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Illustrations of the System called Responsible Government

James Busby

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ILLUSTRATIONS
OF THE
System called Responsible Government.

IN A LETTER TO HIS EXCELLENCY, COLONEL GORE BROWNE, C. B.,
GOVERNOR-IN-CHIEF, &c., &c., &c.

BY
JAMES BUSBY , ESQ.

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[Text]

TO HIS EXCELLENCY COLONEL GORE BROWNE, C. B.

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GOVERNOR AND COMMANDER-IN-CHIEF,

&c., &c., &c.

SIR, –

On the 4th April last I addressed to your Excellency a complaint against Mr. Dillon Bell, the Commissioner appointed under the Land Claims' Settlement Acts of 1856 and 1858, in reference to the manner in which he dealt with a claim which I brought before him. This letter I delivered to you in person, in order that I might beg you to read a "case" which was drawn up in reference to Mr. Bell's proceedings for submission to the Chief Justice, and his Honor's decision thereon.

Your Excellency, with a friendly note dated 9th April, returned me that document. On the day following I again addressed you in the same unofficial style. And you were kind enough a few days afterwards, although unusually pressed with business arising out of the state of affairs at Taranaki, to afford me an interview, and to discuss with me the subject of my letter.

After the delivery to you of that letter, I received a communication from the Colonial Secretary's office, dated 10th April, 1860, of which the following is a copy: –

"Sir, With reference to your letter of the 4th instant, addressed to His Excellency the Governor, preferring a complaint against the Land Claims' Commissioner, I am directed to inform you that the case to which you refer having been brought before Mr. Commissioner Bell, who it appears is acting according to law, the Government cannot interfere.

I have, &c.,
(Signed) W. GISBORNE,
"Under Secretary"

On the 14th instant I addressed your Excellency, requesting an answer to my letter of the 18th April, which answer I have just received.

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I beg and trust that your Excellency will not consider the official style which I have adopted in the present letter, as indicative of any change in my personal regards towards yourself, or of any want of a disposition to reciprocate the friendly tone of your letters; and also that you will excuse any want of courtesy – should it appear to you that there is a want of courtesy – in my making public, with the rest of this correspondence, those letters¹ which you addressed to me in a style which may seem rather that of friendship than of business. Irrespective of this, I make no apology for publishing the correspondence, as I consider a private wrong suffered at the hands of a public functionary, to be a public question, and that it is right that it should have every degree of publicity which it is possible to give it.

The letter from Mr. Gisborne, before quoted, refers to my "letter addressed to His Excellency the Governor," and then proceeds to inform me that "the Government cannot interfere." The meaning of this style is not to be misunderstood. I do not pretend to be ignorant that there are certain persons who call themselves a "responsible Government," and who would set aside the Queen's Governor, or make him subservient to their own views and ends, but I do not recognize any Government as existing in this Colony apart from your Excellency; nor can I forego the right of addressing my complaints to Her Majesty's representative, and if need be to Her Majesty herself, and of claiming an answer to my complaints from the Queen's Governor in the Colony, or the Queen's Government in England, through whatever channel it may please the Governor or the Queen's Government, respectively, to address that answer. If I mistake not, the Queen is bound by her Coronation oath to give her attention to such complaints as this, nor do I believe that such responsibility can be transferred by a Colonial Governor to subordinate functionaries, although they may usurp the style of supreme authority.

Writing to your Excellency in this sense, it appears to me that it would be unbecoming to adopt a style otherwise than strictly official. It being, moreover, my purpose to speak of the functionaries of Government with more truth than tenderness, it is right they should have every opportunity of seeing what is said of them.

Your Excellency is well aware, both from my published opinions and from private conversation, that I have always regarded "the system called responsible Government" in the Colonies, as of more than doubtful legality; and as being certain to lead to an abuse of the powers of Government, in practice, if not in its own nature and existence, an abuse of those powers. Indeed, except from persons who consider themselves qualified to be Colonial Statesmen, and see in that system the only hope of realizing the objects of their ambition, I have met with no other apology for such a system than a supposed necessity; or, than that it is better than a despotic Governor with a nominee Legislature; as if one abuse could only be cured by another abuse – as if there were no refuge from despotism but in democracy.

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I addressed to you, in the year 1857, a published letter on responsible Government, and in continuation of this letter, or in a subsequent one, I shall beg leave to offer some further observations upon the subject in its general aspect. My more immediate object is to submit certain facts and considerations in illustration of the working of the system, with the view of enabling your Excellency and the public to judge whether the House of Representatives has furnished you with a Ministry which is worthy of your confidence, and that of the public, and whether a trustworthy Ministry is even likely to be furnished under such a system. As an illustration of the working of responsible Government, this letter may therefore be considered as a sequel to that of 1857.

If, in politics, any thing has been on all hands considered to be sacred, it is what is called the PUBLIC FAITH or the HONOR OF THE CROWN, in relation to engagements which have been entered into by the Government of the Country. When we speak of the public faith, we mean – as I apprehend it – the obligation which is upon every member of the community, according to his station and influence, to maintain the rights of individuals. When we speak of the honor of the Crown, we mean the embodiment of that obligation in the person of the Sovereign, who is entrusted by the British Constitution with giving it effect. There is good cause therefore for a religious adherence to the public faith; its violation being nothing short of an outrage upon every member of the community; nor could a functionary of the Government be guilty of a greater crime than that of compromising the honor of the Crown by a violation of its engagements.

The first illustration of the working of responsible Government which I propose to bring forward, arises out of the question referred to in the correspondence alluded to in the commencement

of this letter, of which I shall endeavour to give as succinct an account as may be consistent with clearness.

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Preparatory to the establishment of British sovereignty in New Zealand, the Queen's Government considered it expedient to order an enquiry to be instituted into the nature and validity of titles to lands claimed to have been purchased from the aboriginal owners.

I have in a previous letter² cited to your Excellency the terms in which Lord Normanby, the Queen's principal Secretary of State for the Colonies, instructed Captain Hobson to "take care to dispel any apprehensions which maybe created in the minds of the settlers that it is intended to dispossess the owners of any property which has been acquired on equitable conditions, and which is not upon a scale which must be prejudicial to the latent interests of the community." And in which he intimated that the Governor of New South Wales would be instructed, with the advice of the Legislative Council of that Colony, to appoint a Legislative Commission to investigate and ascertain the nature and validity of those titles – and "how far grants held from the Natives were lawfully acquired, and ought to be respected and confirmed by confirmatory grants from the Crown."

Here, then, was a national engagement entered into by the highest authority in the State, that British subjects possessing landed property in New Zealand, should have their titles investigated, and placed upon public record, if found to be just and equitable.

In accordance with the regulations which were consequently established in that behalf by the Government of New South Wales, made application, in conjunction with my partners, to have our title investigated to a tract of timber land estimated to contain from 40,000 to 50,000 acres, on which we proposed to erect a saw mill. Of this application no notice was ever taken, but my partners, nevertheless, confident in the goodness of our title, and assured by Captain Hobson that an establishment for the purpose of supplying a commodity so necessary to the infant Settlement as sawed timber, could never be considered as prejudicial to the latent interests of the community, proceeded to erect the saw mill.

The measures of the local Government were, unhappily, of a different character from those indicated by the Queen's Government in their instructions to Captain Hobson. It is unnecessary to refer further to the proceedings of the Government of New South Wales. The Land Claims' Ordinance of New Zealand,

Session i., No. 2, professed to confiscate all lands held under native titles by British subjects, declaring all such titles to be null and void unless allowed by Her Majesty, and, until allowed by Her Majesty, to vest in the Crown.

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The Natives from whom the land in question was purchased, having learned that it was the intention of the Government to allow the purchasers to possess not more than 2,560 acres out of the tract purchased by them, and to take possession of the rest, marked off a new boundary, including what they supposed would be allowed to the purchasers by the Government, and declared that as we could not possess the rest of the land, they would keep it to themselves, for the Government had no right to it, and should not have it.

Matters were in this state when the rebellion broke out, and we were forced to abandon our establishment, at which period the balance of our outlay over what we had received from it amounted to £3,500, including £555 which had been paid to the Natives for the fee-simple of the land. The partnership having been dissolved, the whole share of one partner, and a part of the share of the other partner, was conveyed to me in consideration of my expenditure in excess of theirs. Then was passed the Native Land Purchase Ordinance (Session vii. No. 19), by the provisions of which I was made liable to a penalty of £100 for using, of occupying, or cutting timber on any part of the land, and to a similar penalty, after every period of a month from a previous conviction.

Your Excellency will perceive from this narrative that in the first place there was a direct violation of the promise of the Crown, that I should have an opportunity of proving my title, and placing it upon record; and, secondly, such a confiscation of my title as, whether a legal act of confiscation or otherwise, had the effect of leading the natives to consider the title to the greatest part of the land as a nullity. But the injury did not end here. Intelligence having been conveyed to me that a party of white men, nineteen in number, had commenced sawing my timber, I immediately wrote to Governor Grey, representing that whatever might be the nature of my title, which myself considered to be as valid in law as the title of any land held in England, it was certain that these persons had no title whatever, and requesting him to put the "Native Land Purchase Ordinance" in force against these parties. But this Sir George Grey refused, alleging that "it appeared I had no legal title to the land." This was the only reply which he conde-

scended to give me. I then placed upon record my formal protest³ against the conduct of the Government, in order to preserve my right to compensation, which was all that it was in my power to do, under circumstances of so extraordinary a character. In the course of time the land has been, so far as I have been able to learn, denuded of the timber, which constituted its principal value.

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I assure your Excellency that it was not without the utmost repugnance that I made application to have my title investigated by the Commissioner under the Land Claims' Settlement Acts of 1856 and 1858, having no doubt on my mind of the illegality of those Acts, and of the proceedings of the Commissioner under them. But this was the first opportunity afforded me of obtaining some compensation for the loss I have suffered through the conduct of the Government, and there are circumstances in which a person would not be justified in postponing obligations of a private to those of a public character. I believe that the former were, in my case, of such a nature as to be more binding than the latter.

The material facts stated in the foregoing narrative were established before the Commissioner. The Native witnesses, two of the principal Chiefs from whom the land was purchased, gave the description of a boundary, which probably corresponded with the boundary which they had marked, as supposed to contain what they understood the Government would allow us to possess, but they had previously admitted the authenticity of the deed which described the tract originally purchased.

