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Notes on Maori Matters.

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NOTES
ON
MAORI MATTERS.

"SI QUID NOVISTI RECTIUS ISTIS CANDIDUS IMPERTI; SI NON, HIS UTERE MECUM."
AUCKLAND: JULY, 1860.

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The following notes were hastily put together before the meeting of the Assembly and the publication of the papers laid before it respecting the war and the land question.

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They were not compiled, originally, for the purpose of publication; but the writer has consented to their being published – although he has not had an opportunity of revising them or correcting the press – as it has been represented to him that they may in some (though, he fears, not very significant) degree, contribute to the formation of a sound judgment on matters of the gravest importance to the Colony at an eminently critical point in its history.

Notes for the formation of an opinion on Maori matters. Introductory

NOTES FOR THE FORMATION OF AN OPINION ON MAORI MATTERS.

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INTRODUCTORY.

SUPPOSE a man of average intelligence, desirous of forming an opinion for himself upon the present and future relations between the Colonial Government and the Colonists of New Zealand on the one side, and the Aboriginal Inhabitants on the other.

Let him be a humane and just man – calm in temper and judgment, and free from prejudices arising from personal interest, or official position; – from deeming himself "in honour" bound to the support and advocacy of particular views; – from the habit of viewing the question from one point of view only; – from feeling, the consequence of personal sympathies or antipathies; – from merely professional treatment of the question; – from dogmatism, as being anxious to establish a theory; – and, lastly, from the dilettanteism of philanthropy. Suppose such a man looking at the subject with the single purpose and desire of forming a temperate judicial opinion for his own satisfaction.

In order to feel his way to get a sound foundation on which to base his judgment, and sound materials for its construction, he would probably adopt some such course as the following: –

1. First of all he would look back and see how much, and what, is known with any precision and certainty of the origin of

the Maori population of New Zealand; of the mode of their settlement in these Islands; of the nature of their social ties and government; of their notions of right, justice and property; of their customs and observances as regards the interior economy of each several tribe, and of the connexion and intercourse among different tribes; and of the general character of the people,

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2. He would next look back to the circumstances of their intercourse with Europeans before the establishment of the Colony by the British Government.

3. Keeping these things in mind, he might now consider what would be the course most proper to be adopted by a wise, far-sighted, just and humane Sovereign in colonizing a country so circumstanced as New Zealand was at the time when the Colony was actually established.

4. He would then look at the Treaty of Waitangi. And he would, first, have to make up his mind what each party to it probably meant in executing it, and also what each party must be taken to have known that the other parties meant, – so as to see what it was that all parties in common must have intended to agree to. He would thus discover what was really ceded by the Natives, and what was guaranteed or granted to them in return.

5. He would now be in a position to judge whether the treaty corresponded in spirit and letter with his a priori judgment of what was just and proper.

6. The inquirer might now consider the general course of policy which ought to be followed by the Government in the practical application of the treaty, upon the principles and in the spirit before indicated; and especially with respect to the acquisition of land by the Crown.

7. Having formed his opinion on these matters, he would be

able – as soon as he had procured authentic information as to the facts connected with the anti-land-selling league and the King movement – to determine whether either or both amounted to a violation, by those engaged in them, of the letter or spirit of the treaty.

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8. So likewise, when the conflict of testimony and allegation as to William King's case had been determined, the conduct of the Government and of King could be tested in the same manner.

9. And now at length, on a full consideration of all these various topics, the impartial inquirer might be able to suggest how the policy at which he had before arrived a priori could be carried out hereafter, – how a final settlement of all matters now at issue is likely to be effected. And, more especially, he might be able to determine how the alienation of land by the Natives might hereafter be regulated in such a manner as to satisfy the requirements of such a policy and the feelings of the Maories themselves, and to secure to both races the greatest common benefits with the fewest and smallest incidental mischiefs.

The inquirer will find several serious obstacles in his way towards a decision on most of these matters. He will find that those who are most conversant with Native habits and customs and character have become, – either, on the one side, from the purest and best of motives, advocates – or, on the other, from selfish and unworthy causes, detractors – of the Natives, rather than mere witnesses or judges. Such persons, as well as most writers on the Colony, he will also find very apt to theorize with respect to Maori laws and institutions, and to create systems probably undreamed of by the people themselves, – often suggested by apparent, but fallacious, similarities and analogies between the rude and traditional customs of a barbarous race and the constitutions and laws of fully civilized nations.

The writer of these notes speaks of all matters of fact with extreme diffidence, having derived his information at second hand, from books, documents and conversation with Europeans; and does not presume to make any special application of his general observations to those immediate topics of the day respecting which there can be any controversy of fact.

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CHAPTER I.

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Retrospect. – Settlement of the Maories in New Zealand. – Occupation of Land. – Tribes and Hapus. – External Relations. – Internal Economy. – Property. – Sovereignty. – Chieftainship. – Position and Rights of Chiefs.

It would appear that some 400 years since a considerable body of barbarians, originally derived from the Malay race, found their way from the Islands of Polynesia, where they had been temporary sojourners, to the shores of New Zealand, – a country then probably void of inhabitants, – established themselves there, and received accessions to their numbers by fresh immigration from the same source.

They arrived here in canoes, – the pilgrims occupying each canoe being associated by the ties of kindred, forming a number of families with a common name and common ancestry. On landing, they took possession of the unoccupied soil, not in mass, nor in the name of one people or nation, nor individually, but in small aggregations of kindred families, clans, or tribes, some of which, either at the outset, or in process of time, were subdivided again into hapus or septs.

The tribes, not being united together under any common head or sovereign, but being socially and politically – as far as they had any polity – independent of, and often hostile to, one another, each tribe would have, de facto, in a rude way, within the limits of the territory occupied by them, the same sovereignty, substantially, which a civilized nation acquires, according to the law of nations, over an unoccupied country of which it has taken possession; that is to say, they would not admit the right of any other tribe or individual, as long as they were in possession, to interfere with their enjoyment of the land or to meddle with their internal economy; but they would regulate the domestic affairs of the tribe, and their relations with other tribes, according to the will of their own sovereign or quasi sovereign power.

That sovereign power, though vague and undefined, seems to have been vested in the whole body of the freemen of the tribe; for, although various classes of persons were recognised, and much stress laid, socially, on the dignity of birth, there

does not seem to have been any distinct subordination of rights and duties or privileges of freemen, inter se. (Slaves were the personal property of their captors; that is, their owners could give them away or take their lives without being subject to punishment or censure, and slaves had no kind of civil rights, although they often lived with their captors on a footing almost of apparent equality.)

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It would appear that of the attributes of sovereignty, the: administration of justice, (as far as there was any beyond mere reprisals,) and the right of declaring war, as well as the power of temporary alienation of land belonging to the tribe, were all vested in the tribe generally, and, although often exercised by chiefs or tohungas, were so exercised with the consent, either express or tacit, of the whole tribe.

But the original tenure, by occupation, was one which could be maintained by a tribe only so long as they were strong enough to prevent another tribe from depriving them of it; for there was no tribunal, external or common to all the tribes, to which appeal could be made; nor does there seem to have been any compact or understanding, express or implied, that if one tribe should disturb another in its occupation the general body of the tribes should protect the occupier or punish the assailant.

Therefore, the right of occupation was always liable to be superseded by force, and acquisition of territory by conquest was recognised by all the tribes as rightful; possession, (other than by sufferance,) being the evidence of the right.

In speaking, therefore, of the right of a tribe to land, it seems plain that, for all purposes external to the tribe itself, it means its power of keeping possession; and the "interest" of the tribe in the land is neither more nor less than its aggregate possession, through families or individuals, of the lands which they were allowed to enjoy, and, by the whole tribe, of those lands, forests, fisheries, &c, which they all enjoyed in common, such possession not being merely by the sufferance of a conqueror, and having been acquired by occupation or conquest. There seems to have been no recognition of a power of alienation in perpetuum by one tribe, or individual of a tribe, to another tribe, or individual of another tribe; though land seems to have been lent or exchanged for a time by one tribe to another. And when a man of one tribe married a woman of another, he was generally allowed to enjoy the land in which she had an individual interest, within her tribe, during her lifetime.

