remaining in great grace of Our Lord Jesus Christ"), if it were not vouched by one of the resident missionaries, and if the Native letters to the Waikato chiefs containing an account of it had not been seen and read by the then District Magistrate there. Wiremu Kingi and Ihaia were members of the same tribe: Rawiri Waiaua and Katatore were members of the same tribe: Katatore and Tamati Tiraurau were members of the same tribe: yet all these were successively murdered or attempted to be murdered one by the other.

These then were the "rights of the tribe;" this the "interference of the chief in the affairs of his tribe;" which it was criminal in the Governor to announce that he would not tolerate in New Plymouth. It is something too much to

Page 24 – Continued.

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find that the attempt of a Queen's Governor to put an end to atrocities such as those which disgraced humanity in these feuds, should be branded as an infraction of the rights of the tribe and of the chief.

But this paragraph is further remarkable for being the first instance where Wiremu Kingi is unmistakably referred to as "the Chief" of the tribe. Now this is a pure assumption. It is absolutely certain that the various sections of the Ngatiawa do not recognise him as the Chief of the whole tribe; it is extremely doubtful whether he would anywhere be recognised as anything more than the principal man of the Manukorihi branch. There is no doubt whatever that as between Reretawhangawhanga (Wiremu Kingi's father) and Te Hawe, the Chief who resided at Queen Charlotte Sound, the latter was everywhere recognised as the highest Chief. The best evidence of the status Wiremu Kingi holds is to be found in the history of these savage feuds. If he had ever been acknowledged by the Ngatiawa people themselves as their Chief, they would not have resisted his will as they have so often done even to blood. It was because they denied his right to govern their affairs, it was because they refused to submit to dictation from him, that so many have fought with him before and are in arms against him now. On more than one occasion they had his life in their hands: he was actually taken prisoner in one of the fights, and was spared by the very men whom he afterwards purposed to roast alive. There is something repugnant to good feeling and common sense in supporting the claim of such a man to a position, the refusal to grant which by other Chiefs of his own tribe has been the source of so much blood being shed; and in accusing the Governor for not permitting a tyranny, which those immediately concerned had over and over again staked their lives to be delivered from.

PAGE 25.

Page 27

"Was the principle thus enunciated."

The assumption that the Governor's declaration, that "he would not permit anyone to interfere in the sale of land unless he owned part of it," was directed against the right of Chiefs and Tribes, is altogether erroneous. The words cannot be twisted into such a meaning; on the contrary, all owners, whether as Chiefs, Tribes, or individuals, are recognised. At the same time, these words have, and were intended to have, a significant meaning. In several parts of the country, Land Leagues had been formed to prevent the alienation of land, and these combinations had already commenced to interfere between the Government and owners of land.

Many months before the meeting at New Plymouth, an offer to sell land at Waipa was made by the powerful Waikato Chief, Wiremu Nera Te Awaitaia. The Waikato King and Land League party interfered and forbade the sale. The Governor made a precisely similar declaration to that subsequently made by him at New Plymouth. Wiremu Nera presented himself in Auckland in his uniform as a Native Assessor, and insisted on his right, as an officer of the Queen, to deal with his own property as he thought fit. He was firm in his purpose, and so was the King party. There was every appearance that something serious would arise out of the quarrel; and such would probably have been the case, but for one circumstance. Claimants of proprietary rights came forward and expressed their unwillingness to be parties to the sale. On investigation, they were found to be joint proprietors with Wiremu Nera. The Government could of course proceed no further: the Governor had declared that "he would buy no man's land without his consent" – a promise which had always been acted on in the past and was fully intended to be maintained for the future. Wiremu Nera was very angry, and the very friendly relations which had previously existed between him and the Government were for a time interrupted. He declared that the Government had been influenced by fear of the Kingites, a body to whom he expressed his own determination not to submit.

This case is one precisely analogous to that of Waitara, up to the time of the refusal to sell by some of the acknowledged part-owners of the land; and might, had it not been for that circumstance, have led to the same consequences. Of course if any person at Waitara had made a claim it would at once have been investigated, as had been done at Waipa, and if on such investigation it had been found to be a bona fide claim on the part of a proprietor, and not a prohibition as a land-leaguer, the same course would have been followed, and the negotiations for purchase broken off.

PAGE 27.

Page 28

"As to the alleged incompatibility"

The Government have not only not recognised this claim at Taranaki, they have uniformly and steadily denied it; and every cession of territory from the Ngatiawa has been based, not on its recognition, but on its repudiation.

It is difficult to understand how Sir William Martin could advance such a statement in direct contradiction to all that was put forth by the Government, and particularly to the evidence of Chief Commissioner McLean, at the bar of the House of Representatives, under whose control all those purchases have been effected.

PAGE 27.

"Nor did the Government disavow."

The Government, of course, did not disavow their intention of pursuing the same policy everywhere. But what policy? It is very material that no doubt should be allowed to be insinuated as to what the policy was. It certainly was not the denial of any lawful rights of Chief or Tribe which had been recognised by former Governments, or had ever been understood to exist: these were always intended to be maintained in the future as they had been in the past. But it was the denial of any right in Chiefs of these Land Leagues which have been formed throughout the country, to prevent the rightful proprietors of the soil from selling their land to Her Majesty if they please. This policy the Government had openly declared long before the Waitara purchase, and specially in the case of an offer of land by the Waikato Chief Wiremu Nera te Awaitaia. (See note p. 25.)

PAGE 27.

How was the tribe to act?.....

"And who could that be except the chief?"

It has been shown (see note, page 24) that Wiremu Kingi is most certainly not acknowledged by anyone to be "the Chief" of the Ngatiawa tribe. But even if he were, he is barred from setting up the claim here referred to, to be the "mouth-piece or representative" of his tribe, in any question of preventing the sale of land in the Taranaki district. The Governor has desired throughout the proceedings he has taken to rest entirely on the acts and decisions of the Government, and to avoid as much as possible any reference to the transactions of the New Zealand Company; but this paragraph in the pamphlet makes it necessary to refer to the following facts. In October, 1839, when the principal agent of the New Zealand Company, Colonel Wakefield, was engaged in making his first purchases from the Natives, Wiremu Kingi accompanied him in the ship *Tory* from Waikanae to Queen Charlotte Sound, in order to induce the Natives of the Ngatiawa tribe who were settled there to sell their land to the Company. He took an active part in the treaty that was made on that occasion, and with Himiona, a Native teacher from the Waimate Mission Station, explained to the Ngatiawas the nature of the bargain they were called upon to make; and himself, in the cabin of the *Tory*, gave out the names of the places sold, which were entered in the Deed of Sale.