It was in the power of the Commissioner to have awarded to me a certificate authorizing me to purchase 4,270 acres of land, which, at the market value of 10s. an acre, would have amounted to something less than one-ninth part of my loss (speaking on the part of my partners and myself), for the sum of £3,500, if it had been invested at 10 per cent., which was far below the current rate of interest on the best securities, would have amounted at this time to nearly £20,000. This extent of land, I hold, he was bound to award to me, if there is any meaning in the words, that "all proceedings under the Act are to be conducted, not according to strict law, but according to equity and good conscience;" or in Clause III. of the Act of 1858, which provides, that "If upon the examination of any claim or grant, it shall appear to the Commissioners that difficulties exist in the way of the claimant obtaining quiet possession of land to which he may be really entitled, and which would otherwise have been granted,

or if from delay in the settlement of the claim, or from any act of the Government, the value of the land may have been materially reduced; or if for other reasons it shall appear expedient to exchange the particular land claimed for other land, the Commissioners in their discretion may direct a grant of rural land within the same Province of equal value, as compensation for the land taken in exchange, or may grant compensation to such amount as they may deem to be just by the issue of a Certificate, entitling the person in whose favour the same shall be issued, or his assigns, to purchase waste lands of the Crown within the province in which the land taken in exchange is situate, according to the law for the time being in force for the sale of such lands." I did not expect from the Commissioner

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compensation for the full extent of my loss, which this Clause taken by itself would appear to give him authority to award, because it is overruled by other Clauses of the Acts; but, according to the Schedule of land to be granted in proportion to expenditure in its purchase, and by other provisions of the Act, was entitled to that much. Both the contingencies provided for in the Clause quoted, meet in my case. First, a difficulty has arisen in acquiring the land originally purchased, through the delay of the Government in investigating the title, without default of the claimant; and, secondly, the land has been deprived of what constituted its chief value, through the interference of the Government. The evidence of the purchase being complete, I expected an immediate decision from the Commissioner, but, on asking for an explanation of the delay, I was informed that he would not be prepared to give his decision until the land should be surveyed, thus depriving me of the benefit of Clause III. of the Act of 1858, with reference to which my application had been made; and, secondly, that he had been unable to see sufficient grounds for multiplying by 3 the value of the goods given to the natives – a most extraordinary assertion, seeing that the 25th Clause of the Act of 1856 expressly provides that this shall be done "in every case." The Chief Justice has, indeed, given his opinion that the Commissioner under the Acts has the power which he claims of reducing the compensation to a less amount, and of postponing his decision on the case. If, however, your Excellency will examine the provisions of the Act, you will find them to be of a character so contradictory and inconsistent with each other, and the powers given to the Commissioners to be of such a nature, as to make the provisions of the Act capable of almost any interpretation which he may choose to put upon them. But power to act, and the justice of action are two very different

things – and it was because I considered the conduct of the Commissioner to be so flagrantly unjust and inconsistent with the provisions of the Acts which speak of equity and good conscience, that I determined to appeal to Your Excellency in support of the honor of the Crown, to take the case into your own hands. Page 10

My belief was that the eleventh clause of the "Waste Lands' Act, 1858," gave you that power, irrespective of the Commissioner. I see nothing to restrict that power. The object of the clause is "to enable the Governor, at any time, to fulfil and perform any contract, promise, or engagement heretofore made by or on behalf of Her Majesty, and whereof there is evidence in writing, with respect to any allotment or parcel of land within the Colony," and it enacts that "any Crown Grant made in pursuance of any such contract, promise, or engagement, shall be valid." It might be contended that the question for the Governor's consideration is whether there is any such "contract, promise, or engagement, unfulfilled"; this is a question of fact, not of law – and whether the decision of the Commissioner in the case in question would be a fulfilment of the engagement entered into by Her Majesty. It is evident that it would not; and that it would not now be in the power of the Governor to fulfil that engagement. The original violation of the engagement is irremediable, as regards the consequences which resulted from it.

What then remains but to afford an adequate compensation. I have already stated that the provisions of the Acts do not enable the Commissioner to afford any redress which can be considered as a distant approach to compensation. Nevertheless, had the Commissioner afforded me such an approach to compensation as the provisions of the Act empowered and enjoined him to afford me, I should never have troubled the Government further with the question.

Your Excellency informs me in your note of 19th May, as you had previously stated to me in conversation, that you "are advised that the section of the Waste Lands' Act to which I refer, has no application to Land Claims for the settlement of which specific Acts have been passed, and of which my claim is one." I have no doubt whatever that this was the intention of Your Excellency's legal adviser; but I apprehend a Judge administering the laws with a view to justice, would not consider what was the intention of the framer of the law, but what was the intention of the whole Legislature which enacted it, and would probably feel bound to assume that it was the intention of the Legislature to do justice and to maintain the public faith; unless it could be shewn that a particular class of claims were expressly excluded.

I shall not, however, insist on Your Excellency's right to form your own judgment on a question of interpretation of law. You have repeatedly assured me, if I rightly understood you, that on this point you have no discretion whatever, and would not be justified in exercising any discretion. How grave then must be the responsibility of choosing a Law Officer, and how necessary the assurance that your legal adviser is worthy of confidence as a sound lawyer, and, much more, as an honest man. Neither Your Excellency nor myself are lawyers, nevertheless we should be unfit for the stations we hold, or have held, if we were so ignorant of jurisprudence as not to know that the end of all law is justice. Page 11

Whether legislation is exercised with a view to the determination of relative rights between private individuals, or to the preservation of the public peace and the safety of the community, or to the dealings of the Government with the people in the way of fiscal regulations, the ultimate end of all law is justice. It may not be easy in matters of detail, to apply the rule of law so that it shall comprehend and provide for justice in every case to which it may be applied. There is less difficulty in detecting what is palpably unjust in the rule, and in its application. I consider that it would be an abuse of the term to designate as a Law any of the enactments of the different Legislatures of New Zealand, having relation to the rights of British subjects to the lands which they possess in New Zealand.

The framers of the first Land Ordinances denied the right of British proprietors of land in New Zealand to the possession of their property, even after the title had been investigated by sworn Commissioners, and reported, by a public record, to have been equitably purchased from the rightful owners.

The burden of what was called legislation upon this question, was the provision for distributing by an arbitrary rule a portion of the lands belonging to individuals, to the individuals to which it respectively belonged, and taking possession of the remainder for the purpose of disposing of it as public property. It was nothing to the people who contrived these Ordinances, that the Queen had, in a state paper of the highest sanction, assured the proprietors of land in New Zealand, of "her intention to confirm them in their possessions, if found to be held by an equitable title, provided they should not be upon a scale which must be prejudicial to the latent interests of the community." And that the Queen's Government had in an official document published in papers laid before Parliament, intimated its intention, in the event of proprietary rights having been acquired of such an extent, as to make it advisable to

interfere with them, to apply to Parliament to vest those rights in the Crown with adequate compensation to the holders, the sovereign power of the Empire being alone possessed of authority to interfere in such a manner with the private rights of a subject as secured by the 29th Section of Magna Charta and other fundamental Statutes of the realm. Page 12

By the time that Captain Fitzroy came to be Governor the investigations of the Commissioners had shewn, that the lands held had not been acquired for a "blanket or a hatchet," as was supposed, but for an adequate consideration; many of them having in fact, cost more than their intrinsic value, and no tract of land having been acquired by an acknowledged title which could be considered "of such an extent as to be inconsistent with the latent interests of the community." Governor Fitzroy saw how much the peace of the Colony depended upon the Settlement of these titles, and did his best to correct the evils resulting from previous errors, by issuing grants which, while they recited the number of acres stated in each case by the Commissioners, conveyed the whole quantity of land contained within the boundaries described in the purchase from the Natives. But his attempts to do justice to the settlers at the North caused the hostility of the New Zealand Company and its settlers at the South, and the influence of that Company procured his immediate recall. Sir George Grey, after having failed in an attempt by legal proceedings to undo what Governor Fitzroy had done, passed an act of a confirmatory character by way of justifying his interference – Session X, No. IV). He was more successful in his attempts to deprive another class of land purchasers of their lands – those who had purchased land under an express and solemn

engagement from the Government that their purchases would be confirmed by a Crown grant. The lands thus purchased he seized in violation of an agreement ratified by the seal of the Colony; but I have entered so fully into this question in former papers⁴ that I shall avoid going into it here. The effect of these inconsistent and contradictory proceedings was such as might have been expected. The original question was simple, and might have been settled without difficulty. But all confidence in the Government was now destroyed; many persons had been ruined, numbers had been driven from the Colony, some hastened to a premature grave, by the ruin of their worldly circumstances, through the conduct of the Government, which robbed them of their property instead of protecting

them in the enjoyment of it, and the Maories broke out into open rebellion. We now come to the proceedings of the General Assembly, and the responsible Government.

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The preamble of the Land Claims' Settlement Act, 1856, after reciting the various Ordinances which had been passed "for the Settlement of the said claims (to Land) or the rendering valid the said grants, and that many of the said Land Claims are still unsettled and the validity of the said grants disputed on various grounds (who disputed them?) and that it is essential to the peace and well being of the Colony that all such land claims should be finally settled, and such disputed grants corrected," proceeds to enact a vast variety of provisions, some of which provisions have no other effect than to render nugatory other provisions, or to cast such doubt upon their meaning as to enable the Commissioner to give any decision he pleases, whether to favor a supporter of the responsible Government or to crush a claimant who has rendered himself obnoxious to it, as the occasion may afford opportunity.

Your Excellency's present legal adviser, who is, I believe, officially styled the Queen's Attorney General, and is considered in the eye of the law to be a Minister of justice, is responsible for this measure. That is, so far responsible that your Excellency gave your assent to it on his recommendation. It was said that being a land claimant himself he declined to draw the bill, but this does not render him the less responsible for it.

Taking it for granted that your Excellency agrees with me that justice is the object and end of the law, I beg you to cast your eye over the provisions of this enactment, and to try it by this rule. The first ordinances failed of their effect. Why? because they had no foundation in truth, not to say in law, and their provisions were irreconcilable with justice. It is not to be expected that citizens of a free state will quietly submit to be deprived of their rights or to give up their property because it may appear to certain persons to be too large. The true object of Government is to maintain existing rights, not to determine how much property one person may possess, and to appropriate the surplus, as if Government's were better qualified to administer property than the parties to whom it belongs. This at least is the object of British Government, and of the Governments of all civilized countries.

When the possessors of 50,000 or 100,000 acres in England, where there is less than 2 acres for each inhabitant, are deprived of their possessions, because of their being too extensive, it will be time enough to deprive the possessors of property to that extent, if there be any such in New Zealand, where there are (or were at the time of the passing of the measure) 700 acres for each man woman and child, whether of British or Aboriginal race which inhabits it.

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As I have already stated, the original ordinances were framed upon the false assumption that no valid or legal titles to land existed in New Zealand, although the Queen had already recognised such titles, and promised, if they should be found to have been equitably acquired, to confirm them by a confirmatory grant. And the common law of England protects every man in the possession of his land until some one else can prove a better title. The burden of what was called legislation, in these ordinances, consisted, as I have before said, of provisions for distributing, by an arbitrary rule, a certain portion of the lands purchased by British subjects from amongst those parties to whom they respectively belonged, by right of purchase from the aboriginal owners, and assuming the rest as public property. In other words instead of fulfilling the promise of the Queen, that confirmatory grants should be issued on proof of their having been equitably acquired, making that very proof the groundwork of their confiscation. The working of these provisions had shown their gross injustice. A discretionary power had been given to the Executive Council which, though it afforded partial relief to some parties – only shewed in a stronger light, the injustice suffered by other parties.