There does not appear to have been any mode of making or enforcing contracts or obtaining justice as between different tribes. In short, as between tribes, or individuals of different tribes, might seems to have constituted the only right known to the Maori people.

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On looking into the internal economy of the tribe, we find that there were some rights pretty definitely ascertained, while others were very vague. As before noticed, the distinction between the classes of free men do not seem to have been well defined, nor do their distinctive functions.

Much misconception and many fallacious reasonings on this subject, which seem to have been prevalent, may be fairly attributed to mistaken assumptions with respect to the rights, privileges and powers of the persons called "Chiefs." The word "Chief" has been used in a very vague and ambiguous manner. Chieftainship seems, in truth, to have amounted to little more than a prestige accorded by a tribe to individuals, which gave to its possessors an influence and control over the tribe in proportion to the personal respect which they could command. Great stress was laid on birth, and the Ariki, the lord, or head Chief of a tribe, was the person of highest birth, and was estimated accordingly; the Rangatiras following him, according to the distinction of their descent. These were naturally looked to as leaders in war or in council; but, apart from the deference paid to their position, there does not seem, except in time of war, to have been any definite authority, privilege or duty, assigned to them, except that of a species of vaticination and oracular uttering of traditional lore by the Ariki and the Tohunga, accompanied in the case of the Ariki with the painful isolation of the Tapu. Not birth only, but personal superiority also, their physical or oratorical, seems to have been enough to induce a tribe to treat the possessor as a Chief; but the low-born Chief held his honor only for his life, and did not necessarily transmit chieftainship to his posterity. If the man of highest birth proved unequal to his work in time of war, men of lower birth acquired the influence and ascendancy of a Chief, and were acknowledged as such.

A Chief of great influence, and confident of the power he had over his tribe, would often act for it almost without consulting the general body; and if a principal and influential Chief was sure of the assent of the men of the highest birth - and character, he might count upon that of the mass of the people. Chiefs were, then, simply the chief men of a tribe or

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hapu, and their functions in time of peace were few and unimportant. When war began, they naturally became more important, and the Chief had more power. An unpopular Chief of great birth would not be a representative man; and tribes often repudiated the acts of such Chiefs; and, conversely, when a man of no birth or position proposed or did an act for the tribe, they would adopt and ratify it, if it suited their views. In time of peace the relations of the principal, or any other Chief to the tribe was not in any way like that of a Sovereign to his subjects or a feudal lord to his vassals; but in war time, the head Chief – whether he was the hereditary head or a successful adventurer who had gained prestige, – would necessarily have much of the authority of the Emperor.

The lord Chief, "Ariki," – who combined the functions of priest and chief, – seems generally to have been allowed by the tribe on acquisition of territory by conquest to take the first choice of land for usufructuary possession; and after him, the Rangatiras, according to their rank by birth; the tutuas, or general body of freemen, getting what they could in the scramble, for their own usufructuary occupation. As families increased and cultivations were exhausted, fresh appropriations of this kind would take place within the general territory of the tribe. The portions of land so adopted and appropriated, at all events after they had been cultivated by the possessors, became the property of the individual occupier as against all other persons of the tribe, whether Chiefs or commoners. This usufructuary right, though not alienable to strangers or to other persons of the tribe, descended by inheritance, as of right, to the children or other kindred of the occupier; and in case of a woman marrying into another tribe, her husband, as has been before remarked, often enjoyed her right for his life.

It has been recently stated that a kind of fiduciary interest in land was sometimes vested in a Chief for the benefit of others, such as widows and orphans belonging to the tribe. But such a practice looks very much like the result of European suggestions and is scarcely consistent with the older habits of the people. If any such custom was generally recognised by the Maories, it probably amounted to no more than this; that some Chief was entrusted with the duty of seeing that land which had been appropriated with the consent of the tribe for the purpose of allowing certain persons to occupy it by the sufferance of the tribe, was used for that purpose; in which case, the occupation of such persons would really be the occupation of the tribe,

and no title or right would devolve, by inheritance, on the heirs or kindred of the persons so permitted to occupy.

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No accumulation of personal property by a man, beyond the produce of his cultivation and his own handiwork, ever took place, and there was no contract of sale; even barter was carried on by the clumsy mode of reciprocal presents.

Violations of any right of property, or of any right known to the Maories, were punished or remedied either by reprisals or by an award of compensation, enforced either by appeals to, superstitious fears, or persuasion, or force.

There seems to have been no specific tribunal, but the general body of the tribe concurred in an award made by the tohungas, the priestly depositories of the oral traditions of the tribe, or by the Ariki, and enforced by threats of punishment by evil spirits and the tyrannical and embarrassing process of the tapu. The Rangatiras, too, sometimes persuaded the offender to submission by oratorical appeals to the examples of bygone times.

What special authority, if any, the head Chief possessed in a civil capacity, as distinguished from the Rangatiras, does not seem clear; and it is doubtful whether any privilege or right was awarded to him, except the concession in many cases of the first choice of land, and the deference paid to his position, supported by the tapu.

There was a vague idea of power, influence, right, quasi sovereignty or lordship, derived from the tribal acquisition of the land, called the "mana" of the land, – the shadow as distinguished from the substance; – but even if this "mana" was vested in the head Chief, or in other Chiefs, which is improbable, it does not seem to have given them any beneficial rights, or any power of disposal or control over the property in the land without, or contrary to, the assent, express or implied, of the body of the tribe. The customs about this, and many other of the matters referred to, were by no means uniformly the same in all tribes. When a Chief gave slaves, whom he had taken, leave to hold land, he expected from them, and they brought to him, certain produce or work, as tribute, in respect of the "mana"; but though freemen also used to make presents to the Chiefs, these were merely complimentary, were not demandable of right, and were almost always returned.

To sum up, then: – There was no general government or general intertribal polity among the Maori tribes of New Zealand. They had no common head, no common tribunal, no common interests. The government of tribes, – if their, customs

can be called by such a name – corresponded with no known type among civilized peoples. There were some features of monarchy, more of aristocracy, and many of republicanism; but the combination was not definite, nor capable of assimilation to any known constitution of civilized society: nor was the government merely patriarchal. Their notions of property of any kind were the vaguest; nothing approaching to regular commerce existed. The origin of the interest of tribes and individuals in land was communistic, and the enjoyment of it in some degree communistic; – the one acquired by force, the other at the mercy of external force. There was no practice of alienation of land by individuals at all – except, indeed, the indirect alienation for a life, of the usufruct of a portion of land belonging to a woman who married into another tribe – and no "out-and-out" alienation, even by a tribe; but slaves and others were allowed to hold lands by the sufferance of conquerors who retained in themselves the mana of the land, while the usufruct was in the occupier. The customs and practices, the acknowledged rights and duties, were by no means uniform or definitely settled; they differed or were modified by circumstances at different times in different tribes. The existence of customs which were common to all the tribes, and the absence of other customs, such as the ordinary modes of alienation of property in civilized communities, before Europeans came to the country, are to be accounted for by the consideration that the circumstances of the people made the customs they possessed convenient, advantageous, or necessary, according to their narrow views and limited knowledge; while they had never theretofore felt the want, the importance, or the convenience, of those which they lacked.

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The character of the people it is not very easy to delineate, both justly and completely, composed as it is of elements so diverse. Brutal and savage to excess during the excitement of war, they were yet capable of actions which would not have disgraced the chivalry of Europe. Grossly immoral with respect to the intercourse of the sexes before marriage, they yet treated the marriage tie with much respect, and its violation with severity. Quick in apprehension and of lively wit, they could yet hardly master the first elements of arithmetic. They were both generous and treacherous, good natured and vindictive. They were very superstitious, and yet had but little imagination. They had little or no fear of death, and yet they seemed to need physical excitement to stimulate their courage to action.