Those names were as follows: – Tehukakore, Warehama, Rangiwaiama, Wairarapa, Turakirae, Wanganuiatera (Port Nicholson), Rimarapa, Oterangao, Omera,

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Tuamero, Ohariu, Titahi, Porirua, Ohoeka, Te Rewarewa, Waikanae, Waimea, Otaki, Owaha, [Ohau], Manawatu, Rangitiki, Wangaehu, Turakina, Wanganui, Waitotara, Whenuakura, Patea, Tangahohi, Ngatiruanui, Pahakahatiro, Taranaki, Moturoa and the several other Sugar Loaf Islands, and the river or harbour of Mokau. The Deed was executed at Queen Charlotte Sound on the 8th November, 1839, and the first signature was that of Wiremu Kingi for himself and his father Reretawhangawhanga.

Either this deed effected a valid sale (so far as Wiremu Kingi as the "mouthpiece and representative of the Ngatiawa tribe" was concerned,) of the whole of the land from the river Mokau on the west coast to the river Warehama on the east coast, in which case he is barred by his execution of that deed from assuming any right as "the mouthpiece and representative of the tribe" to repudiate in 1860 the sale which he made in 1839; or he signed it as an individual proprietor, in which case he showed that the "consent of the whole tribe" was unnecessary, and the argument of general tribal right in the Ngatiawa must be given up.

In either case it is a fraud in Wiremu Kingi to attempt the repudiation of his sale of 1839. He has admitted to Commissioner McLean that he received part of the payment given at Queen Charlotte Sound by Colonel Wakefield.

But this Deed raises a curious point. Governor Fitzroy excluded from his arrangements in 1844 the parties to the sale to the Company in 1840. It has been shown (see note page 13, 14) that his recognition of that sale was one proof of his admitting no general tribal right in the Ngatiawa. But what of the sale in 1839? Exactly the

same principle must be applied to it as to the sale in 1840: certain members of the tribe conveyed away their proprietary rights by both Deeds alike: and if Natives were justly barred by one deed they were as justly barred by the other.

It has been urged against a reliance on this Queen Charlotte Sound Deed that it leaves out Waitara in the enumeration of places sold by Wiremu Kingi. Again, another objection is that certain reserves were promised in the Deed to be made, but were never made. But, 1st. the Government has never rested on the Deed, and 2nd. the Deed cannot be claimed for its reserving part and rejected for its selling part; and there were no reserves promised specifically in any particular part of the immense territory described in the Deed,

PAGE 28.

Page 30

"The Natives also have understood."

The Natives have understood this because they have been told so by Europeans. It is one of the most serious embarrassments against which the Government has to contend, that publications such as those which the Bishop of New Zealand, the Bishop of Wellington, Archdeacon Hadfield, and now Sir William Martin have put forth, lead the Natives to believe that the Governor has initiated a new course of policy which will end in wresting their lands from them and subverting the rights they possess under the Treaty of Waitangi.

PAGE 30.

Page 31

"The answer asserted the Tribal Right."

It is satisfactory at last to obtain an admission of what this letter of King's really meant. The apologists of W. King have hitherto urged that this letter was a full notice of his proprietary right: the Government as constantly maintained it was no notice of any right except the assumed right of preventing the sale of their own land by other proprietors. Sir William Martin says it "asserted the tribal right."

Here then was the whole question.

If a general tribal right in the Ngatiawa tribe had ever been admitted by the Government at Taranaki, the notice was one which the Government were bound to respect, and stay their hand accordingly. If, on the other hand, that general tribal right had never been acknowledged among the various sections of the Ngatiawa themselves, and had been invariably denied and repudiated by every successive Governor of New Zealand, the notice was one which the present Governor would properly disregard as a threat, in the same manner as all preceding threats of the same kind had been disregarded in the acquisition of other blocks at Taranaki.

PAGES 30, 31, 32.

[Letters from Wiremu Kingi to Archdeacon Hadfield.]

These letters were withheld from the Governor's knowledge up to August 1860. It appears that so long ago as the 2nd July 1859, Wiremu Kingi said, "Therefore my thoughts of love go forth to you, that you may speak a word to the Governor and McLean concerning the course of proceeding about Waitara here." Again, "I think that you should concern yourself with the Governor and McLean and Parris." Again, "Let your word to the Governor and McLean be "strong."

The Governor had specially requested Archdeacon Hadfield to keep him informed of anything important among the Natives of his district. The Governor at that time placed great confidence in the judgment of the Archdeacon; and if the latter had communicated these letters to the Governor when he received them, and intimated at that time the opinions he has expressed since the breaking out of hostilities, as to Wiremu Kingi's proprietary rights, he would very probably have been the means of preventing much of the bloodshed that has taken place.

The Governor has, perhaps, no official right to complain of Archdeacon Hadfield for not communicating these letters to him: but he has a right to complain of the manner in which they were published after being withheld from him so long. Archdeacon Hadfield came up to Auckland in the steamer which brought the Wellington members to the meeting of the Assembly last July. He had these letters in his possession. They were made public, for the first time, to serve a party purpose in the House of Representatives.

In the letter of, 2nd July, exactly the same intimation is given to Archdeacon Hadfield as had been given to the Governor himself in Wiremu Kingi's letter of 11th February 1859 (quoted in the despatch of 4th Dec. 1860), namely an intimation of the determination of the Land League that Waitaha [Bell Block] should be the European boundary. Sir William Martin stops his italics just before this declaration: "What I say is, that the boundary for the Pakehas is settled, namely Waitaha. That is all, let them remain there."