The object of the Act of 1856, however, was not to do justice, but to enforce the original injustice. "This," state the Committee in their report, "perhaps formed one of the greatest difficulties encountered by Sir George Grey in his attempts to settle the claims, that no enactments of his, especially with popular institutions looming in the immediate future could absolutely fix the point where decision would be actually final, and appeal or reversal really unattainable." The Committee, therefore, keeping out of view the evidence of gross injustice which they had received, proceeded to make provisions to carry out the attempts made by former Governments "to settle or stifle" the titles of the original settlers: and "by nothing less than a verdict backed by all the authority and weight of a body representing the opinions of the whole community" to give effect to the "exterminating process" which was adopted by Sir George Grey towards the purchasers of lands under pre-emptive certificates. A number of persons who had been robbed of their property under circumstances of the most aggravated injustice were accordingly expressly excluded from redress, the Commissioners being debarred from receiving their complaints.

instead of a healing measure which might have been looked for after the injury and loss inflicted by the previous ordinances, and the demonstration of the erroneous suppositions upon which they were founded, we have a repetition of all the enormities of these Ordinances, with power granted to the Commissioner of so arbitrary a nature, as to enable him to give whatever interpretation he pleases to the Clauses of the enactment.

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I will not fatigue your Excellency by an analysis of the measure, though I believe no better example could be found by which to demonstrate the madness and folly of a departure from justice in the framing of a statute. I would simply beg you to look at the 10th Clause, and those following it so far as they relate to the calling in of voidable grants. It would puzzle the Attorney General to shew you a precedent for such provisions as these in the statute book of any civilised nation. Was such a thing ever beard of as a party being threatened with penalties for refusing to deliver up property legally in his possession? Such proceedings are akin to the use of the thumbscrew and the rack to extort evidence. The law of England is especially jealous of the interference of the Crown with the landed property of the subject. It is probably not too much to say that Parliament itself would scarcely alter the fundamental laws of the realm relating to property in land without a convention of the people, or what is the same thing in England a Parliament specially elected to decide the question. Here, the Queen's Attorney General for the Colony of New Zealand summons the Queen's subjects to deliver up their title deeds to be dealt with by the Commissioner appointed under the statute, who is vested for the occasion with the functions of both judge and jury – failing of which the said title deeds were "to be declared null and void, and to become so to all intents and purposes in like manner as if they had been repealed in the Supreme Court by writ of scire facias."

I trust your Excellency will not consider that I am addressing myself in terms disrespectful to yourself, when I express a decided opinion, that they who acted upon "the good old rule, the simple plan, that they should take who have the power," were respectable, compared with the men who framed and would carry out such a provision as this. The freebooters at least exposed their persons to retaliation. Open violence is less hateful than insidious craft. The robber on the public way, or in the private dwelling, destroys an individual, or distresses a family – but those who make use of the sacred functions of legislation to extort the property of individuals, destroy that sense of its security, which is the very bond of society, without which civilization can have no existence. The

robber is the thunderbolt which destroys an individual. The Government which acts the part of a robber, is the earthquake which lays the whole city in

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ruins. These, Sir, are grave words, and will doubtless excite the astonishment of many who read them. Time will test their truth, and the justice of their application. The time is not far distant when the history of the first twenty years of the New Zealand Colonies, will be referred to as a singular proof how possible it is, even in a British Community, for the functions of government to be systematically perverted from their true purposes, to such as are destructive of the peace of society; and with what success, for, irrespective of the ruin which they have brought upon individuals, no candid historian will be able to avoid tracing the former war with the natives (if not the present war also) to the destruction of their faith in the Government in consequence of the dishonesty of its measures.

I have said that your Excellency would find the provisions of the Land Claims Acts of 1856 and 1858 to be irreconcilable with justice, which, I trust, we agree is the end of law. There is another rule which has been used as descriptive of a just law, namely, that it should affect all men alike—that "all men should be equal before the law." Let us try the Land Legislation of New Zealand by this test. Suppose it to be granted that the Land Ordinances of New Zealand, if severe, were rendered necessary by the peculiar circumstances of the case. It will not be disputed that they should have been equal in their application. Let us take an illustration.

I lately read an extract from an English periodical styled, I think "The Mining Journal," relative to the flattering prospects of the Barrier Island Mining Company. In which it was stated that besides their probable copper mines they possessed 25,000 acres of the best land in New Zealand, with sites for towns and other advantages. This valuable property is one of the "sundry claims to land which have arisen within the colony of New Zealand in respect of dealings with the aboriginal inhabitants thereof," and its history will I believe be found to be substantially as follows. Three enterprising persons, named Webster, Abercrombie and Nagle, purchased from the Native owners, previous to the establishment of the colony, a tract of land on the Great Barrier Island, in which indications of copper ore had been discovered, and which they estimated to contain 20,000 acres.

In the "Return of the cases heard by the original Commissioners" printed by order of Governor Grey—the Grants are stated as follows. (Claim No 32), W. Abercrombie 8119 acres, J. Nagle 8070 acres, W. Webster 8080 acres; total 24,269 acres. And

the following note is appended. "The Commissioner (Godfrey) recommends "No Grants," on the ground that claimants have received a maximum grant of 2560 acres, but reports that a valid purchase of part of the Island has been made. N.B. W. Webster is the only one of the three claimants to whom a maximum grant has been awarded. Case referred to Mr. Fitzgerald by minute of Executive Council, 18th June, 1844, with authority to recommend an extended award: on the 19th June Mr. Fitzgerald recommends that claimants may receive a grant of land in the Island within certain "boundaries of which His Excellency is fully cognizant." Referred back June 20th to recommend a specified quantity. Commissioner states, June 21, that he cannot do so, not having any data, but adds a memorandum stating that the claimants are entitled for their expenditure to a grant of 8611 acres. Governor Fitzroy's orders for grants, in a memorandum made out in the land office, dated July 4th, 1844. N. B. Grants for 4269 acres more than the claim, and 15,658 acres more than the quantity to which the claimants are entitled by their expenditure."

It is believed that the title to this tract of land, was mortgaged, whether before or after the issue of the grants, to the Bank of Australasia in Sydney, from which the equity of redemption was purchased by or for Messrs. Whitaker & Heale, who after having for some time carried on the mining of copper upon it, on their own account, established a joint stock company and sold a portion of their interest in the estate to persons who became with them shareholders in the Company.

Your Excellency is aware that the original Land Claims Ordinances restricted the Commissioners from "recommending" any grant exceeding 2560 acres unless previously authorised by the Executive Council to recommend a larger grant. On what principle the Executive Council acted it is difficult to imagine. It seems doubtful whether any principle was kept in view. There was and could only be one safe and invariable rule that which is pointed out in the Queen's instructions, namely, the full recognition of existing undisputed rights, or the reservation of their recognition if supposed to be too extensive, for the consideration of the Queen's Ministers, and the determination of Parliament. The Ordinance itself was a violation of that rule, and, the confusion that followed, for an illustration of which I recommend a perusal of the printed return above alluded to, shows the extreme danger of a departure from these principles of Government which have been consecrated by the experience of all nations and all ages.

I do not grudge Messrs. Whitaker and Heale the possession of one acre of the 24,269 acres, although Mr. Commissioner Godfrey reported that the parties through whom it came to them were not entitled to any grant at all, and Mr. Commissioner Fitzgerald reputed that their expenditure entitled them to a grant of not more than 8611 acres. And Sir George Grey remarked that they had got "grants for 4269 acres more than their claims, and 15,658 acres more than the quantity to which the claimants are entitled by their expenditure." My belief is that the grants are for no more than was purchased from and acknowledged by the aboriginal owners, and that as no other parties made a claim to the Land, the Government was bound to maintain the holders of the title in possession of it.

That there were legal difficulties to be overcome, however, seems certain—for according to the decision of the Privy Council in the case of Swainson v. Clarke, at least two, if not the whole of the three grants, were invalid, because of their not being in accordance with the recommendation of the Commissioner.

But taking it for granted that Mr. Whitaker the Attorney General acted fairly and above board in the delicate task of squaring the titles of Mr. Whitaker the Landholder with the requirements of the Land Claims Act, what I wish to ascertain is how Mr. Whitaker the lawgiver can reconcile the provisions of those Acts with the rule that all men shall be equal before the law. What equality, for instance, there is between the case of Messrs. Whitaker and Heale, who are secured in the possession of 24,269 acres of land, which the mining journal states to be of the best in New Zealand, independently of its mineral treasures, and that of my own case in the Bay of Islands, where I possess 10,600 acres of land, which Mr. Commissioner Bell knows to consist, for the greater part, of some of the most worthless in New Zealand, but of the half, or more than the half of which, acting under the provisions of the Acts for which Mr. Whitaker is responsible, Mr. Commissioner Bell is now seeking to deprive me.

The contrast with my own case is this—that my expenditure according to the Schedule entitled me to between 9000 or 10,000 acres. The Commissioners indeed only returned 2923 acres, but a reference to the records will shew, that the several amounts paid entitled me, according to the rates and dates specified in the Schedule, to grants of between 9000 and 10,000 acres in the aggregate—so that in giving me grants for the whole of my land, the Governor's discretion required only to be stretched to the extent of about 1000 acres out of 10,600, or about 10 per cent; whereas, in the case of

Messrs. Whitaker and Heale, it required to be stretched to the extent of 15,658 acres out of 24,269 acres, or nearly 200 per cent. Of the want of accordance with the rule, in the Land Claims Acts that "all men should be equal before the law," the inequality between Messrs. Whitaker, Heale, and myself measured by the sliding scale of the Acts, one would think to be quite sufficient in favor of those gentlemen, without Mr. Whitaker seeking to make that inequality greater by attempting to take from me half of what I have got. Why should he not rather bring about an equality by surrendering two-thirds of what he has got himself? This he would certainly do, if his zeal were of the right stamp. He has "called in" my grants because he considers them "void or voidable in law." And I have resisted his attempt to obtain them, because I am not to be frightened by an attempt at extortion, for which I believe him liable to prosecution. My grants are not what I was entitled to have from the Government, in due fulfilment of the Queen's engagement, but, such as they are, I value them as a record of the validity, after due

investigation, of my title as obtained from the rightful owners. That title stands on its own ground, and neither the Queen's Attorney-General, nor any one else, can lawfully interfere with it, unless they are prepared to shew by the verdict of a Jury, that some one else has a better title to it than I have.

Whether it is by the management of the framers of the law, or of the Commissioner acting under it, that Mr. Whitaker and the shareholders of the Barrier Island Mining Company find themselves in legal possession of 24,269 acres of land, while these functionaries are seeking to oust other parties from lands to which they have a much better title, both by the rule of equality, and the provisions of the first ordinances, it may be difficult to determine.

I must now beg to trouble your Excellency with another illustration of the working of Responsible Government, shewing how the Commissioner under the Land Claims Act exercises the discretionary power which those acts give to him.

