

them of their lands, but rather to secure them in possession of *what they had not already sold*, and that *land not properly acquired* from the Natives would not be recognized as the property of the person claiming it, but *would be returned to the Natives to whom it rightly belonged*—*vide* Buick's "*Treaty of Waitangi*," 2nd Edition, p. 126. [The italics are mine.] I may say at this stage that hundreds of thousands of acres of land which Europeans purported to have purchased did in fact subsequently revert to the Maoris by reason of the withdrawal of the claims by the purchasers or their disallowance for various reasons by the Commissioners, and in all those cases the Maoris not only had their lands returned to them, but also retained the consideration which had been paid to them by the purchasers as the purchase-price or part thereof in connection with these transactions and which aggregated a very substantial sum amounting to many thousands of pounds.

22. In August, 1840, the Governor and the Legislative Council of New South Wales enacted an Ordinance appointing Commissioners for the investigation of the purchasers' claims to land, &c., in accordance with the Marquis of Normanby's original instructions, and incidentally one of the purchasers of a vast tract of country, a Mr. Wentworth, having appeared before the Legislative Council to object to the enacting of the ordinance, Sir George Gipps delivered the address mentioned in paragraph 14 in which he stated lucidly the legal position in regard to the title to land purchased by the Queen's subjects in New Zealand prior to the acquisition by Her Majesty of sovereignty over the Islands.

23. The position taken up by Captain Hobson, as instructed by the Marquis of Normanby, in regard to the purchases of land prior to British sovereignty has already been indicated. Also I have indicated what Captain Hobson told the Maori chiefs regarding an inquiry into those purchases. So far as concerns lands remaining in the ownership of the Maoris, that is dealt with in the Treaty itself, and perhaps it is desirable at this stage to set out the three articles of the Treaty in their authenticated form in the English language. They are as follows:—

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent chiefs who have not become members of the confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of sovereignty which the said Confederation or individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective Territories as the sole Sovereigns thereof.

Article the Second

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.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the natives of New Zealand her royal protection and imparts to them all the rights and privileges of British subjects.

24. Various ideas have been at different times expressed with regard to the provisions of the second article of the Treaty, but it has been the general and accepted view, with which I entirely and respectfully agree, that the Crown's guarantee of full, exclusive, and undisturbed possession of the Maoris to their lands and estates, &c., extends only to the lands which they still owned according to Native custom; it did not include, and was never intended to include, lands to which the Native title had been already extinguished by the purchase thereof by Europeans in good faith and for fair consideration. That view is supported by the statement made to the chiefs before the signing of the Treaty, as already quoted from Mr. Buick's book.