

145. We now come to a point where it is necessary to consider the terms and effect of the Treaty of Waitangi. Article the Second of the Treaty reads as follows :—

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests, Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession ; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

146. From the earliest times the Treaty has been a subject of controversy not as might have been expected between the Native race and the Crown, but among the Secretaries of State. Select Committees, Legislators, land companies, and others who, from a sense of duty or motives of personal or public interest, endeavoured to make it speak or be silent.

As instances of this divergence of opinion one could quote from the despatch of Lord Stanley his opinion on an aspect of a report of the Select Committee of the House of Commons appointed on the 30th April, 1844, to inquire into "the state of the colony of New Zealand and into the proceedings of the New Zealand Company." This Committee, which was under the chairmanship of Lord Howick (who, as Earl Grey, subsequently became Secretary of State for the Colonies) characterized the Treaty as "a part of a series of injudicious proceedings" and declared that the acknowledgment by the local authorities of a right of property on the part of the Natives in all their wild lands after British Sovereignty had been assumed was not essential to the true construction of the Treaty and to be an error that had produced very serious consequences.

147. In Lord Stanley's opinion thus to restrict the Native territorial rights to those lands actually occupied for cultivation appeared wholly irreconcilable with "the large words of the Treaty of Waitangi" and with the directions of the Marquis of Normanby to Captain Hobson to obtain "*by fair and equal contract the cession to the Crown of such waste lands as might be progressively required for the occupation of settlers*" (Instructions of 14th August, 1839).

148. Incidentally, although the House did not adopt the resolutions of the 1844 Select Committee, its report had a considerable influence on the course of affairs in the colony when the Chairman, as Earl Grey, assumed control of colonial affairs and endeavoured to give effect to its recommendations. The constitution and instructions of 1846 certainly appear more in keeping with the assertion of Mr. Somes (Governor of the New Zealand Company) that "we have always had very serious doubts whether the Treaty of Waitangi made with naked savages by a Consul invested with no plenipotentiary powers could be treated by lawyers as anything but a praiseworthy device for amusing and pacifying savages for the moment" than with the value hitherto placed upon the Treaty by previous Secretaries of State, prominent members of the House of Commons, and the Maori race itself.

149. The fact that the constitution of 1846 was not immediately put into effect and was never put into effect in its original form appears to strengthen the idea that the rights of the Maori under the Treaty of Waitangi demanded respect for reasons which are admirably set out in the *Constitutional History and Law of New Zealand* (Hight and Bamford), at page 198 :—

It is doubtful whether the colonists had reached that condition of self-control in which they might safely be entrusted with any considerable powers of self-government with dominion over the aborigines ; nor were the Maoris likely to acquiesce in the confiscation of their waste lands which the Governor was instructed to effect. Grey was therefore constrained to proceed warily with the establishment of the constitution. At a time when English public opinion set little value on the maintenance of the bonds between the Home land and the colonies, one grievous blunder in administration might involve their immediate severance. In Grey's view, the constitution was not a truly representative one ; conferring as it did upon a small section of the inhabitants exclusive power over a large number of their fellows, whose interests in many respects were totally opposed to their own. The exclusion of the