In my address to the House of Representatives published under the title of "the First Settlers in New Zealand," I brought forward the case of Mr. Francis White, one of the earliest settlers who had settled at Hokianga, and purchased there a tract of timber land which contained spars suitable for navy top-masts, and consequently of great value. You will find in the printed "return of cases heard before the original Commissioners, the following statement relative to this remarkable case:" – Claim No. 243G. William White and Francis White claim 10,000 acres, examined by Messrs. Godfrey and Richmond, who awarded under the Ordinance Session

2, No. 14, afterwards disallowed, 3381 acres, (this was at a valuation of one acre for each 5s expended,) the "Amended award" under Ordinance Session 1, No. 2, was 2560 acres. Scrip issued in favor of W. White £6099, ditto F. White £1901, (which last was not received). Under the head "remarks" is the following: – "Case 243G, Mr. Fitzgerald reports, on the 13th June, 1844, that several natives at Hokianga are indebted to Mr. White to the extent of upwards of £2,000, the only means of paying which is by timber, and therefore recommended that 7440 acres, in addition to the maximum grant already awarded should be given to Mr. William White. The claims were referred to Mr. Fitzgerald on Dec. 26, 1844, by a minute of the Executive Council, who awarded, Dec. 27, 6099 acres, upon which Governor Fitzroy, authorised Scrip Credit £4099 on December 27, 1844. On September 27, 1844, Governor Fitzroy, without a Commissioner's award, had authorized a credit of £2000 to W. White and £1901 to F. White, making in the whole £8000 Scrip Credit on this claim. In consideration of Scrip Credit for £4099, Mr. White on Dec 27, 1844, signed a memorandum releasing the natives from all claims he had on them. William White expended all his credit in the purchase of lands, but F. White did not make use of his credit. On September, – 1845, F. White was informed that after a survey, the land he was entitled to, would be granted to him. On the 11th March, 1848, he (F. White) applied for a Crown grant, and was informed that the Attorney-General was of opinion that he was entitled to only 1280 acres, being half the original award of 2560, His Excellency concurred in this opinion."

Could the wildest imagination have invented such a tissue of absurdities and dishonesty in dealing with the rights of property, supposing it had been the object of the inventor to bring the administrators into contempt and hatred! But this is not all, a Special Commissioner was sent by Governor Grey to investigate a complaint made by a native that Mr. F. White was interfering with his property, which complaint was found to be groundless – this commissioner recommended Mr. F. White to take out a license to cut timber upon the Land which had belonged to his brother, but had passed to the Government on the issue of scrip, and to include his own share of the land in the license, which would protect his right until the land should be surveyed and the grant obtained. This was done, Mr. White paid £5 and obtained a license on a printed form under the signature of the Colonial Secretary, the first which was issued under that particular regulation – this however did not prevent Governor Grey from directing another license

to be issued under the hand of the Military Officer Commanding in the district, who was also Resident Magistrate, authorising a certain native to cut the timber on the same land – this native sublet the privilege to other natives, by whom the property was ere long denuded of its contract spars which Mr. White valued at £10,000. While this was going on, the original owners of the land with Tamati Waka at their head, proceeded with Mr. White and the surveyors to mark the boundaries of the land – they were resisted by those who held the authority from the Resident Magistrate to cut the timber. The two parties spent a night in altercation, and in the morning Tamati Waka informed Mr. White that they were ready to carry through the survey, but that the other party was prepared to resist, and that it could not be accomplished without bloodshed. Mr. White saw ample grounds to leave no doubt of the truth of Tamati Waka's statement, and he relinquished the attempt. The Land having been deprived of its timber was of no value. And thus disappeared the competence for the possession of which Mr. White had laboured during twenty years in the wilds of New Zealand. Hope, however, dawned upon him with the enactment of the Land Claims Settlement Extension Act of 1858. The Commissioner had heard with every indication of sympathy his grievous tale; and, by his interference (as Mr. White understood) a provision (Clause 111) was introduced into the new Act, which enabled the Commissioner to give compensation in other land, in cases where "from any act of the Government the value of the land may have been materially reduced." Doubtless Mr. White considered that the sympathizing Commissioner would take a liberal view of his case – would probably consider that some compensation was due to his outraged feelings, as well as for his actual loss, and would use the wide discretion which the Acts allowed him to give him as near an approach to compensation as the provisions of the Act would allow – far short as that would be of an equivalent for the value of his property, in the possession of which the Queen had solemnly engaged to confirm him. Out of the 10,000 acres, the estimated extent of the original purchase, Governor Fitzroy had disposed of 6099 acres to his partner, 4099 acres of which was stated to be on condition of his cancelling a debt of upwards of £2000 due to that partner by certain natives. But had Governor Fitzroy any right to compensate Mr. W. White for a debt due by another party out of Mr. F. White's share of the property? Ought Governor Fitzroy's philanthropic release of £2000 of debt due by natives to be made at the expense of Mr. F. White, who was in no way concerned in

it? This was rather a difficult question for the Commissioner to grapple with. But there still remained 3901 acres. It no where appears how many acres the Messrs. White were entitled to in right of their expenditure, but as they were declared to be entitled to 3381 acres, under the Ordinance which awarded only one acre for each 5s. of expenditure, the extent, according to the Schedule, would probably be very considerable – 3901 acres at the market value would not have exceeded one-fifth part of Mr. White's loss by the authorized robbery of his spars; but the Commissioner could at least have awarded that much. The Commissioner did not do this. He did not even revive the Scrip credit for £1901 which, if it had been expended when awarded, might have purchased land of several times the value of any which could now be obtained for the same amount of Scrip. Nor did he adopt the "opinion" of Mr. Attorney-General Swainson, in which His Excellency (Sir G. Grey) concurred, "that claimant was only entitled to 1280 acres." Passing over all these gradations of claim – of these awards, and amended awards – of opinion, and concurrence in opinion – Mr. Commissioner Bell seemed determined by a bold originality of decision, to manifest his independence of all precedents – and awarded a scrip credit for £160!!

As the detail of this singular concatenation of administrations has approached its termination, your Excellency has probably held your breath to see the end. And here it, – official bad faith, robbery, and injustice, have all reached their climax in this award of Mr. Commissioner Bell. Can any one demur to the question, whether the transactions of men who risk their lives on the high way in order to relieve their own necessities by lightening the passers-by of part of their superfluous wealth, do not wear an aspect of respectability compared with the transactions which have just been detailed.

It is said of the Jesuits that, being sworn to obey without inquiry the behests of the General of their Order, the most atrocious crime committed under such authority becomes with them an action of the highest merit. The end sanctifies the means, and of the end the General is the sole judge. In proportion to the

violence done to the natural conscience, is the merit of the duty of obedience. Is this the kind of service which Mr. Bell's employers require of him, and which has recommended him so highly to their favour? On proposing to raise his salary from £600 to £800 a year the Colonial Secretary was reported to have said, if I recollect rightly – and I cannot be far mistaken – for the words were very remarkable – that there was not a man in New Zealand who

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could have performed so difficult a duty so well – that there was not one but himself who could have performed it. Was Mr. Stafford right in this or did he estimate the morality of all other public men in New Zealand by too high a standard?

It seems almost superfluous to call to mind the conduct of Responsible Government to the widows Smithson and Forbes – the case of the latter was specially brought before the Assembly by myself as one which would admit of no contradiction in debate. Her title to 8 1/2 acres of land having been certified in the Government Gazette and a grant for it stated to be in preparation under the authority of Sir George Grey himself, who nevertheless sold the whole of it, save less than an acre by public auction, and intimated to the widow – a widow with seven children who had sold her watch and trinkets to make this small provision for her family – that if she did not pay the fee upon the grant of 1 acre 1 rood 35 poles which had been reserved for her, the Surveyor General would be instructed to take possession of it also.

It was in an attempt to procure some redress for these widows in the Legislative Council that the present Chief Justice first opened his eyes on the marvels of antipodean legislation, being one of two members who divided on the side of justice against robbery. The Attorney-General on the same occasion, amidst "prolonged general laughter," referred to the case of another widow, a Maori, who was deprived of her native inheritance because she had married an Englishman, on whose death Sir George Grey seized and sold the land. – Such are specimens of "Responsible Government," and of the views held by its members of the sacred functions of legislation. What a pity the Chief Justice had not been aware that the Attorney General's own title to 24,269 acres was secured, he might then have felt satisfied that the widow's 8 acres could not be wanted "for a garden of herbs." It must, however, be considered as one of the most astounding facts of modern times, that an assembly of men professing and calling themselves Christians, should, by a solemn act of legislation, have, justified robbery, the proof of which was manifested before them by authentic public documents, and have expressly inhibited any redress to the widows who were the victims of that robbery. The very reference to a widow who had been so treated, having called forth (unless the Council was labelled by the reporter) "prolonged general laughter." We read of a certain "judge who feared not God, neither regarded man," whose indolence turned away from the widow's petition, until he was overcome by her importunity. We also read of the scornful men who ruled Jerusalem when it was approaching the climax

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of its wickedness, that "they judged not the fatherless, neither did the cause of the widow come unto them," These were but sins of omission, and yet they appear to have been set down in holy writ as the most heinous of which men in authority could be guilty.

History will be searched in vain for a parallel act of legislation to the New Zealand Land Claims Act of 1856-An Act to legalize Robbery and authorize Extortion. Doubtless the great majority of the Legislature knew not what they did.

I will now beg your Excellency to look with me at the other side of the picture, for it cannot be denied that the "Responsible Government" have, after their manner, a zeal for the maintenance of the public faith.

An occasion on which this zeal manifested itself was the following. It appears that the Government had sold to certain parties portions of land, which, though never purchased from the natives, had been included in a survey with a tract which had been purchased from them; and that finding it impossible to prevail upon the natives to part, on any terms, with their title to the land in question, it became necessary to provide compensation for the parties who had purchased and received grants for it from the Government. They were accordingly written to, and informed that the Governor would provide for them, respectively, compensation in other kind for the land to be relinquished, and in money for the improvements made upon it. Valuers were accordingly named by the Government, and the land which was purchased at 10s. an acre under the regulations established by Sir G. Grey on the eve of his departure from the Colony, was valued at from seven to ten times its original cost. I refer your Excellency to the Report of the Committee of the Provincial Council "upon the mode in which compensation in land was granted to the parties to whom it was awarded by the arbitrators appointed by the General Government in reference to the land resumed at Pukekohe": ordered to be printed, 12th April, 1860, – and more especially to the evidence taken before that Committee. The whole case is most instructive. You will find at the top of the list of parties to be compensated, the name of the present Superintendent, who had purchased 392 acres of the Pukekohe land, and who, without having made any improvement upon it, was awarded seven times 392 acres of other country land at the market price of 10s. an acre. The Report of the Committee is very reserved, being confined to the relation of bare facts, and the expression of an opinion that on receiving at the market price of 10s. an acre, land from seven to ten times the extent and cost of the lands they relinquished, they would have received sufficient com-

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penensation, without the additional privilege of selecting land in a manner which no other person would have been allowed to select it, even if such selection could have been made without a violation of the law. But in this letter I do not intend to confine myself to the bare report of the Committee. Statements were made to me as Chairman of that Committee which I did my best to establish by evidence, but a reference to the evidence printed with that report will shew the difficulties I met with in procuring even the evidence I was able to procure. Having put "Responsible Government" on its trial, I do not in the least scruple to bring before your Excellency and the public the statements which were made and the opinions which were expressed to me in relation to those transactions, in addition to the statements which were made and the opinions which were expressed in the Report of that Committee.

