" ture never permits itself to do this without consent of the owner of the land, or at least without securing " to him complete indemnification. In vain may it be urged that the good of the individual ought to " yield to that of the community. The true principle applicable to all such cases, is one to which we " have had occasion already to refer, and which is constantly borne in view by the English law, that the " private interest of the individual is never to be sacrificed to a greater extent than is necessary to secure " a public object of sufficient importance. The public, therefore, is considered in all such transactions, as " an individual treating with an individual, for an exchange. All that the Legislature does is to oblige " the owner to alienate his possession for a reasonable price; and even this is an exertion of power which " the Legislature indulges with caution, and which *nothing but the Legislature can perform.*"

And this principle is very clearly laid down by Bowyer, in his "Universal Public Law," page 230:—

"With regard to interference with the rights of property by the State for the public advantage, as "in the case of roads, canals, and railways, and other public works, it would seem that when this involves " a permanent alienation of private property secured by the municipal law, without the consent of the " owner, it ought to emanate from the authority of the legislative power; but the actual administration " of this function is executive." Authorities on this head could be multiplied, but the rule of law is so well known, and is so largely brought into actual operation, that no citizen of England can be ignorant of it. I am aware that a different rule has been, to a certain extent, followed in some of the North American Colonies. For instance, the Indian title to land has never been extinguished in Canada, and the Crown retaining certain reserves for the Indians has always insisted upon the right to occupy the lands at its discretion, and to grant the lands. (See the answer of the Right Honorable E. Ellice, M.P., to question 6,001, before the Select Committee of the House of Commons on the Hudson's Bay Company, printed 1857.) But this exception does not affect the argument, for it must be observed that there never was a treaty between the Crown and the Aborigines in that dependency. The Crown did not grant the right of a citizenship, nor guarantee the quiet enjoyment of interests in land, existing at the time of its becoming paramount, but gained the country by conquest from the French.

The rule, therefore, being clear that in the case submitted, the authority compulsorily to take the land required for a public work, must emanate from the Supreme Legislature, and that no interest in such land can be extinguished against the consent of the owner thereof, without such authority, whether such owner be a person of Aboriginal origin or of European descent, and whether his interest be a perfect fee or a lesser interest unknown to the common law of the country, and that the Supreme Legislature, in what Sir Edward Coke calls its omnipotence, can delegate its authority to a subordinate Government, it only remains to enquire whether it has done so; or, in other words, has the General Assembly received power from the Supreme Parliament to make laws affecting lands not yet surrendered by the Natives to the Crown.

I need not enter into the question as to whether the Crown or its local delegate, the Governor, has any authority to take compulsory possession of lands in the Colony, for I am not aware that such a power is asserted by any one as having emanated from the Sovereign Parliament, and as we have seen, it can emanate from no other source. Neither can there be any pretence for asserting that the power of taking lands, urgently required for works of public necessity, from the Maoris, as barbarians, and occupying a country taken by right of discovery, is a prerogative of the Crown; for the exercise of such a power would in this case be in derogation of the honor of the Crown and in contravention of its own promises, contained in the treaty, and "the honor of the king is to be preferred to his profit," and "*Rex non potest fallere.*" Moreover, if such a prerogative existed, it would not vest in the Governor, who is simply the highest subject in the colony, and not a viceroy in any other than a social sense, and only has such powers as are expressly given to him by lawful authority.

It only remains then to enquire, whether the necessary authority has been bestowed by the Imperial Parliament upon the legislature of the Colony. The general rule governing the legislative authority of the Colonial Parliament is well defined by Lewis (Gov. Dep.):—"The subordinate Government of an " English dependency, consisting of the Crown and a body of persons in the dependency, is competent " to make any law which is not inconsistent with some Act of Parliament, or some recognised rule of " common (or unwritten) law binding the dependency."

"It is, however, generally true, that a legal and confirmed Act of the Assembly has the same " operation and force in the Colonies that an Act of Parliament has here." (Chitty on Prerog.: 37.)

The Constitution Act (15 & 16 Vic.) after providing that the House of Representatives shall "be " chosen by the votes of the inhabitants of New Zealand possessing certain qualifications, but without " distinction of race," enacts (sec. 53) that it "shall be competent to the General Assembly (except and " subject as thereinafter mentioned) to make laws for the peace, order, and good government of New " Zealand, provided that no such laws be repugnant to the law of England." The exceptions are (sec. 54) with respect to Appropriation Bills, and (sec. 61) the levying duties on articles required for Her Majesty's Forces, or the imposing duties, &c., at variance with treaties made by Her Majesty. The term "Waste Lands of the Crown" in this Act is clearly confined to unappropriated lands vested in Her Majesty over which the Native title has been extinguished. Thus sec. 62 (since repealed or altered by the General Assembly) provides for the disposal of Waste Lands of the Crown and payment out of the proceeds "for the purchase of land from aboriginal Natives or the release or extinguishment of their " rights in any land." Parliament, by this phraseology, seems undecided whether to regard the Crown and the Native as buyer and seller of a perfect estate in land, or the Crown as the chief owner negotiating for the buying out of a lesser interest, and has used alternative language adapted to either case. Sec. 72 empowers the Governor to make laws for regulating the sales, &c., of the Waste Lands of the Crown in New Zealand, and of all lands wherein the title of Natives shall be extinguished, and all such other lands as are described as demesne lands of the Crown in 10 & 11 Vic., c. 112 (Supra). Sec. 73 provides that it shall not be lawful for any person other than Her Majesty to purchase or in any wise to acquire or accept from the Aboriginal Natives land of or belonging to, or used or occupied by them in common, as tribes or communities, or to accept any release or extinguishment of the rights of such Aboriginal Natives in any such land as aforesaid. Phraseology signifying doubt as to the nature of the aboriginal interest in land is used here also, as in sec. 62; but in both places the interest is recognised to be valuable, and in this latter section the word "conveyance" is used, a word generally applied to transfers of the greatest estate in land known to the law. (This word is similarly applied in the "Native Reserves Act, 1856.") In this Act, which may be termed the Charter of the New Zealand Constitution, we find no restriction placed on the power of the General Assembly to affect Native lands by legislation, provided that the pre-emptive right of Her Majesty be not infringed. Of necessity, then, this power, under the general rule of law before stated, was included in the general delegation of legis-