But why are only two of the letters from Wiremu Kingi to Archdeacon Hadfield produced? There were three. Those dated 2nd July and 5th December, 1859, are given by Sir William Martin; the intermediate one, dated

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Page 32

27th July, 1859, is omitted. In this letter there are two remarkable statements. The first is this: – "Your clear words have reached me, and I have seen them..... If, indeed, you had not heard the word which you quote in your letter to me; but, is it not so, you and the Rev. Mr. Williams heard the word of Reretawhangawhanga relative to Waitara, saying that it should be held? That was Rere's word and mine, and that word was also from you two." What the "clear words" were will, perhaps, never be known. Archdeacon Hadfield has denied giving any advice to Wiremu Kingi since 1839 to hold the Waitara; but in a letter from him to Archdeacon Govett, at Taranaki (as reported by Mr. Parris), he said that "he would not advise Natives to sell their land, – that he was not pleased with anything the Government had done for the Natives, – and that the Governor would find that a large party of the Natives at Otaki would espouse William King's cause."

The second statement is this: – "Mr. Parris has also talked of my being shot with a gun, and simply burying me outside – I am not to be taken to the graveyard. It was his plan (or idea) to fetch Te Whaitere [Katatore]: he died, and in like manner by Mr. Parris also shall I die. Mr. Parris is glad that I should die, so that he may get the land. He rejoiced also at the death of Te Whaitere Katatore, that the land might be clear."

Sir William Martin, no doubt, considered that this tissue of wicked calumnies against a man who, it is perfectly well known, saved the writer's life, would be too much for anyone to credit. If the letter had been published, it might have destroyed the effect of the other two.

"He maintains that the land cannot be alienated."

"It cannot be inferred"

Sir William Martin appears here to change his ground as to the true meaning of King's letters; but though the language is carefully guarded, the qualification is only apparent, not real. He says, "it cannot be inferred from this that Wiremu Kingi did not assert also some individual claim to land within the block." This negative way of putting it escapes the difficulty to Wiremu Kingi's apologists of absolutely denying, as the Government do, that these letters contained any notice of proprietary right: but it as carefully avoids affirming that they did contain such a notice. If Sir William Martin could fairly have stated they did, he would certainly not have contented himself with such hesitating words. The point was of far too great importance not to have been taken if anything in the letters had warranted it.

"We have seen that in the official statement"

This is another instance of complete misapprehension. It is true that failing other proprietary claims being preferred, the Government assumed to have extinguished the title of the real owners. But the Government never assumed this in the sense of excluding or denying the proprietary claim of any one who might show that he possessed it. The Government constantly invited such claims, and on the 29th November 1859, when the first instalment was paid to Teira, Rauponga, and the other sellers, a memorandum was read expressly saving the rights of every one having a proprietary claim and not assenting to the sale.

"Letters from Ritatona te Iwa."

These letters are now for the first time seen by the Government. The same remarks may fairly be made as to withholding these letters as have been made in the case of the letters from Wiremu Kingi to Archdeacon Hadfield and from Riwai te Ahu and the other Ngatiawa Natives to the Superintendent of Wellington. (See Notes, pp. 30, 31, 32, 44.)

There could be no excuse in this instance any more than there was in the others. The second letter of 11th February 1860, says; "On this account it was that I wrote to you and Hadfield, [on the 5th December] that you two should speak to the Governor. But we and Wiremu Kingi are waiting for the fulfilment of your word, that Mr. Hadfield should write to the Governor." The Governor never received any letter of the sort, either from Mr. Hadfield or Riwai te Ahu. It is strange that any persons professing to have at heart the welfare of the Natives and the maintenance of peace, should receive letters in which they are repeatedly prayed to write to the Governor, withhold the letters from the Governor's knowledge, publish them for a controversial purpose without any allusion to the fact of their having been withheld, and then accuse the Governor of neglecting the warnings they contained.

But the second letter is the condemnation of the writer. It contains the proof of the intention of Wiremu Kingi and his followers to resist the survey of the land, even to blood. Let no one say after this that their resistance was the result of the proclamation of Martial Law. On the 11th February this Ritatona te Iwa, writing for himself and Wiremu Kingi, warns their friends at Waikanae that they will resist the survey by force and are prepared to fight. On the 20th February, nine days after this letter, the survey was attempted. On the 22nd February Martial Law was proclaimed. On the 17th March hostilities commenced.

Thus the evidence of the fact that resistance by force of arms was deliberately intended by Wiremu Kingi and his people long before the proclamation of Martial Law, is furnished in a letter which was unhappily withheld from the knowledge of the Government for more than nine months after its date, and eight months after the commencement of hostilities.

It will be seen that great stress is laid in a following portion of the pamphlet on the peaceable manner in which the survey was obstructed on the 20th February. This letter, produced in support of the accusation that it was the Governor who resorted to force, affords the most conclusive proof of Wiremu Kingi's party having determined to resort to force themselves long before the survey was attempted.

(Tipene Ngaruna's statement) "Wiremu Patukakariki stood up and said."

This is quite untrue. Patukakariki never made any objection when Teira's land was offered. He did object when Piripi offered to sell some land.

It is somewhat surprising that Sir W. Martin should insert a statement so untrue, when indisputable evidence was before him in the statement of the Native Minister and Chief Commissioner, who were present at the meeting.

Its falsehood disposes of the rest of the letter, and makes it unnecessary to say more: but as Sir W. Martin has put in italics the concluding part which refers to a proposal made by Teira to exchange certain lands, it is perhaps as well to observe that Sir W. Martin ought to have been aware that the proposal, whatever it really was, was made long before the offer of his land by Teira, and had nothing whatever to do with any transaction in which the Government had been mixed up.

(Riwai te Ahu's letter) "True, he has a title."

This is an important admission by the adverse party. It goes to prove far more than the Rev. Riwai te Ahu probably meant to admit. If Teira has a good title to his own cultivations and subdivisions, so has every other Native who is a party to the sale, including a number of absentees at Queen Charlotte Sound under Ropoama Te One, who is a Chief of the hapus concerned in the sale. The title of the sellers then to part of the block is certain. The Government contends that their title to the whole is probable. The question as to the extent of their ownership was what the survey would have brought out when it was forcibly interrupted by Wiremu Kingi. (See note to other letters, pages 34, 35, and 44.)

"In these documents the grounds of the opposition to the Government are clearly disclosed."

Not one of these documents was ever submitted to the Government till they were read in the House of Representatives. Assuming that they "clearly disclosed" the grounds of opposition, it was as clearly the duty of those persons who received them, to communicate them to the Government at the time.

PAGE 42.

If anything be plain"

The points in dispute, then, were not so difficult to ascertain as they appeared to be at page 17. William King, it is said, representing the whole tribe, stands upon the fact that the whole tribe have not consented to sell the Waitara land.