Their arts were few and rude. They were not nomadic, but much attached to the soil which they or their fathers had occupied or conquered; and all their differences, according to their own proverb, were about women and land.

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CHAPTER II.

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Intercourse of the Maories with strangers before the treaty of Waitangi – and its effects.

From the first discovery of New Zealand by Tasman, some 200 years after the settlement of the Maori immigrants, down to the later visits of Captain Cook a century after, the amount and nature of the intercourse between the New Zealanders and strangers does not seem to have been such as to cause much modification of their habits; although the first ideas of external commerce must have been suggested to their minds, and the probability of their deriving substantial benefits from the repeated visits and the settling of Pakehas, in the country may have occurred to them.

The introduction of fresh varieties of animal and vegetable food, superior to the ordinary provisions to which they had been accustomed, was probably the first great step towards material civilization; and the increasing acquaintance of the Maories with white men, proving that the latter were not only not necessarily hostile to them, but were able and willing to teach them many useful and pleasant arts and to give them command of many previously undreamed of comforts and luxuries, and mechanical and warlike contrivances, induced them at first to tolerate, and then to encourage, the regular intercourse, and, afterwards, the permanent settlement, of whalers and others who visited the coasts..

They seem to have evinced no jealousy or predisposition against an amalgamation of races, on the formation of temporary or permanent connexions between the Pakehas and the women of their own race and tribes, but, on the contrary, to have encouraged such unions. As Europeans began to settle in the country, and naturally desired to acquire land for occupation and cultivation, the Maories discovered that they might now use their land in a way to which they had hitherto been unaccustomed, by exchanging parts of it for the now much coveted blankets, axes, tobacco and, above all, fire-arms and gunpowder of the stranger.

Thus, a new kind of transaction, not formerly recognized by the general customs of the Maori race, sprung up, and alienation of land was introduced de facto.

About the character of the earliest land sales probably but little trustworthy evidence is attainable. Whether individuals of a tribe practically arrogated to themselves the right of disposing of the portion of land which they occupied with the consent of their tribe, and which if not alienated would have descended to their kindred, I am not aware; but it seems probable that the common men did not do so. Chiefs, or persons calling themselves Chiefs, seem to have engaged in such transactions; but whether they claimed or assumed a right to sell the portions which they individually occupied, or more than they occupied for their own benefit, without the consent of the tribe, or acted in the name or in the interest of the whole tribe, with its express assent, or an implied assent, on which they counted in respect of their personal influence, does not seem very clear. In many cases, it is likely that they assumed to act for the tribe or hapu, and gave up to the persons entitled to occupy the lands portions of the goods received for it. Indeed it is probable that there was very little principle or system in these transactions.

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Sometimes the Maori would try to cheat the Pakeha by pretending to sell land to which he had no title; sometimes, and perhaps more often, the European would try to cheat the Maori by giving him comparatively worthless articles for large tracts of land; sometimes there was a common intention of each to take advantage of the other; and often, no doubt, unprincipled Europeans obtained, for ulterior fraudulent purposes, what they knew to be sham titles, with the signatures or rather marks of Chiefs, – sometimes filling in the boundaries of the land supposed to be sold according to their fancy, after the so called execution of the conveyance. It is believed that the principal disposers of land in those days were persons who had no titles, or only defective ones; and persons with only an ostensible but no real title were the most forward to enter into negotiations with the Europeans.

The alienation of land to strangers being thing quite new to the Maories, it is probable that many of the tribes or Chiefs who parted with it really believed that they were giving the purchasers only a temporary usufructuary interest, – either a life interest, or some other estate such as lawyers call a particular estate, – leaving the reversion of the fee, as it were, and the mana or ultimate quasi seigniorial right over the land, in the tribe.

But whatever right the one party may have intended to grant and the other to acquire, undisturbed possession by the party purchasing gave a sort of title by acquiescence; and if the pur-

chaser alienated to others in his life time, or on his death devised the land to another, and the second purchaser or devisee took possession, and his possession was not at once disturbed, when it came to the knowledge of the Natives formerly interested, that would seem strong evidence that the person in possession had a right to the land recognized by such Natives. The enclosing of land by a purchaser, too, seems to have been always taken as such an assertion of a right to it, that Maori proprietors formerly interested in it were deemed, by acquiescing in it, to have acknowledged that all their title was gone.

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The practice of disposing of the possession and enjoyment of land, if not of the whole property and title to it, became thus established, not according to any fixed specific principle, but simply according to the dictates of convenience on the part of the seller, regard being had to the probability of the alienee not being disturbed in the possession.

The more regular sales, however, were probably conducted in such a way as to recognize the communistic principle, – the Chiefs who personally engaged in the transaction acting for themselves and the tribe, or for persons of the tribe who claimed a share of the produce of any given sale.

While these rude beginnings of commerce were taking place, a mightier instrument of civilization was in the course of introduction, – the one best fitted to throw down the strongholds of barbarism and superstition, to establish the intercourse of widely differing races upon a safe basis, to prepare the way for their amalgamation and ultimate fusion, and for securing the highest blessings of modern civilization.

Through the labours of devoted Missionaries belonging to various Christian bodies, the Maories, in an almost incredibly short space of time, learned the folly and wickedness of many of their old superstitions and the habits connected with them, and accepted with avidity the promises made to them by their new spiritual advisers and guides, of better things for the present life as well as for the future. Although it may be true that many of the new professors of Christianity among the Natives were mere professors, and that with others their new religion was only a newly adopted superstition, there were, doubtless, many who became as sincere believers and acted as sincerely on their belief as the majority of professing Christians in civilized countries; and, whatever may have been the amount of sincere faith among the new converts, the doctrines and practices of Christianity had, at all events, made very large numbers ashamed of some of their former

customs (cannibalism, among the number), had given them new notions of morality and justice, and suggested to them the blessings and advantages of peace. The introduction of Christianity paved the way for the abolition of slavery. The Missionaries often made the manumission of slaves a condition precedent to

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baptism, and the converts gave conclusive evidence of their sincerity by voluntarily depriving themselves of one of the principal evidences of rank and personal distinction among their people. The old cumbrous and superstitious practices of the tapu, which had been the chief means of holding their rude society together, were necessarily modified, where not entirely superseded, on the introduction of Christianity. The spiritual prestige, and, consequently, a great portion of the influence of the Arikis and Tohungas was necessarily destroyed and, as yet, nothing else in the shape of internal government was substituted for it.

The introduction of fire-arms naturally tended to make the Maories even more quarrelsome than formerly, for a time, and their wars, for a time, more sanguinary than before; but as the spirit of Christianity was developed, and individual movable property was acquired by industry, and by commerce in land and its fruits and in other products of labour, the importance of peace became more manifest. Large quantities of land came into the possession – the undisturbed possession – of Europeans. Many Englishmen, some of them men of character, some of no character at all, were settling on the shores of New Zealand.

Meanwhile the Maories who had much communication with the English settlers began to desire to put themselves under the protection of the British Crown, while unprincipled land purchasers were naturally opposed to such a course, (and some honest ones also) and the Missionaries, probably jealous lest their good work should be interfered with by a concourse of English adventurers, were generally hostile to colonization, and apparently desirous of keeping up a marked distinction between the races.

Ministers of the English Crown, having before them the reports of sad results of the extension of English dominion in other quarters of the world, and fearful lest they might become accessories to the extermination of the Maori race by establishing an English Colony among them, and failing to perceive that English subjects would settle in the country, in numbers, without the leave of the Government, and would merely be likely to do much more mischief to the aboriginal inhabitants than if their settling was recognized and regu-

lated by the Government, not only abandoned the claim to the sovereignty of New Zealand, which had on several occasions been asserted by the British Crown, but recognised the independence of certain tribes, by providing them with a common flag, – a proceeding which appears scarcely dignified unless they were prepared to guarantee the independence of such tribes, as an aggregate body or nation, against other powers. Notwithstanding the reclamations of English settlers and the expressed wishes of many of the Natives, the English Government could not, for a long time, be induced to take any steps towards adopting New Zealand as a Colony, or giving their proteges the benefits of civil institutions, which might counteract the mischiefs attending the uncontrolled intercourse between them and English subjects – many of questionable character, – and might aid in developing and rendering permanent the good work of the Missionaries, and in educing the civil and social advantages for which that work was the best preparative.

