

border. . . . In July the invasion of the Waikato was ordered. On the very day before our men advanced, the Maori had begun what they meant to be their march to Auckland, and the two forces at once came into collision. In a sharp fight at Koheroa the Natives were driven from their entrenchments with some loss, and any forward movement on their part was effectually stopped." General Cameron crossed the Maungatawhiri Stream on the 12th July, 1863, and the fight at Koheroa took place on the 17th July. It is not necessary to give the history of the war, in which the capture of Orakau in April, 1864, was the final and decisive blow.

29. The first step in the way of confiscation was taken when the Governor by his Proclamation of the 17th December, 1864, declared his intention to retain and hold as land of the Crown all the land in the Waikato taken by the Queen's Forces within certain specified boundaries. This Proclamation did not purport to be made under the New Zealand Settlements Act, 1863. By an Order in Council made under that Act on the 30th January, 1865, the East Wairoa and West Pukekohe Blocks were declared to be districts under the Act, and were reserved and set apart as sites for settlement and colonization. By another Order in Council, made on the 16th May, 1865, a district called the Central Waikato District was declared to be a district under the Act. By another Order in Council, made on the same day, certain parts of this district were set apart as sites for settlement and colonization. By another Order in Council, made on the same day, the Mangare, Pukaki, Ihumata, and Kerikeri Blocks were declared to be districts under the Act. By another Order in Council, made on the 2nd September, 1865, an addition was made to the Central Waikato District as already proclaimed.

30. It is clear that the tribes whose lands were included in those Proclamations had been engaged after the 1st January, 1863, in rebellion against Her Majesty's authority. They were rebels, therefore, within the meaning of the New Zealand Settlements Act, 1863, and their land was liable to be confiscated. The first question is whether or not the circumstances were such as to justify us in saying that in good conscience and equity the Natives, although rebels, ought not to have suffered any confiscation of their land. It is true, certainly, that the Government did afford them some excuse for their resort to arms. For them the Government had become a gigantic landbroker, whose sole object, however disguised, was the acquisition of their territory, regardless of their rights under the Treaty of Waitangi. They knew that the first Taranaki war was an unjust and unholy war, and this view of it was completely established when the Waitara purchase was abandoned by the Government. Sir William Martin, in his memorandum of the 16th November, 1863, said that a deliberate review of the whole connection between the two races forced him to believe that the Natives had not fallen short of their part in the original contract more than we had of ours; that they had not, as a nation, sinned more against us than we, the superior and protecting power, had against them. If in the circumstances the Natives had contented themselves with providing for their own defence when attacked, with providing also for the establishment of law and order in their midst, and for the regulation of sales of Native land, they might have been declared to be blameless. But they were not content to do that, and formed a plan for the destruction of Auckland and the slaughter of its inhabitants. This was to be part of a general attack in the North Island, and a party of Natives had actually set out on the march north to attack the pakehas before General Cameron had crossed the Maungatawhiri Stream. In view of these facts and of the other matters already mentioned, we are not justified, we think, in saying that the tribes who took part in the Waikato war ought not to have suffered some confiscation of their lands as a penalty for the part they took in the rebellion.

31. The next question to be considered, then, is whether or not, having regard to all the circumstances, these confiscations exceeded what was fair and just, whether as penalty for rebellion and other acts of that nature, or as providing for protection by settlement as defined in the Acts. Before dealing with this specific question it will be convenient to consider the argument advanced by Mr. Smith as to the construction of the New Zealand Settlements Act, 1863. That Act, he contended, authorized only the taking of land actually required for military settlement. To secure land for military settlements in disaffected districts was, no doubt, one of the