As has been said already, it must not be believed for a moment that William King is the Chief of the whole tribe. William King is undoubtedly a chief of the Manukorihi section of the Ngatiawa tribe. He never has been and never would be acknowledged by the other sections of the tribe as the head chief of Ngatiawa.

But even if he were, the difficulty at once arises as to what is meant by the consent of the whole tribe. Does Sir W. Martin mean that it is necessary in every sale to get the consent of every man? not of the families, or subdivisions, or communities, "but of the whole tribe? If so, in the case of Ngatiawa, scattered as that tribe is, it is of course a simple impossibility. Being an impossibility it has never been attempted, and yet, without it, large blocks of land have been acquired at Taranaki.

If this is not what Sir W. Martin means, what is his meaning? Does he mean a majority of the tribe? If so, what majority? How many men of the tribe will be sufficient to constitute a veto on a sale – one, or ten, or fifty? These questions are not irrelevant or unfair. It was the bounden duty of Sir W. Martin, 1st, not to state an impossible proposition: 2nd, having used a term which in its natural sense affirmed an impossible proposition, to define his term in that sense in which it could be specifically assented or objected to.

Page 42.

"In the case of the Bell Block."

The instance given by Sir W. Martin in support of his statement is singularly unfortunate; every statement in it is contrary to the fact.

1. The block was in the Puketapu country. The whole tribe of Ngatiawa did not agree to the sale; nor did all the Natives of Puketapu.
2. William King's Opposition to the sale was not "withdrawn," for he never made any. He was not there at the time.
3. He never "ceased to oppose," for he had never made any opposition.
4. His people never "assented," for they had nothing whatever to do with the sale.

It is of some importance that the circumstances of the Bell Block purchase should be accurately stated.

When Sir George Grey made his visit to New Plymouth in March 1847, he commenced the treaty for the purchase of the Grey Block, which was soon after

Page 42 – Continued.

concluded to the satisfaction of all parties. In May 1847, the New Zealand Company came to their agreement with Lord Grey. As soon as this agreement became known in the Colony, Sir George Grey determined on suspending all operations for the purchase of land in the Company's settlements. As respected Taranaki this was officially notified by the Governor to Mr. Dillon Bell, at that time representing the Company at New Plymouth.

In March 1848, Sir George Grey revisited New Plymouth, and specially authorised Mr. Bell to enter into negotiations with a Puketapu section of the Ngatiawa for the land between Mangati and Waitaha, now known as the Bell Block. The land was offered by Rawiri Waiaua and others, and violently opposed by Katatore, Parata te Huia, and their followers.

"After the preliminary negotiations a day was named (says Mr. Bell in his report) to commence cutting the boundary lines in order to try the right of the disputants. Parata, Katatore, and the other hostile men, immediately cut lines as boundaries of their own land, and then prepared to resist by force the determination of the others to sell theirs. I took out with me the whole of the friendly party to work, numbering nearly 60 men. The battle began at the first line, and at some places the ground was fought for inch by inch. The Natives only used their fists, sticks, and the backs of their tomahawks; anything like a sharp edge was most religiously let alone; and it was wonderful to see the amount of battering they endured without really using the deadly weapon they carried. The end of it all was that in a few days I had cut the whole of the lines, and that tangis and feasts caused a speedy oblivion of the hard blows that had been exchanged." – (Parl. Pap. 1st July 1852, p. 239, 240.)

At that time William King was not at Taranaki at all. He shortly afterwards met Mr. McLean at Wanganui and put in a claim to the Bell Block. The claim was investigated when the payment was divided, and disposed of by the Natives themselves, who awarded him nothing. He had nothing whatever to do with opposing or with ceasing opposition to the sale, but was placed in the ridiculous situation of having put in a proprietary claim which was laughed at by the Puketapu people, and abandoned.

Page 44.

"They raise plain issues."

Any one reading this would of course be led to believe that these issues had been raised before the commencement of hostilities; whereas the Government had vainly invited the claimants to bring forward their claims, and they had never done so. It was the bounden duty of persons possessing documents which in their opinion raised these issues, to have communicated them at once to the Governor, even if the letters themselves did not repeatedly pray that this should be done.

The Governor has perhaps no official right to complain of Archdeacon Hadfield not sending him the letters he received from Wiremu Kingi; but when the Superintendent of a Province receives remonstrances addressed to him in his public character on matters of grave public importance not within his functions to deal with, and when such remonstrances expressly pray that these matters may be laid before the Governor, the Governor has just grounds of complaint against an officer who withholds them altogether from his cognizance, and lets them see the light for the first time only to serve a party purpose in a debate in the House of Representatives. A double evil is produced by such proceedings: the Natives are invited and encouraged to address the Superintendent on Native grievances which he has no power to redress, and are then led to believe that the Governor pays no attention to remonstrances which he was never permitted to see.

PAGES 47 and 48.

Page 40

"How could these officers, being agents for the purchaser, be fit and proper persons to decide on the validity of all the objections made to the purchase?"

The answer to this is that these persons never decided at all. The decision in cases of difficulty has invariably been in the Governor's hands, where alone it could properly rest if no Tribunal was in existence.

That the Officers of the Government were the proper persons to conduct the enquiry was certainly the opinion of the party with which Sir W. Martin is identified. In a letter addressed to the Governor by Archdeacon Hadfield on the 15th April, 1856, he says: – "It is absolutely necessary if the peace of the country is to be preserved, that all transactions with natives in reference to the purchase of land should be entered on with the greatest caution and care; and that these should be entrusted to those only in whom the Government has perfect confidence, and who are directly amenable to the General Government" (Parl. Pap. July 1860, p. 234.)

Page 49.

Page 41

"It is plain that he, Mr. Parris, did not investigate".....

If the title of the Ngatiawa had ever been admitted by the Government there would of course have been a necessity to enquire into the tribal right claimed for W. King. But as in accordance with the acknowledged custom among the various sections of the Ngatiawa themselves and the plan invariably pursued by the Government, no such tribal right would be admitted, but on the contrary the Government would necessarily recognize nothing but the separate rights of families and subdivisions, there was nothing to enquire into in connection with a general tribal claim. It is not pretended to be denied that those who signed the Deed of Sale have proprietary rights in the block. Their rights are admitted by all the adverse claimants, and the proprietary rights of any such claimants have been expressly saved.

