

New Zealand islands, and finally, all doubts as to what were the rights of the Natives is removed by the provision contained in clause 9 of the aforesaid chapter, which prescribes as follows :—

“No claim shall be admitted in the said Land Courts within the said islands unless it be established to the satisfaction of such Court that either by some Act of the Executive Government of New Zealand as hitherto constituted, or by the adjudication of some Court of competent jurisdiction within New Zealand the right of such aboriginal inhabitants to such land has been acknowledged and ascertained, or that the claimants, or their progenitors, or those from whom they claim title have actually had the occupation of the lands so claimed, and have been accustomed and enjoy the same, either as a place of abode, or for tillage, or for the growth of crops, or for depasturing cattle, or otherwise for the convenience and sustenance of life by means of labor expended thereon. And for ensuring the observance of the several regulations respecting the preparation of the charts, and the keeping of the registers, &c., and otherwise for carrying into full effect the instructions respecting the several matters aforesaid, the Governor in chief shall by Proclamation to be by him for that purpose issued, make and establish all necessary rules.”

The view taken by the Imperial Government of the respective rights of the Crown and of the Natives in the territory of the Colony, was never carried in practice for reasons hereafter stated.

By the 10 and 11 Victoria c. 122, the several provisions relating to the settlement of the waste lands of the Crown, contained in the 13th chapter of the aforesaid instructions, except such as related to the registration of titles to land, the means of ascertaining the demesne lands of the Crown, the claims of the aboriginal inhabitants to land, and the restrictions on the conveyance of lands belonging to Natives unless to Her Majesty were suspended in New Munster.

On the publication of the correspondence, covering the Charter and instructions in the Colony, the Bishop of New Zealand as the head of the Church Missionaries, protested strongly against the doctrine advanced by Earl Grey. The Wesleyan Missionaries also addressed a protest to the Government similar in substance.

The principal objections raised were as follows :—“That the treaty of Waitangi, which guarantees to the Natives the full and exclusive enjoyment of their landed rights, could never be repudiated. That the instructions to Governor Grey were at variance with the terms thereof, and that every acre of land in the country, whether occupied or not, was claimed by the aborigines.”

In reply to these remonstrances Earl Grey disclaimed any intention of infringing the rights of the Natives, and in a separate despatch to Governor Grey on the subject (November 30th, 1847), his Lordship pointed out that in point of fact the Government were not in a position to act upon that principle, and that the rights of the Crown could not then be asserted to large tracts of waste lands which particular tribes had been taught to call their own. The Governor was directed in the strongest language to maintain the rights of the tribes already recognized, and that the rights of the Crown where no engagements to the contrary had been made, should be carefully attended to in the disposal of land wherever no property has yet been recognized.

Earl Grey also pointed out that by the instructions accompanying the Charter, the protector of aborigines is there directed to inform the Registrar respecting all lands within his district, to which the Natives “either as tribes or individuals,” claim either proprietary or possessory title; and that wherever it shall be shown either that such lands have been actually occupied by the Natives, or that the ownership to such land, although unoccupied, has been recognized by the executive or judicial authorities to be vested in the Natives, such claim shall be finally and conclusively admitted.

With reference to the subject Governor Grey informed Earl Grey May, 15th, 1848, that the Natives although willing to recognize the Crown rights of pre-emption would, to the best of their ability, resist the enforcement of the broad principles maintained by Dr. Arnold. With regard to the regulation issued for the registration of the lands of the Natives the Governor stated “I have thought it more expedient to make the matter of registration of the lands of the various tribes a work of much time rather than to hurry it on too rapidly, and that without the boundaries of the claims of the different tribes being in some way marked upon the ground and mapped, the mere registration of the claims would afford little information, and would be productive of slight utility. The plan adopted under the circumstances was to reserve an adequate portion for the future wants of the Natives out of the purchase made by the Crown, and to register such reserves as the only admitted claim of the Natives in that district. The Natives being furnished with plans of such reserves.”

The plan adopted by the Governor was ultimately approved by Earl Grey (January 27th, 1849) in the following terms :—“With regard to the earlier portion of your despatch, in which you mention the course which you have adopted as to the registration of Native claims, I have not on consideration thought any alteration of the instructions necessary, because it appears to me that as they now stand they fully warrant the practice which you at present pursue of registering the portion reserved for the Natives when land purchases are made from them, and which you have my sanction for pursuing.”

The New Zealand Company’s “tenths” and other reserves excepted in the Grants of the Wellington and Nelson districts executed by Governor Fitzroy in favor of the Company were duly registered with the aforesaid Grant on the 30th July, 1845, r. No. 56, fol. 94. In 1856, an Act for the effective management of Lands set apart for Native reserves, was passed by the General Assembly, the preamble to which is as follows :—“Whereas in various parts of New Zealand lands have been and may hereafter be reserved and set apart for the benefit of the aboriginal inhabitants thereof, and it is expedient that the same should be placed under an effective system of management, &c.”

The Act empowered the Governor to appoint Commissioners for the management of these lands, and all lands so vested in them to be considered for all judicial purposes the property of such Commissioners.

The framers of the Act evidently had in view the invalidity of past transactions with regard to these lands, and have expressly avoided validating previous appropriations of Native reserves.

The concluding provisoes of section 16 are as follows :—“Provided always that nothing in this Act contained shall have the effect of removing any invalidity or curing any defect in any Grant or other conveyance made or issued before the passing of this Act, under which any lands may have been granted