The so-called Confederation of a few Northern tribes or Chiefs, apparently arranged by a British Resident, who was the Agent of the British Government in the business of the flag, never acquired any consistency or constitution which could support the suggestion that any delegation of sovereign authority, or of interest of any kind, had been deliberately ceded by the component tribes to the aggregate body, or that the component tribes, by reason thereof, became less independent of each other than they were before; and, whatever may have been the intention of the British functionary, there is no pretence for saying that any national union or confederation was in fact effected by the ceremony of the flag.

The enterprises of private associations of Englishmen – (and whether they were conducted on defensible principles or not, it boots not now to enquire) – and the fear lest they should assume rights and privileges inconsistent with the prerogatives of the British Crown and public law, – and probably the apprehension that New Zealand might be colonized by some other European power if England were to refrain much longer, – at last forced the Ministers of the British Crown, – though with expressed reluctance, and in a persuasive rather than imperative manner, – to establish the Queen's authority, in the Northern Island, upon the principle of cession, in the Middle and Southern Islands, by occupation, and thus to create a British Colony throughout the territory so acquired

CHAPTER III.

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The characteristics of a wise, just, and humane policy for establishing an English Colony among such a people.

The candid inquirer having now arrived at as definite ideas as he could reach with regard to the origin, customs, polity, and rights of the aboriginal race, and of the modifications thereof and the new practices introduced up to the time of the establishment of the Colony, would stop for a while to consider the leading features which ought to characterize the policy of a wise, far-sighted, just and humane Sovereign in establishing a Colony among such a people.

And surely, if extermination of the aboriginals was to be guarded against and their interests kept steadily in view, the fusion of the two races into one people, with one language, one religion, one government, one body of laws – with common rights privileges, and duties, – ought to be the great object of such a policy. The cumulative experience of other colonies and dominions of the British Crown seems to have established, beyond doubt, that coloured races kept separate and distinct from the British race in the same territory always deteriorate and diminish. But, inasmuch as an attempt to force European and English habits, laws, observances and duties, immediately and suddenly, upon such a people as the Maories, must necessarily defeat its own object, provision must be made for a transition period during which the indispensable preparatory processes for the ultimate fusion of races, and for the complete development of British Government and British institutions throughout the whole Colony and population, must be prosecuted with vigour and discretion.

To establish a Colony in New Zealand on the understanding and with the view that the two races should be prevented from fusing themselves, – by guaranteeing to the Natives the maintenance of their own old barbarous customs, which would effectually prevent the development of commerce and civilization among them, would deprive them of many of the advantages to be derived from the colonization enjoyed by the Europeans, and

would arrest them in that upward career, physical, intellectual and moral, on which they had already entered, would surely have been contrary to humanity, justice and wisdom.

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To deal with them as if they were, and were to remain, an independent people, on an equal footing with the English Crown, and only to be bound by treaties of alliance for mutual convenience in the joint occupation of one geographical territory, would be simply ridiculous. They were not, and could not be, in any such sense as to make such an arrangement rational or possible, an independent people. They had no common bond of union. Each tribe had such independence only as it could keep by its own tomahawks or muskets; and all that could have been meant by the recognition of the independence of the Flag-tribes, was that England did not claim a right of sovereignty over them, but abandoned all such claim as it had formerly assumed.

But now the time had come when it was manifest to Settlers and Maories and Ministers that this independence must cease; that the Maories wanted the protection of British laws and British power against British Settlers; and British Settlers wanted justice and British Government among themselves and against Maories; and a wise, humane and just policy suggested that the British Crown should make some such proposition as this to the Maori people of New Zealand: –

"Englishmen are settling in great numbers among you; they are purchasing land from you; they often cheat you. As they increase more and more in numbers, you will be more and more exposed to their dishonesty, and more and more at their mercy. You know what you have already gained, and may guess how much more you may yet gain by the commerce and the arts that have been introduced by Englishmen among you: you begin to feel a want of protection for the pursuits of peace, and to be aware of the folly of constant wars. If, then, you will give up all pretence of independent sovereignty, and become subjects of the British Crown on the same footing and terms as its other subjects, you shall have substantially all the rights and privileges of British subjects, that is, protection for life, limb, liberty, property and character; and, more especially, your beneficial interest in the land to which you are so attached – your lawful possession of it – shall not be interfered with against your will, either by Europeans or by Maories not having any superior right to it. In fact, the land which you – each tribe or individual – formerly held subject to the chance of its being taken from you by a stronger tribe, you shall now hold under the

protection of the British Crown. Your interest in it will now become permanent and fixed. But you shall be at liberty to dispose of what you do not want; – that is, when all persons beneficially interested in land are willing to dispose of it, they shall not be prevented from doing so by the interference of others. You are really giving up nothing except rights of sovereignty which you did not formerly possess, either aggregately or separately, in any definite form. You are only promising obedience to the laws which are to be the guarantees of all your rights, and are to give you wholesome and elevating substitutes for your old, vague, barbarous, and unsatisfactory usages."

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In carrying out these principles and performing these promises in their true spirit, it would be necessary to have respect to the feelings and prejudices of the people, and not to introduce even the most important and advantageous institutions in a way to create antagonism and to excite apprehension. Thus, although the individualization of property both movable and immovable would be a necessary step in civilization, and necessary to give the Maories all the rights of British subjects; yet it might not be desirable, in the first instance, to give a private member of a tribe a right to alienate his own beneficial interest in the land which he occupied – out of the tribe, without their consent, because the tribe might, till a later stage in the process of amalgamating the races, feel vexed and jealous at seeing Europeans sitting down on land interspersed among the occupations of the tribe. By degrees, however, the Maories would practically learn that this was a real good instead of a disadvantage.

One of the most important, perhaps the most important, feature of a wise policy would be, to educate the then rising and the succeeding generations with a special view to the fusion of races; teaching them, as the first and greatest preliminary, the language of the civilized people. The translation of the Holy Scriptures into the Maori tongue was an indispensable step towards the first Christianizing of the Natives, but the use of the Maori tongue at all in the education of Maori children after the establishment of the Colony would be contrary to good sense and a wise policy. It would be tending rather to shut, than to open, the gates of knowledge and civilization, to the rising generations, and to postpone the great and noble work of making from the two races, one Christian, civilized, English-speaking people, partaking in common of the benefits of British rule, British institutions, British commerce, arts and literature. In this matter, a

British Government ought to act paternally, using the best means of persuasion, and other incentives, if need were, to insure the general or universal education of Maori children in the English language.

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In the department of Justice, the administration of the Criminal law should be introduced at once when and where there was power of carrying it out without resistance, and where it was understood. Homicide, malicious injuries, and knowing violations of such rights of property as should have become fully intelligible to the Natives, ought at once to be put down by the Criminal Courts – the administration of justice itself being rendered a means of education, and affording a strong practical proof of the sincerity and truthfulness of the British authorities in their original professions. During the transition state, the less formidable

violations of the rights of property might be dealt with with some reference to the Maori doctrines of compensation. As regarded Civil suits among themselves, it would be some time before the Maories would find their way on such matters into English tribunals, – but when they had done so, justice would require that, during the transition state, Maori customs should be taken into consideration in determining the rights or duties of Maories as among themselves, till at length the time should have come when, by the increasing amalgamation of the races, the Maories would be affected with knowledge of the British laws, and must be taken to have acted and contracted with respect to them.