The present Superintendent, being the principal administrator of Waste Lands in the Province, having had awarded to him £1372 for land which cost him £196, entitling him to purchase 2744 acres of country land, or 1372 acres of suburban land, after it had been offered for sale and left unsold at £1 an acre, applied through his agent for certain land at Puni by a letter addressed to the Honorable the Attorney-General, on which application the Waste Lands' Commissioner endorsed that the land in question was "being surveyed in order to be offered by auction in small lots as suburban lands." According to the regulations established by law, it could not be sold otherwise than by auction at or above the upset price of £1 an acre, or if left unsold after having been offered at auction, at the upset price of £1 an acre, by private sale. Nevertheless, the General Government invited his honor the Superintendent to name a valuator to meet a valuator to be appointed by the General Government to value the land applied for, and on that valuation the land was granted, to the extent of 1700 acres, at 12s. 6d. an acre, 370 acres having been also taken out of what had been surveyed and divided into allotments at the upset price of £1 an acre – whether or not after having been previously offered at auction does not appear. These are the facts reported by the Committee. The opinions expressed to me by various members of the Council were, that "the land was worth £3 an acre"; that "it was not worth so much as that; that £1 an acre was nearer its value than £3." No one set it below £1 an acre. Possibly these were random opinions which might have been modified had the land been examined by the parties expressing them with the same care that it was examined by the valuers, who fixed it at 12s. 6d. an acre. But that valuation was also only a matter of opinion. The only

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way in which its true value could have been ascertained was that which the law required – namely, that it should have been offered for sale by auction. Doubtless it would have been an inconvenience for Mr. Williamson to have been unable to select his estate in a continuous block, which might have happened by

an adherence to law. But who is responsible for the state of the law – for the "Whitaker Land Regulations," which possessed every excellence in the judgment of the Superintendent until they proved inconvenient to himself, when he joined with the framer of them in setting them aside. The Commissioner stated in his evidence that "the force of the legal objections taken by me was admitted, and it was proposed, as I understood, if necessary, to legalize the whole proceedings by obtaining an Act of the Assembly in its next Session."

Your Excellency cannot be ignorant of my earnest and continued endeavours to have the public lands administered on the simple basis of sale by auction at an upset price, and subsequent selection at that price of such as should remain unsold, a system which would render abuse all but impossible, while it would afford the new emigrant an equal chance with the old speculator in going into an open market; and how often have I denounced the Whitaker Land Regulations as opening by their multiplicity and complexity so many doors for abuse. You have now a proof how little regard the framers of the law pay to it when it, stands in the way of their private interests. When your Excellency was advised that you could not legally issue a grant to me which would have been an equivalent for one ninth part of my loss in consequence of the violation of the public faith as pledged to me in the Queen's instructions through the Marquis of Normanby, you had a proof of your legal adviser's zeal for the law, at the expense of the public faith – in advising you to issue a grant to Mr. Williamson for Land valued to him at 12s. 6d. an acre but variously estimated to be worth from 12s. 6d. to £3 an acre, you have a proof of their zeal to keep the public faith at the expense of the law. The only difference being that in my case they take upon them to restrict you in the exercise of a power which the law confides to you, although the law itself places you under no such restriction; while in the other case they make you openly violate the law – which law was enacted by themselves. Do I write parables, or are these the words of naked truth? But I have not done yet. In the return are the names of William Thomas Fairburn and Henry Judd Dampier as the holders, at the date of the arbitrators' award of 362 and 285 acres respectively, which had been valued at £1436 10s., equal at the market price to 2873 acres of Country Land – and which had passed into

the hands of John Kelly. It was impossible to ascertain on what terms this purchaser became possessed of the claim to compensation which he had acquired. Page 27
This was a private transaction which the committee had no right to enquire into. They were also baffled in their attempt to ascertain whether he had any partner in the speculation. The fact is however that he applied for and obtained authority to select 2873 acres of land at Waitakere at 10s an acre, such land not having been previously surveyed and offered for sale according to law. And with respect to this land, a member of the Provincial Council who said that he knew the land well, told me, that it was worth £2 an acre, every acre of it. It must be admitted that this person stood on somewhat different grounds from those who were obliged to relinquish their land. If the original holders of the claims to compensation ignorant that in addition to the value of their land as fixed by valuation they were to have a choice of selection, which might double or even quadruple its value, had been satisfied with the original award and disposed of it at its market price, no one could pretend that the purchaser was entitled to a privilege to which the original claimants made no claim. But Mr. John Kelly having formerly been a partner with Mr. Whitaker in land speculations (see printed return, claim 254) was supposed on this occasion to have guided himself by that kind of exclusive information to which the success of speculation is so frequently owing.

The Committee did not express any opinion in reference to the value of the lands thus disposed of, contrary to law, and the loss which the land fund of the Province has sustained, in addition to the unavoidable loss of compensating the holders of the allotments at from seven to ten times their original cost, as fixed by the valuers, except in the case of Mr. Robert Hall, in which case the loss can be ascertained by the actual results of a public sale. Mr. Hall was at the date of the arbitrators' award for compensation, the holder of an allotment of 460 acres, which was valued at £1380, and entitled him to 2760 acres of country land at the market rate. It appears that he applied for compensation in town land within the town of Auckland, offering to take it at a valuation. This offer appears to have been pooh-poohed by the General Government who would not have their liberality to a stranger said to be less than to the Superintendent, and the former partner of the Attorney General. He was informed that he should have it at the upset price of £100 an acre, although no town land could be legally sold at that price until it should have been previously put up for sale by auction. And this provision of the law was endorsed by the Waste

Lands Commissioner upon his application. The report is that Mr. Hall got £1000 profit upon his selection as soon as it was made, that is £1000 in addition Page 28
to the £1380, which was awarded to him as the value of 460 acres which was originally purchased from the Government for £230. Of the 13 acres 3 roods 8 poles, granted to Mr. Hall, something less than 12 acres was sold at various prices amounting in the whole to £3945. It is but just to observe that I was informed by the party who made the sale, that some of the lots had reverted to him, the purchasers having been unable or unwilling to make good their purchases. But on the other hand he valued the two acres which remained at double the average value of what had been sold.

There may possibly be some minds so constituted as to believe that all these illegal transactions, entailing so grievous a loss upon the land revenue of the Province, did not take place in order that the Superintendent and the former partner of the Attorney-General might benefit by it, – that is, that the framer of the law, and the principal administrator of the law did not unite in violating the law for so base a purpose as to benefit themselves or their friends, but that such benefit was merely a secondary or incidental result of a tender sense of honor, and a virtuous determination that not even law itself should stand in the way of justice. The point to which I wish to bring the question, and in order to which I have pursued this disgusting investigation is this, – whether "the system called Responsible Government," which was called for by the House of Representatives, to which the Secretary of State said he had no objection, and under which your Excellency consented to see the Colony governed, affords the same security to the public that their affairs shall be well and honestly conducted, as they would be under the real, not the nominal, administration of a Queen's Governor. I put it to your Excellency whether there is any interest in England sufficiently powerful to have saved a Queen's Governor from ignominious dismissal who had been the agent in such transactions as these, against whom there was one-half the evidence of corruption which is evidenced by these transactions. Or even supposing he could have been cleared of corruption, who could have been capable of such sottishness as to violate the law for such an occasion as this?

Having brought the case to this point, let us examine whether even these proceedings are exceptional, or whether such proceedings are not rather a part of the system regularly pursued; – in other words, whether the Responsible Government does not actually maintain a systematic violation of law. Your Excellency is much

better aware of the state of things in the Province of Wellington than I am; I indeed have had little opportunity of knowing in detail what has been going on there. Of this much I am aware, that the Superintendent who is entrusted with the custody of the public money of that Province, to be expended by him for the purposes to which it shall be appropriated by an Act of the Provincial Council, has for a long period – probably not less than two years – been spending the public money without an Appropriation Act, – that is, has been guilty of a continuous breach of the trust reposed in him by law. Is it any excuse that he has spent the money, as he alleges, for the good of the Province? Who is to take his word for this? Was so impudent an apology ever offered for a criminal act – nay, for a systematical perseverance in criminal conduct, before the invention of "the system called Responsible Government." Doubtless your legal adviser has told you that the Constitution Act has provided a remedy for this – that the Superintendent is removable by the Governor on a vote of the Council. But is it not evident that if those who refuse to vote the money to be expended by him, were to petition for his removal on this ground, their own hands would be tied up when their own turn should come. Page 29

It is very clear that the public service is as little in the mind of the party who is struggling to obtain power over the public money as in that of the party who is determined to retain and use that power, although he can only do so by a systematic violation of the law. The Constitution Act requires that the proportion of the general revenue which falls to the Province of Wellington should be paid to the Superintendent of that Province. But the question naturally arises – Do not those who pay public money into the hands of a person who is notoriously putting it to an unlawful use, make themselves accessories before the fact to the offence which is committed? Or if not – is the Constitution Act, and the system called "Responsible Government" grafted upon that Act, to be looked upon as any thing else than the frame-work of a conspiracy to defraud the public of their money and their political rights under pretence of governing them? Every thing is made to work in a circle. One abuse is perpetuated by the introduction of another abuse. The abuses of the Superintendents are balanced by the abuses of the General Government, and each party in sparing the misdeeds of the other party, finds an indemnity for its own. Every thing is allowable that can be covered by a vote of the majority, – This is "Responsible Government"! The complicated provisions of the Constitution Act seem intended to enable

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functionaries who act under it to bring forward one section of the Act to justify the violation of another section of the Act. I confess when I consider that the Constitution Act of New Zealand, in what distinguishes it from all other Constitution Acts, was the work of Mr. Edward Gibbon Wakefield, I am inclined to believe that these were the means, joined to the system of "Responsible Government," another invention of the same distinguished artist, by which he intended to keep the administration of the Colony in his own hands, and in the hands of his coadjutors.

But to turn from Wellington, of which I know little, to Auckland, of which I know much, I beg your Excellency's attention to the proceedings of the Superintendent during the last twelve months, and to the proceedings of the Provincial Council during its various Sessions. You will find the violation of the law assume a new and more remarkable phase. On a former occasion I brought to your Excellency's attention the fact that the present Superintendent while locum tenens in that office between a dissolution of the Council and a new election, spent the sum of £26,000 of the public money without legal authority. A large portion of which was spent upon what were called public works, but which no one hesitated to deny to be exactly such public works as would secure his own re-election to office, and the election of those who would support him in it. He has now gone a step further. He has stretched beyond the measure of the Superintendent of Wellington, and of his own measure in previous years, and has actually taken the money which was appropriated by law to one purpose, and applied it to purposes for which it was not appropriated. Nor was this done to a trifling amount. The sum of £13,000 was voted for harbour works, contingent upon the money being raised by debentures, upon the security of the harbour endowments. The money was not raised by debentures – and yet the Superintendent actually expended £21,000 upon those works, thus, by a double breach of the law, withholding the money from the purposes to which it was appropriated by law, and expending it upon purposes on which it could not legally be expended. The Council not only virtually acquiesced in these proceedings, but seemed to receive with approbation the observation of a member that "every Government must violate the law – that he would be sorry to see a Government that would not violate the law." The Superintendent of Auckland stretches beyond the measure of the Superintendent of Wellington, but, what is more, he carries his Council with him.