PAGE 50.

Page 42

"That declaration does not appear to have been conveyed.".....

It was publicly read to William King and a large assembly of Natives and Europeans on the 29th November, 1859. It is misleading to urge that it "could have no legal effect." No one ever pretended that it had. But what is absolutely certain is, that William King and all the Natives present knew perfectly well that its effect was to save their proprietary rights if any, while the Government absolutely repudiated their claim as land-leaguers to prevent the rightful owners from ceding their own proprietary rights to the Queen.

PAGE 50.

"Yet neither Mr. McLean nor Mr. Parris instituted any investigation at Waikanae."

Whatever enquiry there might be elsewhere, there was none at Waikanae (p. 52.)

It cannot but be a matter of satisfaction to the Government that the accusations of not instituting a proper investigation, after all resolve themselves into the charge that no investigation was made at Waikanae. The reason for this is very obvious. Waikanae, of all places which at any time were in the occupation of any sections of the Ngatiawa, was the one place where no investigation was necessary. The Chief Commissioner made personal investigations among the Ngatiawa of Queen Charlotte's Sound, because Ropoama Te One and the principal chiefs of the hapus concerned in the sale who had emigrated to the Sound, still resided there. He made personal investigations among the Ngatiawa of Port Nicholson, because Te Puni and other principal chiefs of Ngatiawa families still resided there. But he was not called upon to make an investigation at Waikanae, because the principal men of that section of the Ngatiawa which formerly lived at Waikanae had returned to Taranaki, and the investigation into the title of the Waikanae claimants would properly take place not at Waikanae where they did not live, but at Waitara where they did.

The Waikanae Natives admit this completely when they say, "Still we felt no apprehension of losing our lands, because we were continually hearing of the strong declaration of Wiremu Kingi that he would keep our lands for us. For he is our Chief, a protecting shade for our lands there." Those Natives who were content to leave their interests in the hands of Wiremu Kingi cannot complain of the consequences of his refusal, either on their behalf or his own, to put in any claim except the claim to prohibit others, who were managing their own business on the spot, from selling their land. What the Government did, then, was to treat with the families at Queen Charlotte's Sound and Wellington by going to the places where they still lived: to treat with the Chiefs who had formerly inhabited Waikanae but had returned, at Waitara where they were now settled. It may be looked upon as quite certain that if the Governor had held a formal investigation at Waikanae and come to the conclusion that there were no valid claims there, exactly the same outcry would have been made against him, and he would have been charged with pretending to investigate, the rights of the Waikanae section of the tribe in the absence of the chief men of that section.

But in truth the accusation is without foundation. No one who has the slightest acquaintance with Maori customs can doubt that the offer of Teira's land was known to every individual native of the Waikanae section as perfectly as it was to William King himself. Yet not one of them ever preferred a claim or an objection.

PAGE 56.

Page 43

"Last comes the letter of Wi Tako.".....

"The Native word".....

In a translation of Wi Tako's letter by Piri Kawau (who in 1854 accompanied Sir George Grey to England), a near relation of William King, and himself, though in the service of the Government, having strong sympathies with Kingi, he renders the expression in question thus: – "O friends, this evil is Wiremu Kingi's, and

another by the Taranaki it is greater than all evils or wrongs in the whole world." Piri Kawau speaks English perfectly well, and could not possibly be mistaken in his interpretation of Wi Tako's letter.

If the proper translation of the word "he" had been such as is here contended, viz., "trouble" instead of "wrong," it was to have been expected that a similar interpretation of it would have been given in the other letters quoted by Sir W. Martin.

In W. King's letter of 2nd July 1859, he says "Ko tenei ka he, he rawa, he rawa." This is translated "Now this will be wrong, very wrong, very wrong," and these words are given in italics. In., W. King's letter of 5th December 1859, he says "Ka he, ki te tae mai a te Kawana ko te he rawa tenei." This is translated "It is a bad business. If the Governor comes, it will be a very bad business." Again in the same letter, the words "mau e homai te he" are rendered "You may bring the evil."

In Ritatona's letter of 5th December, 1859, he says "Ka ki atu matou, ka he tena." This is translated – "We said that is wrong." Again, "ma korua e homai te he" is rendered "if you bring evil."

In the letter of Hohepa Ngapaki and others dated 29th July 1860, to the Superintendent, they say "Na kua rongo matou i te kupu whakatikatika mo te mahi he a te Parete." This is translated "Now we have heard the defence of Parris wrong-doing." Again, "hokona hetia atu ra e Te Teira," is translated "wrongly sold by Teira." Again, "Me ka tangohia hetia atu o matou whenua" is translated "when our lands are wrongly taken away."

In Riwai te Ahu's letter of 23rd June 1860, he says "Kua kitea te he o ta te Teira ma" This is translated "they would have found out the fault in the statement of Teira's party."

Again, Ki ta te kai hoko whenua o Taranaki he tika rawa ta te Teira hoatutanga i taua whenua, a he he rawa a Wiremu Kingi. Ki a matou he nui rawa atu te he o te Teira, kahore he mea hei hunanga mo tona he kia ngaro ai." This is translated "According to the Land Commissioner of Taranaki Teira's offer of that land was perfectly just, and Wiremu Kingi was altogether in the wrong. We say that Teira is far more in the wrong, and there is nothing that can hide his fault."

It thus appears that when the word "he" is applied to the conduct of William King, it must be translated "trouble": but when it is applied by King and his supporters to any act of the Government or the sellers of the block, it must be translated "wrong."

PAGE 58.

Page 44

"On such evidence as the above, the Government was prepared to assert.".....

Where does Sir W. Martin find any assertion of the sort? The Government asserted their right to survey the land sold by Te Teira and his friends, and the absentees at Queen Charlotte Sound. They expressly saved the proprietary rights of any one who might own any land within the boundaries offered by Teira and his friends; and those proprietary rights remain saved to this day.

PAGE 59.

Page 45

"The Government also avoided the unsatisfactory course.".....

Two inaccuracies are suggested here, both of which must be perfectly well known to Sir William Martin.

In the first place, it is notorious that no one but the Land Purchase Commissioners ever investigated any objections to purchases. In the second place, it is notorious that in the Waitara case (as in every other) it was the Governor and not the Land Purchase Commissioners who decided on the objection raised by Wiremu Kingi.

