

had any existence, farther than as it might be the right of the strongest, to which the weak were obliged to submit. If Teira had, under the same circumstances, offered land for sale before the Treaty of Waitangi, he would, without doubt, have been forced to succumb to the superior influence of Wi Kingi and his party. That is, weakness must have yielded to power. But the question may be fairly put, whether the toleration of such a state of things at the present day is consistent with the obligations of the Treaty, by which the Queen engages to protect individuals as well as communities in the possession of their lands until they are willing to dispose of them on terms to be mutually agreed upon.

Much may doubtless be said on the point of expediency in dealing for lands, especially under circumstances in which they may be likely to be required for the use of the Natives; and of the confusion which may be created in a Native Tribe by the settlement of one or two Europeans in their midst. Undoubtedly, it is of the highest moment that the Government should carefully regard such considerations. But, so far as I can ascertain such questions were not raised in the case of Waitara. It would appear that Wi Kingi's cultivations lay upon the north side of the River, although according to Riwai Te Ahu's letter it would appear that he possessed, through his wife and his sons—probably by a former wife,—certain claims to one or more portions of the land.

In offering the block of about 600 acres to the Government, Teira acted as any Native would have acted before the treaty Waitangi, who was bold enough to take such a step. In opposing the sale Wi Kingi acted as he would have acted at the same period, if not disposed to participate in the sale. But in neither the one case nor the other would the decision have rested upon any Native custom or consideration of "right"; but solely on the power of the one party to carry out, or the power of the other party to prevent the carrying out of the proposition to transfer the land.

Of the expediency of raising such a question, under the circumstances, I desire to say nothing, not being in a position to judge; but the question having been raised I do not see how the Government could avoid the obligation of protecting Teira in dealing with whatever individual property he might have held in the block, or of resisting Kingi in his attempt to enforce the law of the strongest—which was the only law known to the Natives before the Treaty, but which came to an end when the Treaty was concluded.

I feel the great importance of giving public expression to my views upon this question. I have seen in a published despatch from the Governor to the Secretary of State a quotation given from the evidence of Mr. Merivale, one of the Under Secretaries in the Colonial Department, before a Committee of the Legislature, to the effect—I quote from memory—that the proprietary rights of the New Zealanders had been admitted as analogous to those of landlords in England. The same number of words could scarcely be made to convey a more erroneous impression.

With the exception of the Colonies of Australia, where the Natives were in too degraded a state to admit of any dealings in respect to the land over which they wandered with as little right or pretension to any property in it, as their fellow wanderers the Kangaroos, aboriginal titles have always been restricted by the colonizing power to the "use and occupation of the land." In no case did the land become subject to the laws regarding property until the Native title was extinguished. The recognition of the title of the New Zealanders to the sovereignty of their country and the property in its soil, on the part of the British Government, involved the necessity of obtaining by treaty the right of pre-emption, which in former cases had been assumed as an incident of the right of the Nation to colonize a country which was occupied by scattered tribes not numbering the one-thousandth part of the human beings which the land was capable of maintaining. With this difference, that, in one case, the right was assumed as an incident of power, and that in the other case it was acquired by treaty, I can perceive no difference between the aboriginal titles, as recognised in America, and those possessed under the Treaty in New Zealand. Nor can it be maintained that any injustice has been done to the Natives by withholding from their titles the rights of property as established by law. The advantages they have obtained by the Treaty immeasurably outweigh the value of their lands, even if they had parted with all that they do not require, for nothing. It is therefore with pain that I see a claim put forth by some of their friends of a right to the value of their lands whatever they might bring in an open market. It is from its security that property derives its chief value. What right can the Natives have to claim that the British Government should give to their property a value which it could never acquire otherwise than by the protection of the British Government? While they are paid for their aboriginal titles at such rates of value as they were anxious to dispose of them before the Treaty, there is not a shadow of ground for alleging that they have been unfairly dealt with; on the contrary, it may be affirmed that history affords no similar example of a savage people having been treated and cherished by a superior nation as they have been.

There is still one point upon which I would, but with great diffidence, offer a remark. It appears (page 18) that in December, 1859, the opinion of the law officers of the Crown in England was obtained upon the question whether the Aboriginal Natives of New Zealand are entitled to the electoral franchise under the Constitution Act. In their opinion the following passage occurs:—"Could he (one Native) bring an action of ejectment or trespass in the Queen's Court in New Zealand? Does the Queen's Court ever exercise any jurisdiction over real property in a Native district? We presume these questions must be answered in the negative." It appears then (says Sir William) that the law officers hold that the Colonial Courts have no cognizance of questions of title or occupancy in any case." (Page 19.) It would appear, from the observations that follow, that Sir W. Martin entertains a different opinion from that expressed by the law officers of the Crown, as above quoted. He says: "What is maintained is this: that it was not their business (that of the Natives) to appeal to the law in the first instance, but the business of the Government." And again: "This is the point which has been forgotten throughout, that the Governor in his capacity of land buyer is as much bound by