It would be much more economical, and productive of less injury

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to public morality, to leave the expenditure of the public money to the will of the Superintendent, – the corruption of one is a less evil than the corruption of twenty. Less money would be wasted in allowing the Superintendent to effect his purposes without any pretence of control than in making it necessary for him to bring a majority of the council to sanction or acquiesce in his proceedings. The Provincial Council has become a false pretence, a piece of machinery which the large funds entrusted to the Superintendent enable him to work for his own purposes. The elective Superintendencies and Provincial Councils are parts of the constitution which might exist without the "system called Responsible Government," but in conjunction with it they render misgovernment complete – an entire perversion of the functions of Government from the true purposes of Government, to serve the selfish and ambitious ends of those who have got possession of the public offices and the command of the public revenue.

The public has recently been informed through a letter addressed by Mr. Frederick A. Weld to his constituents at the Wairau, that that gentleman has consented "to accept office as a member of the present Government," that is not in succession to any existing member, for there is no notice of any removal or resignation, but in addition to the present members. In plain English what can this mean, but that Mr. Weld in consideration of £800 a year well and truly paid from the public purse, consents to give his vote, and to influence the votes of his friends, in enabling the persons who at present have command of the revenue to retain it, and to dispense the good things which the administrators of a revenue of £280,000 a year enable them to dispense, amongst their supporters, including Mr. Weld and his friends. That the public service of the community requires another salaried functionary at £800 a year is a proposition too absurd to be admitted by any one who knows anything of what the real public service requires; – that ample employment will be found for him in sustaining the fabric of Responsible Government, and strengthening the hands of that powerful body of officials which has established itself at the expense of the community, there can be as little doubt. The Southern Cross indeed informs us that "the name of Frederick A. Weld is a guarantee for all that is honorable and straightforward." – Perhaps so; but can he wash the Ethiopian white? Can he touch pitch without being defiled? If not, he may possibly be convinced by reading this letter that his labours as "a private member of the House of Representa-

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tives" may be made to "conduce to the benefit of the public service" more than his accession to the ministry."

I shall not trouble your Excellency with any further ILLUSTRATIONS of the working of responsible Government. I have shown the dealings of its members in cases where they had to decide between the interests of themselves and their friends and the interests of the public; and in other cases where they had to decide between the public interests and the interests of parties indifferent or obnoxious to them. It is difficult to say which class of cases is most instructive. I have also shown in a few words how harmoniously they have worked with the Superintendents in producing and perpetuating abuses, and in making the violation of the law the chief means by which the Constitution is kept in action. Is it worth while to enter into the question, whether the system is disgraced by the men, or whether honest men could be employed under such a system? Can anything be more clear than this, that with the command of £280,000 or £300,000 a-year, the least scrupulous will be the most successful in purchasing support. I have before adverted to a supposed necessity as the only excuse for continuing such a system. – Whence is the origin of such a dogma? The true questions are these: – 1st, Is the British Government unable to rule a dependency of 100,000 people; or, 2ndly, is it entitled to withhold the protection of British laws from any class of the Queen's subjects? Whether the British Government is entitled to throw off a class of British subjects and give them what is popularly called "self-Government," is a constitutional question of deep interest. In such a case, however, they could not refuse to the Colonists the right of settling in a Convention the Constitution under which they should be governed, and of choosing the men to whose Government they would submit. In such a case nothing would remain for any British subject who objected to the new Constitution and the new Government but to leave the Colony. But while we remain British subjects – while the Colony is nominally ruled under a Governor appointed by the Queen – it is not competent to the British Government to withhold from us the protection of British laws and of the Queen's authority against men who oppress us by enacting laws which (being repugnant to those fundamental laws of the Realm which constitute the bond of allegiance and protection between the Sovereign and the subject), have no legal validity, and who may commit the most flagrant breaches of trust with impunity,

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because they are made responsible, not to the Queen's Governor, but to a majority of the Representative Assembly.

There can be little doubt, notwithstanding the corrupting influence of the expenditure of so vast an amount of public money amongst so small a community, that the majority of the people desire to be "well and quietly governed." They would wish to see the offices of Government made subservient to the just and economical administration of public affairs; not to the maintenance of an army of office-holders, whose chief object is to make the administration of public affairs the means of maintaining themselves in office, by rewarding their supporters and buying off their opponents. Why should the Colonists be deprived of good government according to the principles of the British Constitution? What are the difficulties which have induced the Colonial Department of the Queen's Government to abdicate its proper duties? Let us endeavour, first, to trace the true principles of the British Constitution in its application to the Government of Colonial dependencies; and, secondly, to expose the fallacies (if they are entitled to so mild a name) which have led to the supposition that what is called "responsible Government" is consistent with those principles, or reconcilable with any system of Government adopted in a civilized country – or, to go farther, with truth and rectitude.

In the early British Colonies there were no such difficulties. Contentions did occasionally arise between the representatives of the Crown and the representatives of the people, but, in the main, the Government was administered according to the principles of the British Constitution. The representatives of the people voted the necessary supplies; the Governor administered them with the aid of functionaries who were responsible to him for their conduct in the first instance, he and they being alike responsible to the Crown, which had the power effectually to punish their misconduct. If the representatives of the Colonists had reason to be dissatisfied with the way in which the Government was administered, they had it in their power to withhold the supplies which is the legitimate check recognized by the British Constitution upon the conduct of the executive Government. But this check was rarely called for while the Colonies were poor. Living under the laws of England, little legislation was required, and there was no wealth to tempt the ambition of Colonial statesmen. With the increase of wealth came corruption. The modern Colonies

became a field for patronage, and offices were filled by persons having Parliamentary influence, not always well fitted for the duties required of them, or willing to undergo the labours of office in return for its emoluments. This was a source of weakness to the Governments, which were opposed by persons who aspired to office, and claimed it as of right belonging to the Colonists, as well as by persons who were opposed to the waste of the public revenue and the mismanagement of public affairs through the incompetence or unfaithfulness of the public functionaries. After examples had occurred of Colonial judges and other superior functionaries having been left without their salaries for a period of three or four years, provision was made by the settlement of a Civil List, enabling Her Majesty to provide for the administration of justice and the essential offices of Government without an annual vote of the Assembly – an arrangement perfectly consistent with the principles of the British Constitution and in accordance with its practice, and sufficient to maintain the stability of the Government and to secure to the Colonists an efficient and economical administration. Under such an arrangement it was not in the power of the Assemblies to bring the Government to a dead lock, and questions of administration, upon which irreconcilable differences existed between the Executive Government and the Legislature, could be left without much public disadvantage to the decision of the Queen's Government in England. But before this system had received a fair trial, the Democratic branch of the British Constitution had acquired increased power in England by the passing of the Reform Bill, and the Ministry which that Bill brought into power, ceased to contend with the democratic spirit in the Colonies, yielding the administration of their affairs to whatever party might be able to obtain a majority of votes in the Legislature; – and this was called "responsible Government," of which Lord Brougham has given the following description: – "A notion sprung up at one time, which was very much encouraged by Lord Durham and his party, which goes by the name of 'responsible government.' If I were to say that I clearly understand what is meant by the term, I would be arrogating to myself a degree of perspicacity to which I have no right; I should moreover be invidiously placing my intellect in contact with that of my noble friend at the head of the Government. The principle of 'responsible Government' is this, that whosoever governs a Colony (and it is not confined to Canada), is, if I understand it at all – but my noble friend Lord J. Russell not being able, as he says, to understand it, I may be excused if I mistake – however, I believe it to be, that whoever governs a

Colony, he shall be bound to choose as his Ministers whomsoever the Legislature of the Colony is disposed to give its confidence to. And further, whatever be his opinion of their conduct, so long as the confidence continues, he cannot remove them. Now, if it be supposed that this is a copy of the Constitution of the mother country, there cannot be a greater mistake. The Ministers in this country are the organs of the Crown. They are responsible to Parliament, and not merely responsible, but they hold their offices at the goodwill and pleasure of Parliament. But the principle is one of give and take. The Crown has the choice of selection and dismissal, and the Parliament of refusal; and therefore both Crown and Parliament have a somewhat similar, though in cases of irreconcilable differences, not unequal influence.

"And here Mr. Bentham made a great mistake when he wholly neglected the operation on both parties of the fear of differences producing a collision, and described all balances and checks as only bringing Government to a standstill; for he did not consider that the Crown will give up a little not to bring things to extremity with the Parliament, and the Parliament will give up something not to bring matters to extremity with the Crown. But in the Colony we are told to regard as the English Constitution one which gives the whole power to one party in Parliament, and leaving nothing to the Crown. This is called "responsible government." Well, then, our Ministers gave them (the Canadas) responsible Government – that is to say, gave them the power of naming the Ministers, who, though appointed by the Governor, are voted by the Assembly, and are kept as long as the Assembly please to keep them, and to make them the instruments in their hands of executing their designs.

Such is the construction put upon responsible government in the Colonies, and Lord Elgin, I see, has put this construction upon it; indeed, but for such a construction, nobody could even have dreamt of appointing Mr. Lafontaine." – Hansard's Debates, vol. cvi., 19th June, 1849, page 460.

After such an authority as this, it might almost seem superfluous to show that what is called "responsible Government" is not consistent with the British Constitution. A system of checks and balances which provides for the stability of the Government while it controls its action by retaining for the representatives of the people the command of the public revenue. But there are views of the question which were not adverted to by Lord Brougham. Let us endeavour to trace the fallacies by which people have been so generally misled in reference to what is called

"responsible Government" – but which has also been called "representative Government" – and "self-Government." There is-

First, a fallacy in reference to its origin.

2ndly, in reference to its being analogous to the Government of England.

3rdly, in its being consistent or reconcilable with the principles or practice of civilized Government in any country.

4thly, in reference to its being consistent with any real responsibility.

sthy, in reference to its being lawful and consistent with truth and rectitude.

Firstly, in reference to its origin. It was first introduced into Canada, nominally by Lord Durham, but in reality by Mr. Gibbon Wakefield. The rebellion in Upper Canada showed that the great majority of the settlers in that country were too deeply attached to British institutions to tolerate the democracy which it was the object of Lord Durham and his advisers to introduce into that country. But its union with Lower Canada under one Legislature gave a predominance to the representatives of the French habitants of that Colony, who being in all matters of a political character led by their priests, were averse to the British Government and to British institutions. Mr. Gibbon Wakefield, who, in his published letter to the Duke of Newcastle, claimed to be "one of the principal founders of the Colony, and one of the principal authors of the Constitution (of New Zealand), was also the party who introduced it into this Colony, having previously prepared for its introduction by a Constitution of a character so peculiar, as to be inoperative for all the real purposes of Government, but admirably contrived to give up the interests of the community as a stake to be gambled for by the most clever and least scrupulous of its members. That the peculiarities, of this Constitution are to be traced to Mr. Gibbon Wakefield, we have the best evidence, in addition to his own, in the explanation which was given of the Constitution by Sir John Pakington, who stated that he had been assisted in preparing it by some persons interested in the Colony, and that the suggestions of Mr. Gibbon Wakefield were marked by their "accustomed ability." Every member of the Legislature who had paid any attention to the Colonies saw the incongruities of such a Constitution; but Lord John Russell said that it was framed to meet the wishes of the Colonists themselves, and that if it should be found not to answer their expectations, there was no interest in the Government or Parliament of England to prevent its being altered in accordance with their wishes.