Though the institution of slavery still existed to some extent, the law ought to make no distinction, as to its protection, between freeman and slave. The murder, or violent ill treatment, of a slave should be made the subject of criminal punishment; but there would be no just reason for granting to slaves in occupation of lands by the sufferance of their captors or owners, any rights to such lands in derogation of the rights of those who suffered them to occupy. In the transition state, besides protecting the lives and persons of slaves, there would be little necessity for interfering between them and their former owners; and it might be expected that on intertribal wars ceasing, and Christianity developing itself, slavery would gradually disappear altogether; there never having been any custom of external traffic in slaves between the Maori tribes and strangers.

While the Native population were thus from the beginning put in possession of the broad rights and privileges of British subjects, and made amenable to the Criminal law, and such other laws as they should gradually come to understand, they would be

acquiring the intelligence necessary for enabling them to exercise privileges granted to, and duties imposed upon, certain sections of British subjects, such as the right of taking part in the election of legislators, and the duty of assisting as jurymen in the administration of the law. As long as any reference to Maori customs was admissible in the administration of justice, or to define rights and interests for the purpose of the acquisition of land held by Maories, it would be necessary to have some tribunal with a Maori element in it which should ensure the best information and judgment upon the customs and understood rights of the people.

In order to protect the Maories themselves against the rapacity and dishonesty of European speculators, as well as to establish a system of land titles uniform, simple, and practical, the British Government would insist that all its European subjects should take their title to land through the Crown, and also that those Maories who should buy lands after the settlement of the Colony should do the same; facilities being further given to the Maories to define their own lands and get Crown titles for them. To carry out this system a right of pre-emption, or rather of exclusive original purchase, should be given to the Crown.

In the exercise of this right the Crown would give to the Maories such sums as they should be willing to take and as should be reasonable under all the circumstances, reserving for itself the right to sell the same land again to any purchasers, either European or Maori, with the additional advantage of a title to it by Crown Grant, at such advanced price as would leave a revenue to the Crown to be devoted to the purposes of good government, and the promotion of the common interests of both races.

Of this, as of other branches of the revenue, a due proportion ought to be devoted to the special purposes of Maori civilization. Improved cultivation of lands, improved dwellings, improved personal habits, ought to be encouraged by precept and example, by pecuniary and other assistance..

The character and feelings of the people ought to be thought of especially during the transition state. They ought to be protected against temptations to fall into bad habits of Europeans, such as intoxication, and to relapse into habits of quarrelsomeness and violence such as would be fostered by the acquirement of arms and ammunition. They ought to be made gradually to attain to such confidence in the law, and in the honesty of the Government, as to consider the acquisition of means of defence

or attack against or upon their European neighbours as unimportant and unnecessary.

The higher families and Chiefs, those who had formerly enjoyed the greatest estimation and respect, ought to be treated with marked distinction and consideration, and in every legitimate way conciliated; so that they might feel their real loss of influence as little as possible, might not lose their self respect, and might be heartily inclined to use all the influence still left to them in the promotion of the objects of the Government. The Chiefs themselves would not appreciate this tribute to their hereditary and personal importance, more than the mass of the common men of their tribes would do.

Tribes having common occupation of lands and individuals (if necessary, with the consent of their tribes) ought to be encouraged to sell as much land as they did not require for their own usufructuary purposes. But they ought not be encouraged to denude themselves entirely of all interest in land, inasmuch as persons formerly possessed of land, after selling the whole of it and expending the purchase money, might be discontented, might lose their, self respect, become turbulent and troublesome, and finally have recourse to lawless practices, and establish a "dangerous class" in the community.

Firmness combined with conciliation; action, legislative and administrative, founded on fixed principle, and never at variance with such principle, though tender and sensitive to the prejudices and circumstances of the people; a treatment during the transition period such as a wise, just, humane and experienced parent would adopt towards children who had been left theretofore without parental care and subject to evil influences, would be the leading characteristics of a policy which should redound equally to the true well being of the Maori and to the lasting honor of the British people.

CHAPTER IV.

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The Treaty of Waitangi.

Remembering how the British Government had been forced by external pressure, and in spite of its avowed scruples on behalf of the aboriginal inhabitants, to permit and ratify colonization by British subjects in the Islands of New Zealand, and to accept on behalf of the British Crown the sovereignty of the country, if voluntarily ceded by the aboriginal tribes, and that its professed objects in so doing were to give just and equal protection to both races, and to treat all such Chiefs, tribes, families, and persons as should voluntarily become subject to British sway upon the same general principles of justice as regards person and property, our inquirer would now turn to the Treaty of Waitangi, the only title-deed on which the supremacy of the British Crown is based as to the Northern Island of the group.

And be it remarked here, that, whatever may be said about the mode in which that treaty was negotiated and executed, about the ignorance of the Natives with respect to its contents and operation, the Maories who have come under British dominion must either look to it, and it only, for the foundation of their rights as against the British Crown and the Colonists, or to nothing but the vague dictates of natural justice, and it would seem that all chiefs, tribes, and individuals of the Native race, who have acknowledged the sovereignty of the Queen since the treaty, must be taken to have submitted to its being made the test of their privileges and duties. Such acknowledgment, either express or by necessary implication, has been made by almost every tribe in New Zealand. A difficulty might arise both as to the jurisdiction of tribunals, and as to the question between rebellion and war, if it should ever be made manifest that some tribe exists which had never directly or indirectly been a party to the Treaty of Waitangi nor acknowledged the supremacy of the British Crown. This difficulty it is well not to ignore or overlook; although, as it can arise only in exceptional cases, it need not in the meantime embarrass the inquirer in his consideration of the language and meaning of the treaty.

The true meaning of the treaty must be that which the respective parties, the Representative of the British Crown on one side, and the representatives of Aboriginal tribes on the other, must be taken, under all the circumstances above alluded to, to have contemplated in common. Both races had objects of self interest to secure by the treaty. For the English Colonists, the Crown desired to obtain a permanent and safe footing on the soil of New Zealand, enabling them to acquire a fixed property in the land, to be secured, along with personal liberty and protection, by the establishment of Civil Government and the administration of justice on British principles. The Natives, on the other hand, wished not only to get money and goods from the Europeans in return for the lands which they disposed of and to keep up commerce with them and profit by the arts and conveniences of life which they had introduced; but also, fearing the power of the foreigners in case they should permanently settle among them in great numbers, the Maories desired an assurance that the lands which they retained should not be taken from them, either by force, or in any other way, against their will. Those who had become good Christians began to prize the real value of peace; and the wiser men, even among themselves, probably contemplated with satisfaction, the cessation, ere long, for ever, of those internecine wars which, destructive as they were of life and the fruits of industry, had been formerly among their principal avocations and the ultimate arbiters of all their rights. All that has been before considered must now be used to throw light upon the treaty.

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The preamble announces that Her Majesty "regarding with her Royal favour the Native Chiefs and tribes of New Zealand, and anxious to protect their just rights and property, and to secure to them the enjoyment of peace and good order, has deemed it necessary, in consequence of the great number of Her Majesty's subjects who have already settled in New Zealand, and the rapid extension of emigration both from Europe and Australia which is still in progress, to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority, over the whole or any part of these Islands. Her Majesty, therefore, being desirous to establish a better form of Civil Government, with a view to avert the evil consequences which must result from the absence of the necessary laws and institutions, alike to the Native population and to her subjects, has been graciously pleased to authorise

me, William Hobson, a Captain in Her Majesty's Royal Navy, Consul, Lieutenant-Governor over such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent Chiefs of New Zealand to concur in the following articles and conditions." This language emphatically declares that the motives inducing the British Crown to enter into the following agreement, were, favour for the Native Chiefs and tribes, anxiety to protect their just rights and property (that is to say, such rights and property, consonant with the general principles of natural justice, as they then possessed) and a desire to avert the evil consequences of lawlessness both to Aboriginal inhabitants and British settlers. The object of the treaty, in pursuance of such motives, was to secure to her Majesty the recognition by the Aborigines of her Sovereign authority, which would enable her, by means of the establishment of civil government, to secure to the Aborigines and British immigrants those advantages which she was desirous to bestow upon them. In speaking of the "confederated" and "independent" Chiefs, allusion is evidently made to the Flag confederation, and it is evidently intended to include both those who had joined, and those who had not joined, in that abortive and resultless proceeding. No pains seem to have been taken to discover what right Chiefs had to enter into such a treaty so as to bind their tribes – but acquiescence by the tribes would naturally be looked upon as a ratification of the acts of the Chiefs – and the intention must be taken to have been to secure whatever rights and property Chiefs, or tribes, or individuals might possess, – being such rights as natural humanity and justice and Christian principle would allow.