But a further inaccuracy is implied in the observation. In the great majority of cases in which "objections" have ever been made to any purchase, the objections were made by proprietors, having rightful claims of ownership within it. If Wiremu Kingi had at any time asserted that he possessed a proprietary right, all proceedings would have been stayed till his "objection" had been investigated. What the Government refused to entertain or investigate was the "objection" of the Land League, headed by Wiremu Kingi who was its mouthpiece, to any land being sold by the rightful owners,

PAGE 59.

Page 46

"At the Waitara, for the first time, a new plan was adopted.".....

This may be called the central point of Sir William Martin's argument. No one will deny that one of the things most to be desired in the existing state of the relations between Her Majesty's Government and the Native race, is the establishment of some tribunal in which the varying rules of Native tenure shall acquire some settled form, and to the decisions of which they will yield a peaceful submission.

But the difficulties in the way of doing this are immense. It can only be done with the complete assent of the Natives themselves. The establishment of a Land Court to determine conflicting claims of title among the Natives, might only add to the difficulties which already exist in the working of the ordinary Courts of Law in all cases where the Natives are concerned. And at Taranaki especially, the establishment of such a Court would have been a mockery so long as the various sections of the Ngatiawa were resolved to fight out their conflicting claims to land.

It has been amply shown in public documents that the Governor's Proclamation of February, 1858, was openly violated by the Natives. At the very time that Teira's offer was made to the Governor they were at war, and peace was not made till six months afterwards. To have required them to come in and peaceably submit to the decision of a Court on the very questions which they were then fighting about, would have been absurd, because there was not the least chance of their doing it. They were resolved not to make peace. Wiremu Kingi himself, when the Bishop of New Zealand on the 18th February 1858, earnestly prayed him to make peace, replied, "Ekore matou e whakarongo" (We will not listen).

But is it fair to lay so heavy an accusation against the Governor, as if the question had never been considered?

The question was carefully considered by the Legislature in the discussions on the Native Territorial Rights Bill of 1858. In that Bill both Houses of the General Assembly agreed to the following declaration (Section VIII.): –

"It is hereby declared that no Court of Law or Equity within the Colony hath, or ought to have, cognizance of any question of or affecting the Title or right of occupancy of

the Aboriginal Natives, as amongst themselves, to or over any lands or hereditaments over which the Native Title is not extinguished; except so far as the Native Circuit Court may have such jurisdiction under and by virtue of any regulation made in pursuance of the Native Districts Regulation Act, 1858."

Probably those two branches of the Legislature, were of opinion that the territorial rights and obligations of the Natives were not subject to the interpretation of our Courts. These rights stand upon Treaty, of which the Crown is, rightfully, the sole interpreter. This is well put by Mr. Busby: –

"The Native title is not known to the law, nor is it subject to, or entitled to be dealt with bylaw. It rests exclusively upon a Treaty entered into at the time between the British Government (who had recognised the New Zealanders as competent parties to a Treaty) and the New Zealanders. To maintain the faith of Treaties there exists no law. And I confess that, in the responsibility of the Queen's Governor acting in the name and on the behalf of the Queen, so long as he is not controlled by what is called a responsible ministry, I see a greater security for the due fulfilment of the Treaty, than would be derived from any judicial tribunal which could be created for the purpose, could such an anomaly exist as a tribunal to try the administrative acts of the Government in matters of so high an import as the fulfilment of a Treaty. The issue, as it appears to me, was not as Sir William Martin puts it (page 75), whether

Page 59. – Continued.

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the Governor has no more right to seize land upon the decision of his own agent than any other land buyer would have; but whether he was maintaining the obligations of the treaty in defending the rights of Teira against the interference of Kingi with those rights."

The Law Officers of the Crown also decided in December, 1859, that the Colonial Courts had no cognizance of questions of Native title or occupancy. But the two Houses of Assembly proposed a tentative and flexible means by which a jurisdiction in such cases might be established, with the assent and co-operation of the Natives themselves. They proposed, as one means of ascertaining Native title, that "any question of, or affecting the Native title to, or right of occupancy over, lands comprised in any such Certificate, may be determined by the Governor in Council, or otherwise as the Governor in Council shall appoint." It was intended that the Executive Council should act through, the medium of the Native Circuit Courts established by an Act of the same Session. The Bill was reserved for the signification of Her Majesty's pleasure, and was disallowed on the Governor's advice.

In communicating this determination to the Governor, Lord Carnarvon, in his despatch of the 18th of May, 1859, expressed himself as follows: –

"It is no doubt most desirable that the disputes of the Natives respecting the right to land should no longer be settled by arms;" but, "I am bound to ask myself whether, in case the decisions of the Governor in Council on titles to land should be resisted by the Natives, the British Government are prepared to promise such a military force as may be sufficient to enforce them." "If, as in this case, no such expectation can be held out, it is more than questionable whether the moral influence of the European Government would not suffer by the issue (to Natives) of certificates of title, which the Natives would be at liberty to disregard with impunity."

The Imperial Government refused its assent to this plan, which involved the determination of Native title. It resolved to retain in its own hands, through the Governor alone, a free discretion as to the course which should be taken where Native title was in question; and not to incur the responsibility of undertaking to give effect to decisions made by any one not immediately responsible to the Crown.

It was hardly just, then, to blame the Governor for not establishing an independent tribunal in which the conflicting claims of Wiremu, Kingi and Te Teira could be determined. It was hardly fair to leave altogether out of consideration the state of internecine war in which the sections of the Ngatiawa concerned in those conflicting claims were at that very time involved. – [See also Notes to p. 47, 48, 82.]

PAGE 68.

Page 48

"William King's refusal to attend the Governor."

Whatever may be the painful surprise felt at the apology offered by a person lately holding the high office of Chief Justice of the Supreme Court, for the insolent refusal of Wiremu Kingi to attend the summons of the Queen's Governor, protected as he was by a safe conduct, it may at once be said that Sir W. Martin is perfectly correct in his quotation as to the Governor's determination "not to permit him to defy the Government" if he had come.

William King, if he had come only to repeat the pretensions of the land league, would not for a moment have shaken the Governor's determination. But if he had even at that eleventh hour chosen to advance for the first time a proprietary claim, it would forthwith have been entertained, and all further proceedings suspended till it was enquired into.