The Constitution upon which responsible Government was grafted in New Zealand was not therefore a Constitution prepared by the wisdom and experience of statesmen, with a view to secure to the Colonists the blessings of a Government in accordance with the principles of the British Constitution, but a contrivance to withdraw all power from the Queen's Government and lodge it in "a family compact" of the Wakefields and their associates, or, as necessarily followed, in the hands of whatever persons might be most successful in obtaining the votes of the majority. This was done in detail by committing the administration of the different Provinces to elected Superintendents.

What right had Gibbon Wakefield and the two or three others who, with him, found access to the Colonial Secretary, to pretend that they represented the wishes or the interests of the Colonists. It was only necessary, in order to complete the scheme, to get the Government to abdicate the functions that belonged to him, in favour of the leaders of the House of Representatives. What was there in his antecedents which would justify Sir John Pakington in listening to his suggestions? Were they of the right stamp to entitle him to confidence? No, but at that time he represented the New Zealand Company, whose parliamentary influence was such that the Ministry could not disregard it. The second fallacy by which the Colonists are imposed upon is, that what is called responsible Government is analogous to the Government of England.

It is pretended that the Governor stands in the place of the Sovereign, and the responsible Ministry in the place of the Queen's Ministers, whereas it is the Governor alone who stands in the relation of a responsible Minister to the Queen, and the functionaries who aid him in the Government are and must necessarily be subordinate and responsible to him.

It is a principle of the British Constitution that the Queen can do no wrong, – the meaning of which is that no public act of the Queen has any real force, until the instrument by which it has to take effect is countersigned by one of Her Secretaries of State, who is made accountable for it. But where is the analogy in this respect of a Colonial Governor to the Queen. Who ever pretended that a Colonial Governor could do no wrong; or that he had any powers which were not defined and limited by his commission and instructions, or for the exercise of which he was not strictly accountable – not to the Local Assembly – but to the Government and Parliament of England. It must necessarily be so. The Queen is bound by her Coronation Oath to govern according to

law and right. She cannot convey any powers of Government to a subordinate functionary, which are not defined by the same limits and subject to the same restrictions as her own, and the Queen's Ministers are responsible to Parliament for the legal and just administration of the powers of Government which are entrusted to Colonial Governors.

But how is this to be reconciled with the virtual abdication of those powers by the Governor to whom they are entrusted, and their assumption by persons who, being considered by a majority of the Assembly as fit to carry out their views, are installed in the Executive offices of the Government, on the condition of making their acts agreeable to a majority of the Assembly; calling themselves responsible – not to the Governor who appoints them, and is responsible to the Queen and Parliament for their conduct – but to the majority of the Assembly which retains them in office. It is a principle in all civilized Governments that all administrative functionaries are responsible to the head of the Executive Government. In the constitution of the United States of America, which our Colonial constitution has been thought by superficial persons to resemble, the President has the nomination of his executive functionaries, and the entire control over them during his tenure of office. They are responsible to him alone, in the first instance, although the Constitution makes provision for their impeachment and trial, as well as for his own. It must always be so where an established Government exists. It is a principle of Constitutional Government, established by all experience, that the Legislative Power should be kept distinct from the Executive Power. The Legislature defines the duty of the Executive, but refrains from an interference with its functions; but under the form of Responsible Government the Legislature usurps the functions of the Executive branch of the Constitution, in addition to its own. A form of Government, which leaves the administration of affairs to the vote of the majority, is only consistent with a state of barbarism from which the European nations have emerged for several centuries. It is inconsistent with a Government according to law and justice, as substituting the crude opinions, not to say the selfish objects of a majority, for the principles of Government which law and experience have established.

The system called "Responsible Government" being thus irreconcilable with the principles of the British Constitution, as well as with the practice of the most democratic form of civilized Government as exemplified in the United States, is in its very name a false pretence. Those to whom the powers of Government

are committed being absolutely irresponsible so long as they can by any means maintain a majority of votes; being, according to the assumption, responsible to the majority and not to the Governor, they cannot be called to account for any malversation in office, however flagrant, so long as they can succeed in maintaining that majority. The true definition would therefore be an "irresponsible Government" – the Constitution having made no provision for the punishment of malversation in office in the case of men who are illegally entrusted with power. But, to search the question deeper, it may be asked, Can such a power lawfully exist? When the Assembly passes, and the Governor assents to, a law which is repugnant to the fundamental laws of England, as, for instance, the Land Claims Acts, the Bay of Islands Settlement Act, and some others; and much more, when the Secretary of State gives the Queen's assent to such Acts, – Is the conduct of the local Legislature and of the Secretary of State a lawful exercise of authority? or is it not, rather, a violation of the trust reposed in them? The Constitution Act which calls the Assembly into existence, limits its authority to the enactment of laws which "shall not be repugnant to the law of England." Any measure which they may pass which is repugnant to the law of England is therefore not a law – even with the Queen's assent – for the Queen and her Privy Council can only exercise the powers which are confided to them by Parliament, and cannot lawfully do or authorize to be done any act in contravention of an Act of Parliament. When, therefore, the Queen's subjects are subjected to the operation of such enactments, they are entitled to the protection of the Queen's judges,

whose duty it is to administer the laws of England and such Colonial laws as are not repugnant to the laws of England.

And thus the house is divided against itself. It becomes the duty of a Colonial judge to declare not only of the Acts of a Colonial Assembly, that they are illegal, but of the Acts of the Queen in Council, that they also are illegal. Surely this must be a false expediency. A like observation applies to an administrative Act which is illegal or corrupt. The Secretary of State cannot lawfully authorize the Governor to sanction such proceedings. Nor can the Governor give them his sanction without a betrayal of his duty. The system of Responsible Government is, therefore, in every shape a false pretence. It involves no real responsibility. In theory it is irreconcilable with the principles of the British Constitution: in practice, it cannot coexist with the right discharge of the duties which the Constitution imposes upon the Secretary of State, or of those which the Governor's commis-

sion and instructions require of him. And this, indeed, is tacitly admitted by your Excellency's reservation of all power to administer native affairs, as well as in questions which are supposed to involve "Imperial interests."

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Within the brief period of 20 years during which the New Zealand Colonies have existed, we have experienced, according to the traditions of the convict Colonies, the despotism of one man with a Legislature so constituted as to consolidate rather than check the action of his own will. And we have gone to the opposite extreme in which the Governor is debarred from any action unless at the will of the House of Representatives, which will is supposed to be represented by certain of the most prominent members, who, having obtained the support of a majority, are appointed members of the Executive Council and installed into the offices of Government. Styling themselves a Ministry – not of the Governor, but of the Assembly – they thenceforward conduct the public business, not in the name of the Governor, who is altogether ignored, but in the name of the "Government."

Analogous to the fallacies which have obtained currency in reference to what has been shown to be falsely called "Responsible Government" are those which have been equally prevalent in relation to the duties which are supposed to belong to what is called a "General Government." To listen to those who are engaged in the game you would be made to believe that a group of Colonies, each having authority to deal with its local affairs, was, when confederated, analogous to a nation. There can be no analogy between a Colonial dependency (or between a group of Colonial dependencies) and an independent nation. The Government of a dependency can have legally no original authority, nor can it exercise any national functions. Its authority in all things is derivative and subordinate. Its duties are entirely of a local character. A Constitution such as that of New Zealand is without precedent. In no previous instance was a group of Colonies, each possessing a local Legislature, united under a general Legislature, which had power by its Acts to override those of the local Legislatures. In only one instance, that of the Leeward Islands, was there an establishment of a General Assembly, amongst a group of islands, each of which had its own local Legislature. But this General Assembly, which was established by the Colonies themselves – not by the mother country – passed no law whatever during the long period of 93 years – from 1705 to 1798 – thus proving that local regulations are best made by those whom they concern. Statesmanship was not then a trade.

The first essential requisite of all Government is stability. And it is the highest triumph of civilization to have secured, as in Great Britain, the coexistence of the stability of the throne with the liberty of the people. These advantages belong of right to every British Colony, as well as to the mother country. But they can only be secured by an adherence to the principles of British Government. Why should a community of British freemen relinquish the first and greatest advantage of that civilization which the wisdom of their ancestors had bequeathed to them, in order to throw themselves into the hands of a faction, which can only maintain itself by corruption.

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What advantages have these Colonies gained which have chosen what they call "responsible Government," but which is, in fact, the lowest type of a representative democracy – the administrators of the Government holding office for no specific period, but so long only as they can influence a majority of votes. Have not the results been everywhere what might have been expected, – that the instability of the governing power has paralyzed the proper functions of Government, and substituted for them a perpetual struggle for office, which has made a due attention to the real business of the community impossible?

In the mother country there exists an hereditary class whose circumstances constitute to the community one of the greatest securities for good government, independently of the power of party or of faction. A class of persons elevated in rank – in possession of wealth to satisfy every desire and imagination – having only one object of ambition left – that of obtaining distinction in the management of public affairs. A class of persons trained from their earliest years in the science of politics – knowing all knowledge – enlightened by all experience – with the prestige of rank and of a historic name – inaccessible to the temptations which the emoluments of office hold out to the needy. To such a class, which at once adds to the stability of the throne and protects the liberties of the people, Divine Providence would appear to have specially assigned the functions of Government.

But in the Colonies such a class is altogether wanting. It may be affirmed, almost absolutely, that there are no men in the Colonies to whom the emoluments of office would be indifferent, and to whom the Colonists could look up as a governing class with any degree of assurance that their object and aim in acquiring office would be an exclusive devotion to the public good. It is enough to say that there are men competent to the task of government, if they could be continued in office; but honourable men

find it impossible to submit to the conditions by which votes are influenced, and they are forced to give way to men who have no higher objects than to make the public interests subservient to their own, and to the interests of those whose votes have placed and keep them in office – men by whom the functions of Government are assumed only to be disgraced.

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It is not easy to imagine a Constitution of Government more simple or efficient than that which of right belongs to every Colonial community, which might enjoy all the advantages of the British Constitution in even greater perfection than the people of Great Britain. But the Governor must needs be Governor in deed as well as in name, he must assume the responsibility which is inseparable from his office, and his subordinate functionaries must hold office *du se bene gesserint* – not by a vote of the Assembly. To the representatives of the people would belong the constitutional check that no taxes or duties could be levied or expended without their sanction, and for all the purposes of good government this is ample.

When it had ceased to be necessary to contrive measures for the purpose of influencing votes, it would soon be found that the business of the Government and of the Legislature had dwindled down from their present pretentious magnitude to very homely dimensions, such as would allow of the best men in the community taking a share in the public business, consistently with a due attention to their own – statesmanship would cease to be a trade and a speculation.