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Such being the words, and the obvious meaning of the preamble, the inquirer proceeds to the words of

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

Now, it is pretty clear, in the first place, if the statements in Chapter II. are correct, that the so called confederation, had in fact no joint or representative sovereignty over the tribes which had been brought together to form it for a special and pressing

purpose. It is equally clear, if the statements in Chapter I. be correct, that no Chief had any "sole sovereign" power, such as is recognized, with fixed attributes, by the common public law of civilized nations.

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In the next place, it probably matters little whether the Chiefs who did enter into the treaty had the right, according to native customs, to do so without the express consent of their tribes; because the subsequent recognition of the Queen's Sovereignty by the body of those tribes would estop individuals from denying the

agency of their Chiefs. And now, with respect to what was ceded, it seems beyond cavil, when the article and the preamble are read together, and the circumstances of the parties making the cession are considered, that all the usual attributes of sovereignty known to civilized nations must be taken to have been given up to, and admitted to reside thereafter in, the British Crown; that the rights of civil government, of administering justice and enforcing it, and of levying war and of making peace, must have been surrendered, at all events, or nothing: provision being made, as will presently be seen by the next article, to prevent the Queen from claiming, by virtue of the cession of sovereignty, the "substance" or actual usufructuary occupation of the land against the will of the rightful Maori possessors thereof.

The words of the first article would be absurd unless the Chiefs who entered into the treaty were held to have given up every such sovereign or quasi-sovereign right as they either did possess or might be supposed among the British to possess. Otherwise they ceded nothing of their own. Therefore, if Chiefs had any sovereign rights distinct from beneficial and usufructuary possession – which does not seem to have been the case – or any "mana" other than that of which the acknowledgment was in truth a rent paid to them by slaves for possession, by sufferance, of lands which must be treated under the second article as in the possession of their masters, those rights and that "mana" were certainly transferred by the treaty to the Queen of England, and could not be said to be among the rights and property which it was her avowed intention to guarantee to the Chiefs. As far as the ambiguous "mana" existed, it seems to have been that very interest, attribute, or accessory, that "shadow" connected with the land, which the Chiefs really intended to part with, either on their own behalf or on behalf of the tribes, as distinguished from the substance, and usufructuary possession, of the soil.

Such, then, being the nature of the cession which the Chiefs, becoming parties to the treaty, must be taken to have made on behalf of their tribes to the British Crown, it is to be remarked that such cession in fact implied the greater part of the consideration for it, inasmuch as it cast upon the British Sovereign the duties, as well as granted her the privileges, of sovereignty.

And in this alone the Maoris derived a vast advantage from the treaty, inasmuch as they exchanged barbarous, unsettled, and no longer practicable usages, strife and war, for wholesome institutions tending to insure justice and peace. But in order to give them more explicit assurance of the preservation of that which they most prized, namely, their possession of the soil, the treaty proceeded to declare in -

Article the second. – "Her Majesty the Queen of England confirms and guarantees to the Chiefs and tribes of New Zealand and the respective families and individuals thereof the full exclusive, and undisturbed possession of their lands and estates, forests, fisheries, and other properties, which they may collectively or individually possess, so long as it is their will and desire to retain the same in their possession."

Now this article certainly seems to contemplate the possession of lands by chiefs as chiefs, by tribes as tribes, by families as families, and by individuals as individuals, and such possession, whether collective or individual, it professes to guarantee and confirm; – that is to say, it promises that the British Sovereign will prevent such Chiefs, tribes, families, or individuals, being in lawful possession, collectively or individually, from being disturbed in their possession by any other tribes or persons either Maori or European. And it might very well be argued that inasmuch as no right is guaranteed or recognized except the undisturbed possession of the lawful possessor, and as such undisturbed possession is to be guaranteed only so long as it is the will and desire of the possessors to retain the lands, &c., in their possession, the treaty contemplated not only the power of alienation of tribal lands by tribes, but of family lands by families, and of individually held lands by individuals. But though the article seems open to this construction, it would probably be a more fair and ingenuous mode of construction to suppose that the words "Chiefs, tribes, families, and individuals," and the words "collectively and individually," were intended to cover any kind of claims which might afterwards be made out, to the lawful possession of lands, &c, and that the implied right of possessors to alienate, when they no longer desired to retain the lands, &c,

should be recognized as existing in those who had any rightful interest in the possession. It could not have been intended that mere permissive occupation liable to be put an end to at the will of the true owner, or for some definite time or purpose, should be turned into a title as against the true owner. In such case, the occupation of the party permitted would be the possession of the party permitting, – for the purposes of this treaty.

Still it is to be carefully noticed that possession – that is, lawful possession – (whatever may have been its origin) is the thing guaranteed, and that it is guaranteed to those who collectively or individually possess.

The second article, after the foregoing provision, proceeds to stipulate for the pre-emptive right of the Crown; and it clearly contemplates that, by the guarantee before given, a power of alienation was to exist in lawful possessors whether collective or individual. But even supposing an individual possessor – say through inheritance – of land within the general territory of a tribe, acquired by the tribe by conquest, having now got a right of possession as against the tribe itself and all strangers whether Maori or European, must be held to have, also, incidentally, got an independent power of alienating to the Crown; it certainly might be very impolitic for the Crown, during that transition period before spoken of, to purchase land possessed by an individual member of a tribe and situated in the heart of the land of the tribe, against the will or without the assent of those Maoris who might consider themselves in the meantime aggrieved or encroached upon by such purchase. With the development of a wise policy, such a purchase would in course of time be looked upon by the Maoris as a positive advantage, giving increased value to their own possessions; but in the meantime, it would be wise in the Crown to forbear from such purchases, where without the attainment of adequate advantages they would be sure to be looked upon with jealousy and suspicion, or would excite hostility, or help to keep up antipathies or prejudices of race.

These last remarks though properly belonging to another stage of the inquiry, seem necessary here to prevent misconception. The words of the provision for pre-emption are these: –

"But the Chiefs of the united tribes, and the individual Chiefs [and this must mean on behalf of the tribes as well as on their own behalf] yield to her Majesty the exclusive right of pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by her Majesty to treat with them in that behalf."

It is to be noticed here that the word "proprietors" is used, and not the word "possessors"; but it certainly would be too much to infer from that fact that the proviso contemplated that the Chiefs were to be treated as "proprietors" having power to alienate lands of which they were not lawful possessors in their own right, because any alienation of land by any person other than the Chiefs, Tribes, Families, or Individuals, who rightfully possessed the land without their consent would be such a disturbance – at least if the alienation was of a beneficial interest – as had just been provided against.

The only consistent meaning, therefore, is that whoever might have such an interest in the land as is guaranteed by the Treaty must, when willing to alienate it, alienate it in the first instance to the Crown and not to a subject. This provision is founded upon a very intelligible principle already alluded to.

The third Article states: "In consideration thereof, Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection, and imparts to them all the rights and privileges of British subjects."

This article is but an express recognition of that which must have been implied by the acceptance on the part of the Crown of the ceded sovereignty, but was probably introduced for the purpose of reminding the contracting Natives that they were, from the fact of their being British subjects, receiving many substantial advantages besides that for which they more especially stipulated – namely the undisturbed possession of the lands theretofore possessed by them.

They got by the Treaty the general rights of British subjects plus an express British title to the possession of their lands as long as they chose to hold them. But there is no pretence for saying that they had any other just rights and property within the terms of the preamble guaranteed to them, either expressly or impliedly, by the Treaty.