It is quite plain that all the excuses made for William King in this and succeeding passage are based on the proclamation of martial law. "Those persons," says Sir W. Martin, "who find in this conduct of William King a justification for resorting to force, appear to overlook the fact that the resort to force had been already determined on." But what Sir W. Martin avoids saying is that the "resort to force" had been already determined on by William King himself, and notified to the section of his tribe at Waikanae ten days before martial law was proclaimed. – [See Note, p. 34, 35.]

PAGE 75.

Page 49

"The party which sought to disturb the existing order of things."

The question, however, is what was the party which sought to disturb the existing order of things? It has been shown that Governor FitzRoy and Governor Grey laid down certain rules which formed and form the extreme limit of the claims of any section of the Ngatiawa Tribe. In soliciting the permission of Governor Grey to return to Waitara, Wiremu Kingi admitted his obligation to abide by those rules. He agreed to the conditions on which Governor Grey granted that permission, and then broke them.

Every block of land had been acquired in the New Plymouth settlement in accordance with the rules so laid down. Wiremu Kingi admitted the rules when he put in a claim to compensation for the Bell Block, which claim was disallowed by the Puketapu section of the tribe.

When he sought to establish in Taranaki the mandates of the Land League, which prohibited the further sale of territory under penalty of death, he attempted a new system wholly at variance with the precedents of years.

It was Wiremu Kingi, therefore, and not the Governor, who "sought to disturb the existing order of things."

PAGE 76.

Page 50

"To oust subjects of the Crown from their lands".....

It is surprising that Sir William Martin should make such a statement. How often must it be repeated that no one was ousted, and that the proprietary rights of any owner who is not a party to the sale have been saved?

But in the way in which the accusation is stated Sir William Martin begs the question altogether. How does he know that these "lands" are the property of the "subjects" who are "ousted?" It would have been time enough to make the accusation when this had been proved.

PAGE 80.

Page 51

"There are absentee claimants whose claims".....

No one has arbitrarily denied these claims. No one has decided that they are not sound and just. No one has decided that the pah was not built on ground belonging to the persons who built it.

If there exists any valid claim of ownership it is saved to this day, as has been so often shown: and there is nothing for any proprietor to do but to come in peaceably and establish it.

But the manner in which this statement is made requires notice. Is it contended that when the Government is engaged in the purchase of a piece of land, when it has openly invited all claimants to advance their claims, when the rights of ownership of all who were not parties to the sale have been expressly saved, when nearly twelve months of patient investigation have been spent without a single adverse claim of ownership being proved, it is lawful for any one who may pretend to be a claimant to build a war pah on the land, gather a body of armed followers, and execute war dances by way of assertion of title?

PAGE 80.

"The doctrine laid down amounts to this".....

This doctrine was not laid down by the present Governor. It was laid down by Governor FitzRoy and Governor Grey.

1. When Governor FitzRoy met Colonel Wakefield shortly after assuming the Government of the Colony, the rule of maintaining the purchases of the New Zealand Company but awarding compensation to the natives who were not parties to the Deeds of Sale, was expressly established. Thus in the case of Port Nicholson Mr. Clarke, the Protector of Aborigines, with the concurrence of Commissioner Spain, awarded £1500 to the natives. In the case of Wanganui they awarded £1,000; in the case of Nelson they awarded £300; and in the case of Taranaki they would have awarded compensation also, if it had not been for the knowledge, that if they did so the Waikato tribes would immediately have come down and taken it from the Ngatiawa.

2. When Governor Grey gave his decision in the presence of Wiremu Kingi in March, 1847, he determined that the whole land at Taranaki should be resumed for the Crown, the natives receiving compensation for their outstanding claims at the rate of 1s. 6d. an acre.

PAGE 82.

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"The compact is binding irrevocably".

So it is. But it is a compact: it is something binding on both parties. It is unreasonable to urge that the "full privileges of British subjects" are due to natives who will not only perform none of the duties of subjects but have constantly repudiated the British authority with arms in their hands.

The particulars of the feuds in which various sections of the Ngatiawa were engaged have been fully given in the Papers laid before Parliament and the Assembly. It is enough here to recapitulate them.

1. A series of murders was committed during five years, under circumstances of peculiar atrocity, and arising in every case out of quarrels about title to land.

2. The Governor issued a Proclamation warning all the natives that this anarchy would no longer be tolerated.

3. The natives openly violated the Proclamation, and notably Wiremu Kingi and his followers.

4. The belligerents were fighting in the public highways of the district and in fields cultivated by peaceable settlers, whose lives were constantly in danger, and whose property was forcibly taken away..

5. Proposals were repeatedly made to Wiremu Kingi to make peace, which he constantly rejected.

6. He threatened without any disguise to roast alive the inmates of a pah he was investing, and letters containing these threats were sent to the Waikato district, where they were seen and read by the Resident Magistrate.

7. This happened long after the Governor's Proclamation of warning dated February 1858.

8. Peace between the belligerents was not made till six months after Teira had offered his land.

Practically, therefore, the argument to which this note refers amounts to this; that persons who are there styled "British subjects" may make war against each other and roast each other alive to determine their relative rights to land, but that when any of them offer to sell land to the Crown, even while the war is raging, they are entitled to a peaceful investigation before a Court of Law. The Crown on the one hand is bound to give them a judicial decision by an independent tribunal, and they are free on the other, as soon as they leave the tribunal, to come to a decision by the musket and tomahawk.

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"The letter which will be found at the end of this Chapter".....

It is to be regretted that Sir W. Martin did not quote the whole of this letter. It was published in the Blue Book presented to Parliament in July 1860. In the latter part of the letter the Rev. Mr. Riemenschneider refers to the agreement between Governor Grey and Wiremu Kingi as to the condition on which the latter was allowed to return to Waitara, in the following terms: –

"When I further reminded them that Wiremu Kingi had no right either to hold or occupy land on this (south) side of Waitara river, since in 1847 he had given his distinct promise to Governor Sir George Grey, previous to his coming up from the south, that he would not settle on this side but on the opposite (north) bank of the river, I received in reply that W. Kingi being the head Chief of all Waitara, on both sides of it, it was for himself to choose and to say on which side he was to reside."

