

NATIVE AFFAIRS.

21. Mr. Spain held a Commission from Her Majesty to investigate and determine Titles and Claims to land in New Zealand. His Award was a solemn judicial determination. It affirmed the complete extinction of the title of the Ngatiawa tribe within the boundaries of the Block.

22. Governor Fitzroy had no authority to reverse Mr. Spain's determination; but it rested with him to issue a Crown Grant to the Company, and he refused to do so. He also publicly recognized certain claims on the Block to be outstanding. It is important clearly to make out what the claims so recognized were, and, in particular, whether any tribal claim was admitted to be outstanding. Governor

(8) *Rt. Hon. W. E. Gladstone, Despatch.* Fitzroy's concessions were disapproved of by the Imperial Government (8) as going beyond what reason or justice required, but they have not been in practice departed from. They constitute the only real basis, and the extreme limit, of the Ngatiawa claims.

(9) *Governor Fitzroy.* In order then to ascertain the nature of these concessions it is necessary to refer to Governor Fitzroy's Memorandum of 2nd December, 1844 (9). Sir William Martin has very carefully culled his quotations from this document. He has not even given complete sentences.

As often happens in such cases, what is omitted in citation by one party in a controversy as irrelevant, appears to the other side to be of considerable significance. In the Memorandum the Governor declares, that "he would immediately cause further investigation to be made *as to the various claimants to particular portions of land.* He would then endeavour to make special arrangements with those claimants, and he would allow, in all their integrity, the claims of those of the Ngatiawa Tribe who were not parties to the sale in 1840." The words in italics are omitted by Sir William Martin, and certainly they do not favor his views as to the recognition and restoration of the Tribal title of the Ngatiawa. Even the concluding portion of these sentences which is relied upon by him shows, that Governor Fitzroy, in the full height of his liberality, never contemplated and never admitted the assertion of a tribal claim. How could he, with any justice, have done so? He evidently intended that the purchase, which had been fairly commenced, should be proceeded with by dealings with the former occupants of particular portions of land. In fact, he recommended in the same Memorandum, with respect to the sections selected by the settlers but not yet cultivated, that the Company's Agent "should defer treating for those sections until their real owners or the majority of them were on the spot."

24. Could any doubt exist as to the nature of Governor Fitzroy's arrangement, it is set at rest by the report of his Address to the Natives, published in the *Maori Messenger* for September 1844 (10). This Address is even more important than the Memorandum just cited, as it gives the actual communication made to the Natives. The following passages are here extracted:—

"I have no wish to fight," said the Governor. "One great work I have to do, it is this: I will not permit one man to behave ill to another.....My work is this—to carefully settle the question about the land; and I will arrange it thus. I will not consent to the Pakehas being expelled; the matter must be left with me. I will not agree to your molesting the Pakehas, nor will I allow the Pakehas to molest you. I will insist upon quiet being maintained. If you do not listen, I will bring soldiers, that quiet may be kept.....Now this is the Governor's opinion; that all the Natives at Taranaki should go to their teachers, or to the Protector of the District who lives among them, and state the names of their places; and the Protector will write down the names of the owners and their estates, whether belonging to man, woman, or child. And if such owner agrees to sell his place on reasonable terms, it will be purchased and he will receive payment.....Mr. McLean has been left by the Governor as a Protector for you; he will arrange about your lands. Be kind to him, and attentive to what he says; and point out your respective possessions correctly. Do not quarrel; do not say, 'All this is mine, all that belongs to me;' but mark it out quietly, and do not encroach on any other person's possession, but let every man point out his own. Do you ask why we are thus to take down the names of your places? It is to prevent future mistakes. You have heard that no land will be taken unjustly. If you sell it to the Europeans, well: but you must be careful each to sell his own property, and then he will receive the payment himself."

25. In this address we have in the most explicit terms a positive engagement to purchase the portions of particular owners, absolutely inconsistent with the recognition of any such claim as it is now pretended to set up in Wiremu King's behalf.

26. At p. 21 in the third section of the pamphlet (to which it will be convenient to pass for a time), the writer contends that upon the withdrawal of the Waikato right of conquest, the Chief and Tribe were of necessity remitted to their presumed original rights and relations. Now, in the first place, it is purely fanciful to assume that the Tribe (*Iwi*) of Ngatiawa ever had a common property in their territory. It will be remembered that Sir William Martin by his disquisition on Native Tenure has not established more than that the ultimate right of property is, generally speaking, vested in some community. He himself, in 1846, expressed the opinion that "the lands of a tribe do not form one unbroken district over which all members of the tribe may wander. On the contrary they are divided into a number of districts appertaining to the several sub-tribes." (11). Such a thing as general tribal right may exist. Apparently it *did* exist in undivided and unappropriated territory. But did it ever exist amongst the Ngatiawa in Taranaki, or was the right, as with Ngapuhi, Ngatikahungunu, and many other tribes, vested in the *hapus*? It will not do to assume this point. It is known that the Ngatiawa, even before their migration and conquest, were much broken up into sections, and very democratic and quarrelsome. It is therefore exceedingly unlikely that their territory was ever, in any sense, owned by the tribe as a whole.

27. But whatever the original right may have been, and granting for the sake of argument, first, the improbable assumption that the Ngatiawa ever had tribal right of control over their whole territory;