I have already, in a separate paper,⁵ so fully shown the necessity of a paramount local authority for each of the Provinces of New Zealand, that I shall not here enter into that branch of the question. Nevertheless, it may be pertinent at this time to ask, whether the present disgraceful bankruptcy of the Province of Auckland, resulting from a long-continued system of malversation in office, could possibly have occurred under a Queen's Lieutenant-Governor? To this question there can be but one answer – That it could not possibly have occurred; and, secondly, whether, if there had been a Queen's Lieutenant-Governor in Taranaki to have dealt with the difficulties as they arose, the present war would ever have arisen. My own firm belief is that with ordinary prudence it would have been altogether

avoided.

All which is very respectfully submitted by Your Excellency's most obedient, humble Servant,

JAMES BUSBY.

¹ See Appendix.

² Dated 18th April, 1860, see Appendix.

³ See Appendix.

⁴ See "the Preemptive Land Claims, and the right of a British subject to the protection of the law, and of the Queen of England" – in a letter to Governor Gore Browne, C. B., &c., &c.

⁵ "The Federation of Colonies."

APPENDIX.

APPENDIX.

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Mr. Busby to His Excellency Governor Gore Browne.

Auckland, 4th April, 1860.

SIR, –

I am constrained to appeal to Your Excellency against the treatment I have received from Mr. Dillon Bell, the Commissioner of Land Claims, who, in the exercise of the discretion claimed by him, and allowed by the Chief Justice to belong to him, under the provisions of the Waste Lands Acts of 1856 and 1858, has, in a manner which appears to me to be arbitrary and unjust, refused to give a decision upon my claim referred to him in June, 1859, and has postponed indefinitely giving a decision thereon.

I appeal direct to Your Excellency, because to you alone it appertains to vindicate the public faith – which was pledged to me and to others in like circumstances in Her Majesty's name by Her Majesty's Principal Secretaries of State for the Colonies; and because there is power reserved to Your Excellency under the 11th clause of the "Waste Lands Act, 1858," to make good all engagements entered into in Her Majesty's name, in relation to claims to land.

The proceedings before the Commissioner of Waste Lands, which are certified under his name, will prove to Your Excellency that Her Majesty's engagement, above alluded to, was violated in my case; and though it is not in the power of the Commissioner under the provisions of the Land Claims Settlement Acts of 1856 and 1858 to award me an amount of compensation more than equal to one-ninth part of my loss, the Commissioner refuses to make that award, and has indefinitely postponed to give his decision, to my great injury and loss.

I respectfully submit to Your Excellency that, in so doing, the Commissioner of Waste Lands has exercised the discretion vested in him in a way which is not reconcileable with the provisions of the Act of 1856 that all proceedings under that Act are to be conducted according to equity and good conscience.

I have, &c.,
(Signed) JAMES BUSBY.
His Excellency
Colonel Gore Browne,
Governor-in-Chief, &c.

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His Excellency Governor Gore Browne to Mr. Busby.

Auckland, April 9th.

MY DEAR MR. BUSBY, –

I have looked over the case as you desire, but I do not see what I can do or say on the subject. The opinion of the Chief Justice is distinct, viz., that the "Commissioner may exercise or not (his powers) in his discretion after examination of the claim on its merits."

Now as the Commissioner (like other judicial officers) is entirely independent of me and my Executive Council, it is clear that neither I or they can interfere with his proceedings.

I have sent your letter on to the Attorney-General and have not received his reply.

Believe me,
My dear Mr. Busby,
Yours very truly,
T. GORE BROWNE.

Mr. Busby to His Excellency Governor Gore Browne.

Auckland, 10th April, 1860.

MY DEAR SIR, –

Your kind letter, for which I thank you, would be a rebuke to my impatience, in pressing my little matter upon your attention, at a time when you are so much occupied with matters of public importance, were it not that I find it an excuse for myself – whatever others may do for me – in the reflection that I have been struggling against oppression for twenty years, and that I am under obligations to others, which will not allow me to slumber over the short time that may be left to me to do them justice.

I at once perceive that you have misunderstood my representation to you, nor could I have hoped in so short a conversation to make you master of my case. It is precisely because the Chief Justice has decided that the "Commissioner may exercise or not (his powers) in his discretion after examination of the claim on its merits," that I have appealed to you. I do not wish you to interfere with the Commissioner or his proceedings, but to take the case into your own hands and deal with it yourself; – and this, after full examination, I have no doubt whatever you have full authority to do.

The annexed extracts from Lord Normanby's instructions to Captain Hobson will prove to you that Her Majesty, while she would not acknowledge as valid any title to land acquired from the aborigines, unless it should either be derived from, or confirmed by a grant from Her Majesty, pledged herself to cause an investigation

to be made into the nature and equity of titles so acquired, in order that,

if proved to have been equitably acquired, the owners of such property should be confirmed in their possessions by a grant from Her Majesty, unless "upon a scale which must be prejudicial to the latent interests of the community." Page iii

The case stated by the Commissioner, which I only refer to as a resume of the whole, recites the proof that in my case the pledge here given was not kept. In pursuance of these instructions, a Legislative Commission was appointed, and a proclamation issued calling upon all parties who were prepared to prove their titles to state the particulars of their claims to the proper authorities. The particulars required in my case were duly provided. But the claim was never referred to the Commissioners for investigation, and no opportunity was afforded me of proving my title.

The case also refers to my endeavours, which will more fully appear by the record of my letters to the Local Government, to obtain the protection of the Government for my property, which was being deprived of the timber which constituted its chief value; – and to my solemn protest against the conduct of the Government in refusing me that protection, and in conniving at and permitting the robbery of my property, which the "Native Lands Purchase Ordinance" made it impossible for me to prevent.

The third clause of the "Land Claims Extension Act, 1858," first opened to me an opportunity of obtaining some compensation for a small part of my loss. It was in the power of the Commissioner by the third clause of that Act to have awarded to me land of the value of about one-ninth part of my loss. But the Commissioner, acting in the spirit which the Government has from the beginning manifested towards the first settlers in the Province of Auckland "in their attempts to settle or stifle their claims" (I quote the words of the report of the Select Committee of the House of Representatives), appears to have considered that he would best fulfil his commission by awarding the minimum which the law would allow him to award, and by indefinitely postponing to give me any award, without regard to the claims of justice or of the words of the Act, which require that all proceedings under it should be according to equity and good conscience.

The extracts from Lord Normanby's instructions will shew that an engagement was entered into towards me on behalf of Her Majesty which has never been fulfilled. I shall now beg your reference to the clause of the "Waste Lands Act, 1858," which, after providing for the disposal of the Waste Lands of the Crown, reserves to the Governor the power to make good such engagements.

I am prepared to hear that you are advised that before you can exercise this power you must have a judicial decision. I would ask, if this should be the case, of what use can this clause be or what is its purport? All the modes of disposing of land or settling claims of an ordinary character are defined by the enactments of the

General Assembly or of the Provincial Councils; but here is a reserve to the Governor to enable him to save the honor of the Queen and to keep the public faith. I pray and entreat Your Excellency to exercise upon this question your own judgment. Page iv

That you not only have this power independently of any judicial decision, but have acted upon it, or have been pledged by the Members of your Government to act upon it I am prepared to shew. In the case of the parties who obtained grants in the Queen's name of land at Pukekohe, which subsequent investigation proved to belong to the Natives, compensation was made by arbitration without a judicial decision. Here was a case in which the engagement of the Queen testified by a grant under the Seal of the Colony was broken through the default of a subordinate agent of the Government employed to survey the land. My case is that of an engagement made by the Queen and testified under the hand of one of Her Majesty's Principal Secretaries of State, which was broken through the default of the head of the Local Government. Can it be maintained that the one being a national record, is not as good evidence of an engagement as the other which is a local record, or that it is not as much in the power of the Governor to give compensation in the one case, as it was in the other cases. I have in vain looked for any proof of this power being contingent upon a previous judicial decision.

I have, &c.,
(Signed) JAMES BUSBY.

Extract from the Parliamentary Papers of April, 1840, p. 38, 39

"You will therefore immediately on your arrival announce by a Proclamation addressed to all the Queen's subjects in New Zealand that Her Majesty will not acknowledge as valid any title to land which either has been or shall hereafter be acquired in that country, which is not either derived from or confirmed by a grant to be made in Her Majesty's name and on her behalf. You will however at the same time take care to dispel any apprehensions which may be created in the minds of the settlers that it is intended to dispossess the owners of any property which has been acquired on equitable conditions, and which is not upon a scale which must be prejudicial to the latent interests of the community * * * * * The Governor of New South Wales will with the advice of his Legislative Council be instructed to appoint a Legislative Commission to investigate and ascertain what are the lands in New Zealand held by British subjects under grants from the Natives, how far such grants were lawfully acquired and ought to be respected, and what may have been the price or other valuable consideration given for them. The Commissioners will make their report to the Governor, and it will then be decided by him how far the claimants or any of them may be entitled to confirmatory grants from the Crown, and on what conditions such grants should be made.

Extract from the "Waste Lands Act, 1858," Clause III. Page v

"And whereas it is proper and expedient that power should be given to the Governor to fulfil any engagement heretofore made on behalf of Her Majesty, and also to make reserves for certain public purposes within the Colony: Be it therefore enacted that it shall be competent to the Governor at any time to fulfil and perform any contract, promise or engagement heretofore made by or on behalf of Her Majesty, and whereof there is evidence in writing, with respect to any allotment or parcel of land within the Colony, and any Crown grant made in pursuance of any such contract, promise, or engagement shall be valid."

Mr. Busby to Governor Gore Browne.

Victoria, 14th May, 1860.

My DEAR SIR, –

Will you do me the favour to give me an answer to the letter which I addressed to your Excellency before I left Auckland, under date the 18th April.

I remain, &c.,
(Signed) JAMES BUSBY.

Governor Gore Browne to Mr. Busby.

MY DEAR SIR, –

In your letter of 18th April you desire that I should, without reference to the decision of the Commissioner, take your case into my own hands and deal with it myself. The ground you urge for making this request is that the promises contained in Lord Normanby's instructions to Captain Hobson (which you quote) have not been fulfilled.

I do not however see that I have any power to overrule the decision of the Land Claims Commissioner or to take the case out of his hands into my own. I am advised that the section of the Waste Lands Act to which you refer has no application to Land Claims for the settlement of which specific Acts have been passed, and of which your claim is one.

Believe me, &c.,
T. GORE BROWNE.

May 19th, 1860.

I should have replied earlier, but that until I received your last note I assumed you had accepted my verbal reply in answer to your letter.

Publications by the same Author, which may be procured from Mr. Leighton, Shortland-street, or Mr. Wayte, Queen-street.

Page vi

1. "A Picture of Misgovernment and Oppression in the British Colony of New Zealand," 1853.
2. "The First Settlers in New Zealand, and their treatment by the Government," 1856.
3. "Responsible Government," and the Governmental Institutions of New Zealand, 1857.
4. "Colonies and Colonization," a Lecture with especial reference to New Zealand, 1857.
5. "The Federation of Colonies and the system called 'Responsible Government,'" 1858.
6. "The Preemptive Land Claims," 1859.
7. "The Right of a British Colonist to the Protection of the Queen and Parliament of England," 1860.

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