To guarantee in perpetuum any of their usages which must be hindrances to their improvement and civilization would have been most unwise, inhumane, and shortsighted. But in applying to their case the general rights and privileges of British subjects, justice as well as policy would require that during the transition period regard should be shown to their previous customs and habits, so far as they were not at variance with humanity. Protection from violence, justice and personal freedom, and equality with other subjects in those respects, were the main rights and

privileges conferred; but the particular modes in which those rights and privileges were to be insured to them must depend upon the wisdom and policy of the Sovereign power. The modes in which the rights and privileges of British subjects are secured vary in different parts of the British dominions, but the same general principles are applied everywhere; and no doubt it was the intention of the British Crown, and ought still to be its policy, to prepare the way gradually for the universal adoption of the same modes of securing British rights to the whole population of the Colony, giving the Maoris, whenever they are ready to enjoy them, the same tribunals, and the same share in making the laws and administering them, which their fellow subjects of European origin enjoy. To say that by virtue of the Treaty they became at once entitled to act as jurymen, or to take such part, in legislation or government as the Europeans might do, or to share such duties and privileges, would be to say that they were entitled to that which all British subjects are not entitled to, merely as British subjects.

After the third Article of the Treaty came the signature of Her Majesty's representative; and then followed a clause of acceptance of the terms of the Treaty in these words: –

"Now, therefore, we, the Chiefs of the Confederation of the united tribes of New Zealand, being assembled in Congress, at Victoria, in Waitangi, and we the separate and independent Chiefs of New Zealand, claiming authority over the tribes and territories which are specified after our respective names, having been made fully to understand the provisions of the foregoing Treaty, accept and enter into the; same in the full meaning thereof. In witness whereof we have attached our signatures or marks at the places and dates respectively specified.

"Done at Waitangi, the 6th day of February, 1840."
[There were 512 signatures or marks.]

When the Chiefs spoke of "claiming authority" over tribes and territories, they must have meant either the sovereign or quasi sovereign authority which they ceded by the treaty, or merely the authority to bind the tribes and contract for them in respect of the territories, or both. And it could not be urged with any fairness that the treaty, either directly or indirectly, guarantees to them or acknowledges in them, any authority "over the tribes" or the members thereof, inconsistent with the Queen's authority or the rights of British subjects.

Whether the signatures and marks to the treaty were fairly or satisfactorily obtained, whether the parties to it really did understand its provisions or no, – it is needless to inquire; for to all Maoris who have acquiesced in the British sovereignty the treaty is in the nature of a charter of privilege; inasmuch as on a mere cession of sovereignty it would have been competent for the sovereign power to make laws for the government of its new subjects, which would, directly or indirectly, wholly or partially, have deprived them of the possession of the land which they did not hold by any title from their new sovereign; whereas, under the treaty, any law or edict of the sovereign power which, without the express or implied consent of the Natives themselves, would confiscate or disturb their possession of their lands against their will, while they continued to bear true allegiance to that sovereign power, would be contrary to principle and justice.

CHAPTER V.

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Did the treaty of Waitangi carry out in letter and spirit the kind of policy indicated in Chapter H. ?

FEW observations on this subject are now necessary. The treaty, certainly, is silent as to many matters of the highest importance to the Native race; but still it does not affirm any principle at variance with a sound policy. Had it been more special it might have elicited more objections, and been less intelligible. It dealt with the two great points on which a wholesome policy of colonization must be founded, – namely, on the one side, an absolute abandonment of anything like sovereign rights on the part of the Maories, and an acknowledgment of the general and absolute sovereignty of the British Crown; and, on the other, the specific assurance to the Maories of the undisturbed enjoyment of the beneficial interest in their lands.

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THE general course of policy which a Government ought to follow in the practical application of the treaty seems already pretty plainly indicated. To keep steadily in view the ultimate, and not far distant, amalgamation of the races, and an ultimate identity of habits, feelings, and modes of enjoying the rights and privileges of British subjects, and to oppose and repudiate any schemes or expedients which would create fresh difficulties or barriers in the way of such amalgamation, would be the prominent duty of the Government, on the one side; while on the other, it ought to be jealous and cautious of every step which it took, even in the right direction, which might excite alarm, apprehension, or distrust in the Maori mind, yet insufficiently prepared for it; and be guided, to a great extent, in determining on the course to be pursued towards the ultimate goal, by considerations of what would be most acceptable – being right in principle – to the Maoris themselves. Without education having a special bearing on these considerations, and education not religious only but also civil, the course must be slow, difficult, and uncertain.

CHAPTER VII.

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Are the Anti-land-selling League and the King movement breaches of the Treaty of Waitangi.

THE writer has no wish to go specially into these matters at present.

But if it be true that the members of the Anti-land-selling League do not only use persuasion and argument but resolve to use force to prevent persons entitled to alienate their land from alienating, they act in violation of the spirit of the treaty and of the rights and privileges of their fellow-subjects; and if they associate themselves together and do use force to oppose the officers of justice in the enforcement of the rights of their fellow-subjects, and defy the authority of the Queen, they commit a great crime, in direct repudiation of the treaty, and, under certain circumstances, amounting to rebellion or treason.

As to the King movement – if the election of a King and the hoisting of a flag are intended to be a repudiation of the Queen's authority, they are evident and palpable breaches of the treaty, and overt acts of rebellion or treason; but if the actors in the matter are only seeking to have an organisation of their own for the protection of the interests of their race, without repudiating the Queen's ultimate sovereignty, or forcibly interfering with the rights of other subjects, it might be difficult to say that the election alone and the use of the flag necessarily amounted to treason, especially in the case of those who have but vague ideas of the rights of a "King" or the meaning of a flag. It may be that by some tribes and individuals the King and flag demonstrations are viewed in the one way and by others in the other.

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William King's Case

MAY be tested – when the facts are undisputed – according to all the foregoing considerations.

Whether he had any show of title or not depends upon facts which the writer does not know to have been yet ascertained beyond dispute, and on views of Maori rights and customs much disputed, though possibly without any just cause.

That King did not object to the sale on the ground of title is assumed from authorized statements.

That he never claimed justice for an infraction of a right from the representative of the Crown is also assumed.

That his subsequent conduct, whether he had a title and set it up or not, amounted to a repudiation of the Queen's sovereignty and to rebellion, is also pretty plain.

But the course of the case points out what may be an oversight and omission which it might be well to avoid in future.

The person who acts as agent for the Crown in the purchase of land does not seem to be the most proper person to decide whether there be any substantial dispute or not.

Perhaps it would be wise to provide in future that if any opposition or objection should be made de facto to a sale or proposed sale, some tribunal, with a competent Maori element, ought to decide the dispute or that there is no dispute, before the agent of the Crown should be allowed to purchase.

CHAPTER IX.

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The Policy of the Future.

SUPPOSING it to be evident that the Queen's sovereignty, secured by the treaty of Waitangi, and heretofore in various ways acknowledged by persons and tribes now in arms against it, must be vindicated by force; and that, too, in such a way as to shew the Maori people the utter folly and hopelessness of any further or future contest; still it would seem wise that a definite policy, consistent with previously announced principles and with the treaty of Waitangi, should be steadily adhered to, and that no misconduct of the Native population in the course of the rebellion should (after necessary acts of punishment for the sake of example) be used as a justification for departing, at its conclusion, from the general principles professed by the Representatives of the British Crown, before, at, and since the establishment of the Colony.

It is most devoutly to be hoped that whatever excuses, or inducements, or justifications may be afforded by the Maoris for treating the rebellion as a war of races, the Government will at an early period be provided with a British force of sufficient strength to bring it to a speedy and effective conclusion, so as to make any future rebellion all but impossible, instead of being left in such a position that the present conflict will degenerate into a long, chronic, wasting, ruinous war of extermination, deplorable alike in a moral and economical point of view. But whether peace is to be established sooner or later on a safe and permanent basis, it would seem that, so long as aboriginal subjects of the Crown remain in the Colony, the same general principles ought still to be applied to them by a government as conscious of its ultimate power as it ought to be jealous of its honour and scrupulous in fulfilling the engagements of the British Crown in a large and liberal spirit. And, indeed, the present discontents and troubles may be well turned to good account by such a government, inasmuch as a candid and intelligent enquiry into the causes of discontent may enable it to discover, along with much which justice requires to be put down with the strong hand, some causes of discomfort and distrust which are in some measure real grievances, and at variance

with the professed principles of the British policy.

