with money payments, for the soil, or even for the sovereignty. Thus Sir Stratford Canning took possession in 1815 of Singapore, at that time belonging to the Malays, the subjects of the Sultan of Lahore; and in 1825 he bought the domain from the Sultan, for a sum of money. There is probably no case of a colony founded in precisely the same manner as New Zealand—*i.e.*, by contract with a race of savages, the Crown of England obtaining the sovereignty or high domain, and confirming and guaranteeing to the aborigines the useful domain, or the use and possession of all the lands. Vattell certainly speaks of Penn's Treaty as if he has purchased sovereign right in Pennsylvania, as well as the fee-simple of the soil, but I think the passage refers to what Penn thought himself that he had acquired rather than to the interpretation the Courts would put upon that transaction.

I do not think it necessary to inquire minutely whether all the incidents of feudalism attached to the soil of New Zealand immediately the Treaty of Waitangi was signed. There does not appear to me to be any reason for seeking for analogies and parallels in the consequence of a proceeding which is itself without a parallel. The fundamental principle of the feudal doctrines is that all land is holden of some superior lord, originally with a view of keeping up a certain organization for supplying fighting men, for the service of the lord or king. And although the original cause of the foundation of feudalism has long since disappeared, yet the doctrine of tenure remains as the law of real property. But real property means land actually or by presumption held of or at some time or other *granted** by the Crown. Land owned by natives according to their customs or usages can in no sense be deemed subject to the same rules as real property in its technical sense. And we find the Legislature in the Native Rights Act, 1865, directing the Supreme Court, whenever any such question arises before it, to send the issue down for trial by the Native Land Court. And this distinction is very clearly preserved in the Act under which the Court is now sitting. The interpretation clause says that "native lands shall mean lands in the colony which are owned by natives under their customs or usages. Hereditaments shall mean land the *subject of tenure*, or held under title derived from the Crown, or land before Crown grant, and land after Crown grant. The case of *Veale* v. *Brown* (decided in the Supreme Court) will therefore not assist our inquiries, until it is decided whether this *locus in quo* is a hereditament, or in other words that it belongs to the Crown; but this point is the object of the inquiry, so that this process of reasoning would simply lead us round in a circle.

Nor will it avail to say, with Mr. Hesketh, that native land is allodial. I believe that allodium exists in some parts of the Shetland Isles at the present day, but I am not aware that our Courts have ever furnished any illustration of the laws that regulate it. Nor do I profess to be certain what would be the effect upon our case of declaring this land subject to allodium. It does not follow that the *jus publicum* of the Crown representing king and people would then have no existence. Thus the statute of Connecticut, 1838, declared that every proprietor in fee-simple of lands "had an absolute and direct dominion and property in the same," and they were declared to be vested with an allodial title. And although Chancellor Kent states broadly that "feudal tenures have no existence in this country," yet the feudal fiction appears to have been preserved that the lands are held of some superior or lord; for the socage lands of the State of New York are, by an Act, declared not to be deemed discharged of "any rent, certain, or other services incident or belonging to tenure in common socage due to the people of the State or any mesne lord." And socage tenures are of feudal extraction, and retain some of the leading properties of feuds, being distinguished by a fixed and determinate service, which was no military from knight service. If an analogy must be had, the nearest resemblance to the characteristics of native land might, perhaps, be found in the fokland as distinguished from the bocland of our Saxon ancestors.

But none of these speculations seem to the Court to be of much importance. The real question is a question of fact—Was the land now claimed, at the date of the Treaty of Waitangi land or a fishery collectively or individually possessed by aboriginal natives? For, if it was, the full, exclusive, and undisturbed possession thereof is confirmed and guaranteed to the possessors by the Crown of England. And this fact is clearly proved. We must seek then in the Treaty itself for the true solution of our problem, and it only remains now to inquire whether the cession of the sovereignty of the island to her Majesty has the effect of destroying the Crown's guarantee. And the first idea that naturally suggests itself is, that this guarantee was the main consideration for the cession. And, I do not see how one part of an instrument, of which the intention is clear, can be held thus to destroy another part, unless there is irreconcilable conflict. And here there is no conflict. In England, where the whole soil of the country fell to the King by conquest, and grants either exist or are presumed and for all such as has left the Crown, whether, above or below high-water-mark, large portions of the foreshore are owned in fee-simple absolutely by private persons, and there are numerous instances of private holdings of maritime properties, such as oyster-beds, right of fishing with stake-nets, right of carrying away sand and shells, and even of cutting sea-weed below low-water-mark, and others, resembling the right under investigation.

"I think it very clear," says Lord Chief Justice Hale (De jur. Maris, 18, *Hargreave's Law Tracts*), "that the subject may, by *custom and usage* or prescription, have the true propriety and interest of many of these several maritime interests, which we have before stated to be *prima facie* belonging to the King."

"Fishing may be of two kinds ordinarily, viz., the fishing with the net which may be either as a liberty without the soil, or as a liberty arising by reason of and in concomitance with the soil, or interest or propriety of it; or otherwise it is a local fishing, that ariseth by and from the propriety of the soil.

* But still *held* under the Crown.