

observing "that it was obvious that the power of the Crown might be exercised with much greater freedom in a country over which it possesses all the rights that are usually assumed by first discoverers than in an adjoining State which had been recognised as free and independent." But as this inquiry has reference only to the Northern Island, it is not necessary to notice this distinction.

The last dispatch which I will allude to was written by Lord John Russell on the 4th March, 1840.. to John Thompson, Esq., who had asked for a charter of incorporation of a proposed New Zealand Agricultural, Commercial, and Banking Company. His Lordship said: "That as by a series of Acts of Parliament, as well as by the measures formerly taken by the Executive Government in this country (England), the sovereignty of Great Britain over New Zealand is expressly disavowed, the Queen cannot be advised to grant any such charter."

More authorities might be quoted, but it appears unnecessary to strengthen the position that for many years, up to and including 1840, the King, Lords, and Commons of England have distinctly and absolutely disavowed all pretensions to the sovereignty of the New Zealand Islands, or to any dominion or authority over them. The sole origin, therefore, of her Majesty's dominion here, and the relation in which her Majesty is placed with the aborigines, both as to their political status and their territorial rights, must, subject to subsequent modifications, be looked for in the result of Captain Hobson's operations.

Early in 1840 Captain Hobson arrived in the Bay of Islands in H.M. ship "Herald," and to a large assembly of chiefs produced a convention, called by him a treaty, which was translated to them sentence by sentence by the Rev. H. Williams. After some deliberation, and at one time a doubtful contention, the instrument was accepted and signed there and then by "46 head chiefs, in the presence of at least 500 of inferior degree." This document, known as the Treaty of Waitangi, is dated the 6th day of February, 1840, was announced on the 7th by a salute of 21 guns from H.M. ship "Herald"; and was subsequently signed by the majority of the leading chiefs of this land. It purports to be made by her Majesty with "the chiefs of the confederation of the united tribes of New Zealand"—i.e., those who were parties to the Declaration of Independence, as well as with "the separate and independent chiefs who had not become members of the confederation." By Article I the chiefs ceded to her Majesty absolutely and without reserve all the rights and powers of sovereignty which the said confederation or independent chiefs respectively exercised or possessed, or might be supposed to exercise or possess, over their respective territories as the sole sovereigns thereof. By Article II the Queen confirmed and guaranteed 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 might collectively or individually possess, so long as they might wish to retain the same in possession. By Article III her Majesty extended to the natives of New Zealand her royal protection, and imparted to them all the rights and privileges of British subjects.

In a despatch to Governor Gibbs, dated 17th July, 1840, Lord John Russell communicated to him the entire approval of her Majesty's Government of the measures which he had adopted, and the manner in which they were carried into effect by Captain Hobson. All question of previous sovereignty being now removed, it remains to inquire what is the effect of this Treaty of Waitangi, which on the one hand fixed the sovereignty in the Crown, and on the other guaranteed to the natives all their lands, estates, forests, fisheries, and other properties.

Having in the recent case of *De Hirsch v. Whitaker and Landon*, inquired with some minuteness into the subsequent legislation, it will not be necessary again to review the strangely fluctuating view of the character attached by the legislation of this colony and of England to the interests possessed by the aborigines in the wild lands of New Zealand under this compact. From the Lands Claims Ordinance of 1841, to the impracticable Royal Instructions of 1846, and on to the Constitution Act, the views have constantly varied. The Native Lands Act, 1862, was the first effort of the legislature to define and regulate the lands and estates of the natives under the Convention, and was the final settlement of two conflicting lines of interpretation, and indeed of thought. Its preamble recited the second article of the Treaty of Waitangi, and that it would greatly promote the peaceful settlement of the Colony, and the advancement and civilisation of the natives, if their rights to the land were ascertained, defined and declared; and if the ownership of such land, when so ascertained, defined and declared, were assimilated as nearly as possible to the ownership of land according to British Law; and that, with a view to the foregoing objects, her Majesty might be pleased to waive in favour of the natives so much of the said Treaty of Waitangi as reserves to her Majesty the right of pre-emption, and to establish Courts, and to make other provisions for ascertaining and defining the rights of the natives to their land. The Act of 1865, repealing that Act, was passed, to provide for the ascertainment of the persons who, according to Maori proprietary customs, are the owners of the land in the colony, and to provide for the conversion of such modes of ownership into titles derived from the Crown. These two acts entirely coincide with the Treaty, and must be regarded as a complement of it.

I do not think the English Acts Act, 1858, affects the case; and the only other statute to which it is now needful to refer, as carrying out or modifying the Treaty, is the Native Rights Act, 1865, which says, "Every title to, or interest in, land over which the native title shall not have been extinguished, shall be determined according to the ancient custom and usage of the Maori people, so far as the same can be ascertained." The question then is: (1) Is this mudflat land in or to which the Maoris, in 1840, had any and what estate, title, or interest or over which they exercised rights of ownership? (2) And, did the cession of the sovereignty of the Island to her Majesty have the effect of destroying such right or title as if it previously existed?