

"an import as the fulfilment of a Treaty. The issue, as it appears to me, was not as Sir William Martin 'puts it (page 75), whether 'the Governor has no more right to seize land upon the decision of his 'own agent than any other land buyer would have;' but whether he was maintaining the obligations 'of the treaty in defending the rights of Teira against the interference of Kingi with those rights.'"

99. "Peace and growth," it is truly said, "cannot be where justice is not." In the execution of so high a duty as the maintenance of its treaty obligations towards the Native people, the Crown is, without doubt, bound to proceed "according to rules more clear, and methods more patient, than 'those of political expediency.'" The Crown is bound to be absolutely just. But as respects the interpretation of its Treaty obligations, the Crown is not, nor can be bound by law in that limited sense in which the term is used by Sir William Martin, by the law of the land, that is, as interpreted by the Judges.

100. By the supremacy of the law alike over Sovereign and subject, "England has grown and thriven. Without this principle 'New Zealand will not grow or thrive.'" This truly is the desideratum. But what is the obstacle to the supremacy of the law? Who can deny, that the sole obstacle lies in the will of the Native people? Sir William Martin's truths are two-edged swords. It is well that rights should be interpreted by law when obligations also can be so interpreted. The fallacies of the pamphlet are so well sustained, and so thoroughly believed in by the writer, that they assume almost the majesty of truth. Sir William Martin persists in ignoring that the Maories assume, of their own free will, a position outside the law. No man can have the benefit of a jurisdiction to which he refuses to submit. It is vain to reproach the Government with the non-application of principles which the Natives reject. It is exactly because they reject those principles that questions between them and the Government assume the aspect of questions of peace and war. Here then is the fallacy: at the present moment the *desideratum* is to bring the Maories within the pale of the law. Sir William Martin's argument assumes that they already are within it.

101. The existing machinery for the ascertainment of the ownership of Native lands is the Land Purchase Department. That department is the Crown's instrument for the interpretation of its Treaty obligations, or rather for the ascertainment of the facts upon which the Crown must proceed. So far as fair play to the Natives is concerned, there is no reason whatever to allege, that their claims receive less consideration, or are less openly and elaborately investigated by the Department than they would be in a court of law. There is, on the contrary, reason to think that the peremptory procedure of a regular Court would be far less satisfactory to the Natives, in their present condition, and would generally fail to bring out the true claimants. The Department, it may be observed, as dealing with subjects of Imperial interest, has always remained under the direct control of the Governor himself.

102. The writer of the Pamphlet appears to conceive that the Land Claims' Courts are essentially superior in their constitution and procedure, to the Land Purchase Department, and he make it a subject of strong complaint that the title to the Waitara Block was not submitted to investigation by such a Court. At p. 60 he writes as follows: "The matters in issue in this case were of the same kind precisely as those which have been in issue before the various Courts of Land Claims Commissioners which have been from time to time constituted by the Legislature of this Colony. All these Courts have acted on one plan; they have travelled from spot to spot, giving fair opportunities to all parties concerned of bringing forward their claims, taking evidence on oath, exercising the same powers, and protected by the same safeguards, as ordinary Courts of Law. There never was any difficulty in obtaining the attendance of the leading Chiefs before those Courts. Why was not the same thing done in this case?"

103. It is surprising that Sir William Martin should have ventured to cite the so-called Courts of the Land Claims Commissioners as instances of the satisfactory working of a jurisdiction over Native Territorial Rights. The Land Claims Courts are in fact mere Courts of Enquiry, without power to carry their judgments into execution. Neither in their Constitution, nor in their procedure, do they differ materially from the *quasi* Courts of Enquiry, held by the Land Purchase Commissioners.

104. Land Claims Commissioners are appointed by, and hold office at the pleasure of the Governor; Land Purchase Commissioners are appointed in the same manner, and hold office by the same tenure. Land Claims Commissioners are authorised to hear only such claims as are referred to them by the Governor; Land Purchase Commissioners negotiate only for the purchase of such Land as the Governor approves of. Land Claims Commissioners hear and examine, and for that purpose travel "from spot to spot, giving fair opportunities to all parties concerned of bringing forward their claims;" Land Purchase Commissioners follow precisely the same plan. Land Claims Commissioners have no power to determine, but only report for the confirmation of the Governor; Land Purchase Commissioners do precisely the same thing. Land Claims Commissioners, it is true, are empowered to administer oaths, and Land Purchase Commissioners are not. But then the former act in cases where both Europeans and Natives, and the latter in cases where Natives, only, are examined as witnesses. Evidence on oath has rarely been taken by the Land Claims Commissioners in any cases where conflicting rights of ownership of several natives have been in question. Commissioners of neither class possess the powers of ordinary Courts of Law, and protection by "the same safeguards as ordinary Courts of Law" is a phrase without meaning when applied to the procedure of Land Claims Commissioners Courts in contradistinction to that of Land Purchase Commissioners.*

105. It is not true that there never was any difficulty in obtaining the attendance of the leading Chiefs before the Land Claims Commissioners' Courts. Attendance has sometimes been peremptorily refused, and has never been enforced; it has more frequently been purchased at a high price. As a

* These remarks apply, as do, Sir W. Martin's, to the former Land Claims Courts. Recent legislation has conferred more extensive powers on the present Commissioner.