

Owing to the disturbed state of the district no immediate attempt was made to punish the murderers, although a skirmish took place about the 21st May, 1865, by an expedition under Captain Freemantle in an attempt to seize one of those implicated. On the 27th July, 1865, Mr. Fulloon and others were murdered at Whakatane by another tribe, and it was decided to despatch a punitive expedition. In the Proclamation of Peace of the previous war, dated the 2nd September, 1865, the following reference is made: "The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr. Volkner and Mr. Fulloon. If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and for providing for the widows and relatives of the murdered people." Two days later martial law was proclaimed throughout the Opotiki and Whakatane districts. *Gazette*, 1865, p. 279.

An expedition followed, assisted by the officers and men of H.M.S. "Brisk," and some of the murderers of Mr. Fulloon and Mr. Volkner were secured; and on the 30th December, 1865, Mr. Stafford decided they should be tried by the Civil Courts, which event took place a few months later. 1866, A.-1, p. 85.

On the 17th January, 1866, an Order in Council was issued confiscating all the lands within the Bay of Plenty district as defined in the schedule; and this was later amended, on the 1st September, 1866, by altering the boundaries and dating the taking as from that date. *Gazette*, 1866, p. 17.
Gazette, 1866, p. 347.

On the 23rd March, 1866, the Governor reported that he had visited Opotiki among other places, and found the Hauhau fanatics entirely subdued, and tranquility fully established. Any defect in the Proclamation was apparently relieved by the Act of 1866, passed later, which expressly validated all Proclamations theretofore made.

Further than to reiterate that all the principal parties concerned were tried, convicted, and punished, and that a reserve of just over 20,000 acres was set aside for the rebels, it is unnecessary to follow the history further, since the confiscation could only be based on the preceding occurrences, and once peace was restored and an amnesty granted it forgave all intermediate offences. The Whakatohea, however, claim that, in addition to doing nothing to aggravate their crime, they actually assisted in bringing the arch-offender to justice.

To arrive at an understanding of whether the confiscation was based upon justice it is necessary to refer now to the circumstances under which such a confiscation could take place. The Proclamation is based on the New Zealand Settlement Act of 1863. By the 1864 Act the former statute was confined in its operation to two years. By the 1865 Act it was made perpetual, save that no more land could be taken after the 3rd December, 1867, making that portion of it operative for four years in all.

Prior to 1863 the colony was in a continual ferment with Native risings, and it was suggested, as a means to prevent their recurrence, the lands of the Natives might be seized (see Sir Frederick Whitaker's memorandum). Therefore the New Zealand Settlement Act of 1863 was passed, authorizing the Governor to reserve and set aside land for military and other purposes, while providing compensation for loyal owners whose possessions might be so seized. The Act was reserved for Her Majesty's pleasure, and disapproval was withheld subject to certain reservations, which, as the Governor would exercise the power, the Imperial authorities evidently expected he would see observed. These reservations or conditions are summed up as follows: "They considered that the duration of the Act should be limited to a definite period, and suggested the period of two years from its enactment. They desired that the aggregate amount of forfeiture should be at once made known, and the exact position as soon as possible; that an independent Commission, not removable with the Ministry of the day, should be appointed to inquire what land should be forfeited; that you yourself should be personally party to any confiscation, satisfying yourself that it was just and moderate; and that the lands of innocent persons should not be appropriated without their consent merely because it was in the same district as rebel property, and because it was required 1864, A.-1, p. 1.
1864, E.-2, App. II, p. 20.
1866, A.-1, p. 53.