

advice respecting them. I stated that I should not consider the propositions contained in those notes as calculated to accomplish the object, but offered to prepare the draft of a treaty for Captain Hobson's consideration. To this they replied that that was precisely what Captain Hobson desired.

The draft of the Treaty prepared by me was adopted by Capt. Hobson without any other alteration than a transposition of certain sentences, which did not in any degree affect the sense.

A statement of these facts I have thought necessary, to relieve me from a charge of presumption, and in the hope that I may find means to give the following remarks a circulation co-extensive with those of Sir William Martin, which the advertisement on the back of the title page informs us "are printed for circulation among members of the Imperial Parliament and members of the General Assembly of New Zealand."

"Native Tenure of Land," (pp. 1, 2.)

The terms in which Sir W. Martin in the following sentences, speaks of the tenure of land by the natives, and the "rights" resulting therefrom, and what might not be done lawfully appears to me to be founded upon a misconception of the actual condition of the natives, who, down to the date of the Treaty, had no conception of the existence of a right implying an obligation on the part of others to respect that right.

"1. The land," (says Sir W. Martin) "occupied by a native community is the property of the whole community. Any member of the community may cultivate any portion of the waste land of the community. By so doing he acquires a right over that particular piece of land, and the right so acquired will pass to his children and descendants. If he have no descendants the land may then be cultivated by others of the community, as agreed amongst themselves."

"2 The chief naturally represents and defends the rights of his people. He has his own personal interest like the rest. He is also especially charged with the protection of their honor and interests: and would lose all his influence if he did not assert those rights manfully."

"3. To make a sale (of land) thoroughly regular and valid, both chief and people should consent."

"4. The holdings of individual cultivators are their own as against other individuals of the community. No other individual, not even the chief, can lawfully occupy or use any part of such holding without the permission of the owner. But they are not their own as against the community. If it is said of a piece of land 'the land belongs to Paora,' these words are not understood by a Maori to mean that the person named is the absolute owner exclusive of the general right of the society."

"5. It is established, by a singular concurrence of the best evidence, that the rules above-stated were generally accepted and acted upon by the Natives in respect of all the lands which a tribe inherited from its forefathers. Of course many cases must have existed in which might overcame right, still the true rule is known and understood: the Natives have no difficulty in distinguishing between the cases in which land passed according to their custom and those in which it was taken by mere force."

It is usual for writers on Ethics to treat of what are called "natural rights," meaning thereby the duty and obligation which rests upon every man to treat his neighbour as he would be treated himself, with that sense of justice which is implanted in the breast of every human being by Him who made of one blood all nations of the earth, and fashioned their hearts alike; and which, however obliterated by that selfishness and cruelty which reign in the dark places of the earth, requires only to be brought fairly before the mind even of the most ignorant savage in order to command his assent.

The natural rights are generally considered to be the right of life, liberty, and property; and in this sense Sir W. Martin's rules and observations might be accepted without comment. But this is not the sense in which the words used will be understood by the generality of readers, or by those statesmen whose business it will be to consider the obligations created by the Treaty of Waitangi upon the justice and good faith of the British Government.

In these remarks we have only to do with the rights of property, as they are necessarily understood by jurists and statesmen, implying corresponding obligations to respect such rights. In this sense I do not hesitate to say, that so far as we can trace their history, there is no evidence of the New Zealanders ever having possessed any rights, with the exception of those which were created by the Treaty of Waitangi. Of what use is it, practically, for a man to say I possess a right to my property, when there is no law to define the obligations which are created by such a right, or government with power to administer the law, supposing it to have existed? New Zealand was, in an emphatic sense, a country without a law and without a prince. It is doubtful whether the New Zealander, until he witnessed the exercise of authority under the British Government, possessed any idea corresponding to that which is conveyed to our minds by the word "authority." Their only law was that of the strong arm. "When a strong man armed kept his palace his goods were in peace, but when a stronger than he came upon him, and overcame him, he took from him all his armour and divided his spoils: and there was no redress."

I have not a copy of the Treaty of Waitangi before me, but unless my memory fails me, the word "rights" does not once occur in that document. The Queen guarantees to the Natives the possession of their property in land which they may individually or collectively possess. I believe it is in accordance with the rule of international law, as well as with the customs of the New Zealanders, that the obligations created by this guarantee could only extend to the actual possession at that time existing, and that no more fatal error could be committed than that which was committed by Governor Fitzroy when he admitted a right to land as existing in such of the Taranaki tribes as had been driven from their possessions at Taranaki by the more powerful tribes of Waikato, and had located themselves on the coasts of Cook's Straits. This was assuming an obligation on the part of the