

GOVERNORS' DECISIONS.

First Report of Com. Spain.

IV.—EXTRACT FROM FIRST REPORT OF COMMISSIONER SPAIN, DATED TARANAKI, 12TH JUNE, 1844.

It appears to me that the Ngatiawa, who left this district after the fight, and sought for and obtained another location, where they lived and cultivated the soil, and from fear of their enemies did not return, cannot now show any equitable claim to the land they thus abandoned; and having admitted their title at Port Nicholson, by reason of their occupation and cultivation of the land there, from the time of their arrival there from this place up to the time of my decision, I could not, with the slightest regard for consistency in my awards, for one moment entertain any claim of theirs to this district. Had they returned before the sale, and, with the consent of their countrymen again cultivated the soil, I should have held that they were necessary parties to the sale.

It appears, however, that some of this tribe, after the arrival of the Europeans and the formation of the settlement, and when they thought themselves in consequence safe from their enemies, did return here and commenced cultivating land within the limits of the block previously alienated to the New Zealand Company. But I cannot, for the reasons before stated, admit their title; and if I did, I should be also obliged to admit that of all the others who might at any time think proper to return and claim payment.

From my first arrival at Wellington, the chiefs Moturoa, Wairapa, and others, who disputed the sale of that place to the Company, constantly told me that they should remain there until they got payment, and then come here and claim payment also for this place.

I invariably discouraged them from taking a step which appeared to me so unfair and unjust, and I was much pleased to find that not one of them appeared here to assert any claim, although they had full notice of the intention of my visit to this place, and some of their people and Wairapa's son travelled with me the whole journey.

If, however, the claims of those who had returned since the purchase had been once admitted, no doubt all the others would immediately have claimed payment, and my inquiry would have been almost interminable.

[*In Parl. Pap., 8th April, 1846, p. 132.*]

V.—EXTRACT FROM FINAL AWARD OF COMMISSIONER SPAIN, DATED AUCKLAND, 31ST MARCH, 1845.

Final Award of Com. Spain.

The Principal Agent having communicated to me that he was ready in any case where I might consider it expedient, to make a further payment to the natives, although not strictly legally or equitably due to them, I enquired of Mr. Clarke before entering upon the case, and several times after its commencement, whether he considered it would be expedient to offer any further payment to the claimants: but he invariably stated to me that this could not be done with safety; that he had not the slightest chance of inducing the natives to accept a composition, and that if they received any further payment, the Waikato would come down upon them and take it away; which would in all probability lead to a fight between them. I also heard from several authentic sources, that the Waikato, looking upon these people as slaves, were continually threatening to come to Taranaki, and take them back into a state of slavery.

Had it appeared expedient, I might have recommended, as a matter of policy only, but certainly not according to the evidence as a matter of right, that some payment should be made to the natives, as an act of grace on the part of the Company, calculated to assist in procuring a good understanding between the two races; but under the circumstances, and with the probable consequences so apparent, I feel it would have been unwise, inexpedient, and justly censurable, to have pursued such a course. If such an offer had been made, even by way of gratuity, I am satisfied, from the evident spirit manifested by all the aborigines I had seen since my arrival, that it would have been refused, and construed into an admission on my part that they had not sold their land,—besides rendering them still more determined to withhold the land from the Europeans. If, on the contrary, any such payment had been accepted by those who were then present, hundreds of other claimants would have soon sprung up from among the members of the same tribe, whom I have before described as now residing at Port Nicholson, Waikanae, and other places; while there would have been a strong probability of an attack from the Waikato.

Had Mr. Clarke (whose zeal in advocating the interests of the aborigines cannot be questioned for a moment) entertained the idea that the returned slaves had any just or equitable claim to the land, he surely ought to have brought forward such claim, and urged its recognition; but his speech to the natives on the close of the evidence, wherein he had expressed himself in strong terms to the effect that I had afforded him every opportunity of bringing forward evidence on the part of the natives, affords abundant proof that Mr. Clarke held no such doctrine. * * *

The question, then, which your Excellency has raised, turns upon whether slaves taken in war, and Natives driven away, and prevented by fear of their conquerors from returning, forfeit their claims to land owned by them previously to such conquest.

And I most unhesitatingly affirm that all the information that I have been able to collect as to Native customs, throughout the length and breadth of this land, has led me to believe and declare the forfeiture of such right by aborigines so situated. In fact, I have always understood that this was a Native custom fully established and recognized; and I never recollect to have heard it questioned until your Excellency was pleased in the present instance to put forward a contrary doctrine.

Since that time I have made every further enquiry in my power amongst competent and disinterested persons, whose testimony has fully confirmed my original opinion,