

for European settlement, but only in case they had a joint interest with some guilty person, and in case of some public necessity, as of defence or communication. Her Majesty's Government desired further that the proposed Courts should have the power of compensating not only persons absolutely innocent, but those whose guilt was not of such a character as to justify the penalty imposed on them. . . . With such observations as these, and subject to the requirements which I have described, the Act was allowed to remain in operation (though still subject to disallowance) because Her Majesty's Government greatly relied on your own desire to guard the Natives from any unnecessary severity; and on the conviction expressed by your Ministers that as this would be the first, so it would be the last occasion on which any aboriginal inhabitant of New Zealand would be deprived of land against his will."

The true construction of the Act and the instructions from the Imperial Government seems to have been the subject of a struggle between the Governor and his Advisers for many months. The position of the Government was, as summed up by Sir William Fox on the 4th July, 1864, as follows: "The intentions of the Government are precisely those indicated in the Governor's Speech, to which you refer. They have four objects in view in confiscating rebel lands—first, permanently to impress the Natives with the folly and wretchedness of rebellion; second, to establish a defensive frontier; third, to find a location for the European population, which may balance the preponderance of the Natives who occupy the rebel districts; fourth, in part to pay off the cost of a war forced by the Natives upon the colony. While achieving these ends, they would reserve for the future use of the Natives so large a portion of the confiscated land as would enable them to live in independence and comfort, and they would secure it to them by such individual titles under the Crown as might tend to elevate them above that communal system (or no system) of life which lies at the root of their present unsettled state."

1864, E.-2,
p. 77.

In the reply of the Ministers to the Aborigines Society, of the 5th May, 1864, it is said the chief object of the Government in confiscation is "neither punishment nor retaliation, but simply to provide a material guarantee against the recurrence of these uprisings against the authority of the law and the legitimate progress of colonization which are certain to occur if the rebel is allowed to retain his lands after involving the colony in so much peril, disaster, and loss. . . . But it is not and never has been proposed to leave them without an ample quantity of land for their future occupation. A quantity much larger per head than the average occupation of Europeans in this Island is proposed to be set apart for them, on a graduated scale according to rank and other circumstances."

1864, E.-2,
p. 20.

A careful review of the different standpoints seems to indicate that the Home authorities, while admitting the principle of confiscation, sought to confine it within prescribed bounds, which were not, owing to the peculiar nature of the tribal ownership of land, altogether applicable to the circumstances of New Zealand. The New Zealand Government apparently claimed the right to confiscate all lands (if all or some of the tribe rebelled), paying those who were not rebels compensation either in land or money, and to utilize the remainder of the land for public purposes.

To any one acquainted with Native tenure it must be apparent that an indiscriminate confiscation within a certain boundary, although practically the only one that would answer for settlement purposes, must work injustice in the case of many individuals, since their shares in the ownership of the land taken would be by no means equal. Similarly, where the lands of two rebel tribes adjoin, although both might be equally culpable, the exigencies of the situation might require more to be taken from one tribe than another: and it seems altogether impossible to work out in practice those estimable principles laid down by the Home Government, in which it required that the confiscation of territory was "not to be carried further than was consistent with the permanent pacification of the Island and the honour of the English name." There is, however, no guide as to what set of circumstances will make the confiscation just or moderate.

1864, E.-2,
App. II, p. 21.