

expressly saved, and that any one who has a valid claim of ownership may retain his land, or cede it to Her Majesty, as he pleases. GOVERNOR'S DESPATCH,
4th Dec., 1860.

10th. That the insurrection of Wiremu Kingi is not a legitimate resistance to an attempt forcibly to eject him from an acre of land to which he has a just right, but is the result of a League which exists among certain Tribes forcibly to prohibit any further alienation of Territory to the Crown, even by the rightful owners thereof who may be willing to sell.

118. I have thus answered that part of Mr. Fortescue's questions which enquires how far the existence of the "Seignorial Right" now claimed for the Chiefs has been recognised by the British Government or justifies the proceedings of Wiremu Kingi.

119. With respect to the other part of the enquiry, whether there are reasons apart from the Treaty of Waitangi in favour generally of the recognition of such a right, and whether it ought therefore to be admitted in future transactions, I beg to make the following brief remarks.

120. In a pamphlet which I received last night, written by Sir William Martin, late Chief Justice of this Colony, he says: "This Tribal Right is clearly a right of property, and it is expressly recognised and protected by the Treaty. That Treaty neither enlarged nor restricted the then existing rights of property. It simply left them as they were." It is precisely this principle which has been recognised in every cession of territory since the Treaty. But it must be remembered that the ancient customs of the Natives with respect to land had been materially affected by engrafting upon them the new practice of alienation, since the first irregular settlement of the country. We found that the Natives had no fixed rules applicable to all the tribes and to every locality, and we adopted as our guide in each district the customs which in that district were in force among the people themselves, where the right of alienation had followed the old right of property whether in the tribe or the family.

121. To attempt now to introduce a new kind of right distinct from that of property, would require definitions involving in practice a really insuperable difficulty. Assuming any right distinct from a right of property in the soil to be admitted in a Chief, to assent to or forbid the sale of land where the real owners are willing to sell, it would still have to be determined in whom that right should vest. The Government would first have to decide what was the "Tribe," and who was the "Chief" of the Tribe. Failing this, they would have to decide what were the respective subdivisions of the tribe, and who were the Chiefs of those subdivisions. I have no hesitation in saying that the relations between the Chiefs of the several Tribes of New Zealand are not such as would justify the British Government in arbitrarily coming to such decisions, and that at present it would be a simple impossibility to do so with any hope of obtaining the assent of the Native people. But apart from this inherent difficulty, I am of opinion that for the British Government now for the first time to announce, that a right would be admitted in any Chief whatever, distinct from his right of property in the soil, to prohibit the cession of territory to Her Majesty by the real owners of the land, would be as unjust as it would be impolitic. It would sanction the objects of the Land League, which declares that no land shall be allowed to be sold, even though the real owners should not have joined the League: it would strengthen the confederacy which, based upon the League, aims at the subversion of the Queen's authority and the establishment of an independent nationality: it would effectually discourage those loyal subjects of Her Majesty of the Native Race who rest upon the guarantee of their proprietary rights in the Treaty of Waitangi: and it would render all but impossible any success in the efforts which have been made during so many years, to induce the Natives to convert their Tribal Tenure into individual property secured by a Grant from the Crown.

122. I can only, therefore, in conclusion, express my conviction that the proper course for Her Majesty's Government to pursue in the future, is that which has been steadily followed in the past: namely, to continue to deal with the Chiefs or the proprietors of the soil, according to the custom existing among the Natives themselves in each particular district in which cession of territory may be in contemplation, and in the manner which best accords with the rights of property actually in force among them. I look forward, however, to the time when the Natives will be prepared for the establishment of a tribunal in which their varying customs may acquire some settled form, and to the decisions of which they will yield a peaceful submission.

123. I transmit herewith a Memorandum by my Responsible Advisers on the same subject.

I have, &c,

T. GORE BROWNE.

His Grace the Duke of Newcastle,
&c., &c., &c.

MEMORANDUM BY HIS EXCELLENCY'S MINISTERS.

Auckland, 3rd December, 1860.

His Excellency's Reply to Mr. Fortescue's Dispatch of 27th August, 1860, deals so thoroughly with the question of the Territorial rights of the Native Chiefs, that little is left to be said on the subject. *Native Affairs.*

2. The main question proposed by Mr. Fortescue is—Whether or not there exists in the Chief or Tribe "a right, distinct from one of property, to assent to or forbid the sale of any land belonging to members of the Tribe in cases where all the owners are willing to sell."