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It is one thing to acknowledge mistakes of omission or commission, contrary to principle, which have been overlooked, and find remedies for them – another, to make concessions contrary to principle merely for purposes of conciliation.

Demonstrations of strength will not lose any of their value from being accompanied by demonstrations of justice.

The writer does not possess either general or local knowledge or experience which would justify him in making specific practical suggestions with any confidence, but there are certain general outlines of a policy for the future, after the re-establishment throughout the Colony of peace, order, and allegiance to the Queen, which, it seems to him, might well be adopted and declared even while rebellion still exists; and for the ultimate establishment and development of which, during the whole period necessary for the fusion of the two races, preparations might even now be made.

The following crude suggestions are offered with extreme diffidence, and merely as hints, not as deliberate conclusions worthy of specific adoption: –

In the first place, education in the English language ought to be made an exclusive test, in a given number of years; so that, in another generation, no Maori not educated in the English tongue should be allowed to fill any of the offices hereinafter mentioned. But with the present generation such English education should not be made a *sine qua non*.

While Maori customs and habits (not being contrary to humanity and justice) must still be referred to for the purposes of administering justice among the Maoris, a Maori element should be provided for in all tribunals to which they may come for justice; and, in criminal cases where Maories are accused, there should be a Maori assessor to the magistrate in summary cases, and a proportion of Maori jurymen in trials by jury. The assessors should be chosen by the Government out of a list furnished by the tribes of the district; and the Maori jurymen for each province should be furnished from a list of persons elected in certain proportions by the different tribes and hapus resident in the province: the numbers to be decided according to circumstances.

For the preservation of the peace, information as to offences, and execution of process, a Maori peace officer should be appointed for each tribe or hapu by the Government, out of lists furnished by the tribe or hapu.

For the purposes of the purchase of land by the agents of the Crown, there should be a Board or Jury of Natives in each dis-

trict composed of a certain number of members selected by lot from a list of persons elected by the different tribes of the district, to be presided over by some European officer other than the Crown purchase agent. The duty of the president should be merely to propound the questions for the decision of the Jury, and to record such decision, and to administer oaths to witnesses; and the jury should in all cases of dispute, either as to the title, or the proportion of compensation to be paid to individuals, decide conclusively as to the persons interested, and the proportion of purchase money which they ought each to receive. It would be wise to encourage the Natives in every legitimate way to take Crown titles for their lands, by making such tenure of lands a necessary qualification for offices which would be sought after, or otherwise.

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The Governor ought to have the assistance of a Council for Maori affairs, including a European minister, a few Europeans with a special knowledge of Maori matters, and a certain number of leading Maori Chiefs from different parts of the country. The number of Maori members would depend upon local and tribal considerations. To have them elected for the express purpose by the bodies of the tribes throughout New Zealand might entail great inconvenience, but they might be selected by the Governor out of persons named in the lists prepared by tribes or districts of candidates for assessorship, or some such superior office, so as to guarantee their being persons confided in by their own people.

In all selections by the Government of individuals from such lists, preference should be given to persons of the highest birth, or holding the highest position in their tribes; and, *caeteris paribus*, a preference should be given to, persons acquainted with the English language.

It would be most inconvenient to hold out to the Natives any prospect of their being eligible as common legislators for the Colony, or to fill the offices of Government, till they had perfectly acquired the English language; and the acquisition of the language ought always to be held out to them as the means of introduction to new civil advantages.

The persons appointed to different offices, – peace-officers, assessors, land-jury, council, – should all receive some small remuneration, and even ordinary jurymen ought probably to have some small allowance for their expenses. In Government Schools, a monitorial system might be adopted, some little pecuniary reward being granted for the monitorial services of advanced pupils; and assistant masterhips might be held out in prospect as higher rewards. Small lending

libraries might also be established. Through the Native boards, assessors, and officers, practical suggestions should be given to tribes for the improvement of their cultivations, but more especially for the improvement of their dwellings, for ventilation and drainage, conducive to their health and comfort, and thus for the gradual amelioration of their personal condition and habits, and the increase of rational self-respect. To provide the chosen officer or officers of a tribe or subdivision, with an inexpensive model cottage – such as might easily be imitated – would also seem a step in the right direction.

Such are some of the more obvious provisions which might be made to carry out a policy agreeable to a priori doctrine, to the spirit of the Treaty of Waitangi, and to the professed principles upon which a British Colony was established in these Islands.

It is assumed that the Legislature, in the wise and just control of the public funds, – especially having regard to the large revenues yielded to the general funds on account of the difference between the price paid by the Crown to the Maoris for their land and the price for which the Crown subsequently sells that land – besides the large contributions of the Maoris to the Customs – will always be prepared to appropriate a fair share of the whole Revenues of the Colony to Maori purposes – for the improvement and civilization of the race, and for promoting the ultimate fusion of the two races.

The Constitution granted to the Colony for its own self-government, derived as it is through the cession of sovereignty by the Treaty of Waitangi, must always be taken to be subject to the general implied duties of the British Sovereign towards the parties who become British subjects on the faith of that Treaty.

In conclusion, it may be asserted with undoubting confidence that the Government and the Legislature will be sure to discover that perseverance in a liberal and just policy towards the Aboriginal Inhabitants will best and most effectually secure, even to the Colonists of European race, the true objects of all Government and Legislation; – and if, unhappily, the rebellion which has broken out should become general, and implicate all the tribes of New Zealand, so that the Government, on suppressing it, should be in a position to dictate, the terms of the future relations between itself and the Maoris, – there seems no substantial reason why – after such punishment as might be necessary for the sake of example – it should not still adhere to the principles and practice of the same just and humane policy which has been above indicated.

APPENDIX.

APPENDIX. – NOTE A.

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On the question – whether a Sovereign ought to observe the common laws of war towards rebellious subjects – Vattel says, c 18: –

Sec 288. – "The name of rebels is given to all subjects who unjustly take up arms against the ruler of the society, whether their view be to deprive him of the supreme authority, or to resist his commands in some particular instance, and to impose conditions on him."

Sec. 290. – "Violent measures are forbidden in civil society: the injured individuals should apply to the magistrate for redress, and if they do not obtain justice from that quarter, they may lay their complaints at the foot of the Throne. * * *

"What conduct shall the Sovereign observe towards his insurgents? I answer in general, such conduct as shall at the same time be the most consonant to justice and the most salutary to the State.

"In many cases, the safest and at the same time the most just method, of appeasing seditions is to give the people satisfaction."

Sec 292. – "When a party is formed in a State, who no longer obey the Sovereign, and are possessed of sufficient strength to oppose him – this is called Civil War.

"The Sovereign, indeed, never fails to bestow the appellation of rebels on all such of his subjects as openly resist him; but when the latter have acquired sufficient strength to give him effectual opposition, and to oblige him to carry on the war against them according to the established rules, he must necessarily submit to the use of the term 'Civil War.'

"Should the Sovereign conceive he has a right to hang up his prisoner as rebels, the opposite party will make reprisals; if he does not religiously observe the capitulations, and all other conventions made with his enemies, they will no longer rely on his word, * * the war will become cruel, horrible, and every day more destructive to the nation. *

"Whenever, therefore, a numerous body of men think they have a right to resist the Sovereign, and feel themselves in a condition to appeal to the sword, the war ought to be carried on by the contending parties in the same manner as by two different nations; and they ought to leave open the same means for preventing its being carried to outrageous extremities, and for the restoration of peace.

"When the Sovereign has subdued the opposite party, and reduced them to submit and sue for peace, he may except from the amnesty the authors of the disturbances – the heads of the party. He may bring them to a legal trial, and punish them if they be found guilty."

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