Other evidence of that distinct engagement was given in the Governor's Despatch of 4th December 1860,

"For years the people experienced the mischiefs which flowed from the decline and the failure of the power which formerly restrained and governed their tribes"

It must not be considered that the Chiefs possessed similar influence (authority they had nowhere) in all the tribes alike. The Ngatiawa were always celebrated for repudiating chieftainship and the exercise of influence by their principal men: in this they resembled the people at Poverty Bay on the East Coast, who have a proverb "Turanga tangata rite," all men are equal at Turanga.

But it has not been the fault of the party with which Sir W. Martin is identified that the influence of the Chiefs everywhere has not been much less than it is. In a letter addressed to the Governor by Archdeacon Hadfield on the 15th. April, 1856, he gives the Governor this advice: –

"There is however a certain kind of restlessness among some of the Chiefs and leading men, which has manifested itself within the last three or four years by efforts to get up meetings in various places; and I now understand that there is a secret intention of assembling, if possible, most of the leading Chiefs of the centre and southern parts of this island in the ensuing summer, for the purpose of raising the authority of the Chiefs..... It appears to be highly important, notwithstanding a very general opinion to the contrary, that the Government should do nothing towards establishing the influence of the Chiefs, but should rather endeavour to lessen this by every legitimate means, and especially by raising the position of inferior men through the equal action of law." (Parl. Pap. July 1860, p.p. 233, 234.)

"The fact is that Wi Kingi strenuously resisted the King movement.".....

As Sir W. Martin has quoted pretty fully from Mr. Buddle's pamphlet, it is strange he should not have remarked that the deputation from the Ngatiawa and Ngatiruanui tribes, which came up to yield their allegiance to the King and hand over their lands to the League, had been received at Waikato before hostilities were commenced. It was while the deputation was in the Waikato, and after they had made their most violent speeches, that news came from Taranaki of the breaking out of the war.

But there is ample proof of the connexion of Wiremu Kingi with the Taranaki Land League from the very earliest time. Even so far back as 1848, prior to the great meeting which took place at Waikanae (referred to in the Governor's Despatch of 4th December, 1860), and before the migration, Wiremu Kingi had proposed to Natives of Ngatiruanui and Taranaki to give them allotments of land at Waitara, though they had not the slightest pretence of right to land there, and had not the slightest connection with the Ngatiawa tribe.

It is by no means certain that this proposal was not itself the germ of the land league. The league specifically called the Taranaki Land League was inaugurated at Manawapou in the Ngatiruanui country in 1854. The proposal originally made by Wiremu Kingi to members of that tribe to take up a position with him on the Waitara, with the avowed object of helping to prevent any further sales of land, fully accounts for their support to his proceedings in 1855 as stated by the Rev. Mr. Riemenschneider. They had already for years been bound up in a league with him to prevent the extension of English territory, and the Rev. Mr. Taylor admits that the murder of Rawiri was one of its first results.

"It is plain then that those operations were commenced in the belief and on the ground.".....

The manifesto issued by the Governor before he went to Taranaki in February, 1860, entirely disproves this assertion. The ground was that Wiremu Kingi was acting not as "Chief of a tribe" but as a Chief of the Land League, and in no other capacity. The Natives were informed with careful distinctness of the grounds on which the Governor was moving the troops: –

"The Queen has said that all the Natives shall be free to sell their lands to her, or to keep them, as they may think best. None may compel the Maori people to sell their lands, nor may any forbid their doing so.

"William King sets his word above the Queen's, and says, though the rightful owners of the land may wish to sell, he will not allow them to do so.

"The Governor cannot allow William King's words to set aside the words of the Queen.

"William King has interfered to prevent the survey of the Queen's land by Her own surveyors. This interference will not be permitted.

"The land has been bought and must be surveyed. The Queen's soldiers will protect the surveyors. If William King interferes again and mischief follow, the evil will be of his own seeking."

There seems a peculiar injustice in the late Chief of the highest Colonial Court, accustomed to weigh evidence, rejecting distinct and unmistakeable assertions published to the world by the Governor, and then stating himself a "ground" which there is no evidence whatever to show the Governor ever took up.

"The proceedings at the Waitara.

It would have been more fair if Sir W. Martin had stated what proceedings he intended to allude to. Does he mean the proceedings of 1859, or the proceedings of 1860?

He says the proceedings were resorted to "simply because it was desirable to open the Waitara land;" and he gives in italics a quotation from the Governor's Despatch of 29th March 1859, which refers to the acquisition of the land south of Waitara. But if he had also put in italics the words immediately succeeding, which stated that it was most important to vindicate our right, to purchase from those who have both the right and the desire to sell, every one would have seen that the former object, "simply," was not the one the Governor had in view, but that the real stress was laid on the other object, the vindication of that which, a year before hostilities commenced, was laid down as a right in the Natives.

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"But that connection began after our employment of military force and in consequence"

This is at variance with the testimony of the Rev. Mr. Buddle, Superintendent of the Wesleyan Mission (quoted fully in the Governor's Despatch of 4th December 1860), who expressly says that it was while the deputation which had come up from the Ngati-ruanui and Ngatiawa tribes to give in their allegiance to the King, and to hand over their lands to the League, was at Waikato, that intelligence was received of the breaking out of hostilities. The most violent speeches had been made before.

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"There was no place in New Zealand."

To this there can be but one answer. There was no place in New Zealand where it was more peremptorily necessary to interfere in order that the existing elements of discord should no longer be suffered to produce such scenes as Sir W. Martin, in the paragraphs immediately preceding, has described.

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"This was an unfortunate use to make of such an assembly."

Probably if the decision of the Conference had been the other way there would not have been the same complaint. The Chiefs themselves repeatedly invited an explanation from the Governor of the Taranaki question. It was made the subject of, or was alluded to in, the greater number of the speeches. Several Ngatiawa Chiefs from Waikanae, Port Nicholson, and Queen Charlotte's Sound were present as well as Ngatitoas from Otaki, who were as thoroughly versed in the Ngatiawa title as the Ngatiawa themselves. The statement made by the Native Secretary was publicly challenged and answered by Wiremu Tamihana te Neke, a relative of Wiremu Kingi, and one of the three dissentients from the Resolution condemning King.

It is greatly to be regretted that Sir W. Martin should have brought so grave a charge against Mr. McLean without adducing a single proof in support of it. Whenever that proof is attempted, it will be time to meet the charge.

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