

BUICK THOMAS LINDSAY

THE TREATY OF
WAITANGI; OR, HOW NEW
ZEALAND BECAME A
BRITISH COLONY

Thomas Buick

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Zealand became a British Colony**

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Содержание

Dedication	5
PREFACE	6
NOTE OF ACKNOWLEDGMENT	8
CHAPTER I	9
CHAPTER II	28
CHAPTER III	39
CHAPTER IV	53
Конец ознакомительного фрагмента.	55

T. Lindsay Buick
The Treaty of Waitangi; or, how New
Zealand became a British Colony

Dedication

TO

ROBERT M'NAB

M.A., LL.B., F.R.G.S

TO WHOSE ENTERPRISE AND SELF-SACRIFICE

WE OWE THE RECOVERY

OF SO MUCH OF OUR FAST RECEDING HISTORY

I RESPECTFULLY DEDICATE THIS BOOK

PREFACE

The arrival in New Zealand waters of the battleship given to the Empire by this Dominion during a grave national crisis, marks a new epoch in the life of our country, and an event so pregnant with the spirit of Imperialism seems to the author to provide an appropriate point at which to pause and retrospectively review the causes which have made possible such an innovation in our naval policy – such a milestone in our national history. The story of New Zealand's progress since 1814 has been one of splendid emulation tempered by vicissitude. There have been dark days, days of doubt, of devastation by war, but never a period when our people lost heart or renounced their national faith. No attempt has been here made to tell the whole of that story. All that I have tried to do is to get back to the beginning of things, to the birth of law and order, to the genesis of the day when we were able to say to the Mother Land, "We will build you a Dreadnought, and yet another if needs must." The Treaty of Waitangi has been frequently derided and denounced, but it was in very truth the foundation of our nationhood. When we consider what Britain would have lost in material wealth, in loyalty, in strategical advantage; when we reflect what it would have cost to have conquered the country by force of arms, then it is that we can see in clearer perspective the wisdom of Lord Normanby's policy, the breadth of his statesmanship, and we are the better able to appreciate the triumph in diplomacy which that treaty represents.

Unfortunately the lapse of seventy-three years has robbed us of all who were actively concerned in its consummation, and equally unfortunately they have left few records behind them. There are grey-headed men and aged women alive to-day who were children at the time, but so far as I know there is only one with us now who was actually present at the signing of the treaty. Old Rahira te Hua, the daughter of one of the great Hongi's slaves, who has seen ninety-three summers pass, still carries in her weakening memory some misty recollections of that day fraught with such far-reaching consequences to both races. The opportunity for obtaining personal testimony of what happened is thus irretrievably gone. I have, therefore, had to rely for my information almost entirely upon official documents, supplemented by such fugitive memoranda as may have been left by the few concerned, who happen to have placed their opinions or impressions on record. The gathering together of this widely-scattered material, the moulding of it into a connected narrative, has had its pleasurable as well as its anxious moments, for the subject has not been without its perplexities, ambiguities, and contradictions. All of these I have sought to sift with justice and treat with perfect impartiality. Where I have met with conflicting statements it has been my endeavour to so present the position that the reader will be able to form his own conclusions, and where I have expressed my personal opinions they have only been such opinions as appeared to me to be justified by the facts of the case. Whatever impression the reading of this narrative may leave with those who peruse it, I for one cannot lay down my pen from its writing without affirming that two things appear to me to be established – that Britain has no reason to be ashamed of the manner in which she obtained the sovereignty of New Zealand, and in the light of subsequent events she has no reason to regret it. I have not attempted to arraign or to defend the various, real or alleged, breaches of the treaty committed by our Governors or Governments. That phase of the subject is necessarily so controversial in character, that to do it justice would require a volume of its own, the need for which has to some extent been obviated by the publication in 1888 of his *Aureretanga*, by Mr. G. W. Rusden, in which that vigorous writer deals exhaustively with at least the Maori side of the case. The Treaty of Waitangi, the first diplomatic arrangement of the kind entered into between Britain and a savage race, was a wise, politic, and humane measure, the justice of which has been vindicated with the lapse of time. In the expressive language of a native address to Lord Ranfurly, "This treaty has been rained upon by the rain, it has been exposed to the blast of the storm, but the words are still clear, they cannot be obliterated."

Let us hope that no attempt will ever be made to violate either its letter or its spirit.

THE AUTHOR.

"Ennismore,"
Boulcott Street, Wellington,
April 30, 1913.

NOTE OF ACKNOWLEDGMENT

During the compilation of this work I have necessarily been placed under obligations to a number of gentlemen, whose services I now desire to acknowledge.

I am especially indebted to Mr. Charles Wilson, Librarian to the New Zealand Parliament, for the privilege of freely examining the rare official papers I desired to consult. In like manner the courtesy of Mr. A. Hamilton, Director of the Dominion Museum, must be acknowledged in placing at my disposal the New Zealand books in the Carter Collection, while the Hon. J. T. Paul, M.L.C., has been most helpful in consulting for me authorities contained in the Hocken Collection at Dunedin. To Mr. Robert M'Nab I am obliged for the extract from Captain Lavaud's Despatch to the French Minister of Marine, now made public for the first time, and to Te Heuheu Tukino, the present representative of that family, for the narrative of his illustrious grandfather's rejection of the treaty. Valuable assistance has also been lent by the Hon. Dr. Pomare, M.P., by Messrs. H. M. Stowell, L. M. Grace, and Elsdon Best, in solving Maori problems of a technical nature, and to the Rev. T. G. Hammond I am indebted for favours of a more general character. For permission to use the portrait of Tamati Waaka Nēne I have to thank Mr. H. E. Partridge, of Auckland, and especially Mr. A. M'Donald for his generous assistance in preparing the balance of the illustrations.

The written authorities consulted will be found in the Appendix.

CHAPTER I IN THE BEGINNING

"The Islands of New Zealand have long been resorted to by British Subjects on account of the valuable articles of commerce which they produce, and by reason of the peculiar advantages which they offer to whale-ships requiring repair. But the nearness of these Islands to the British settlements of New South Wales and Van Dieman's Land has also led to their being resorted to as an asylum for fugitive British convicts, and such persons having associated with men left in New Zealand by whale-ships and other vessels, have formed a Society which indispensably requires the check of some contending authority. Her Majesty's Government have therefore deemed it expedient to station at New Zealand an officer, with the character and powers of a British Consul, and I have the satisfaction to acquaint you that the Queen has been graciously pleased to select you for that appointment." So wrote Viscount Palmerston, Foreign Secretary in Lord Melbourne's Cabinet, on August 13, 1839, to Captain William Hobson, R.N., and this letter may be taken as the first satisfactory evidence we have that the British Government had at last decided to accept their long-evaded responsibility in connection with New Zealand. Ever since the day when Captain Cook took possession of the country in the name and for the use of King George III., these islands had been allowed by succeeding British Governments to remain a neglected geographical quantity, and this very neglect had now robbed the nation of the title which Cook had by his splendid enterprise secured for it.

The Law of Nations has well defined the principle that before a country becomes entitled to claim sovereignty in any part of the globe "by right of discovery" it is not sufficient that the mariners of that country should sail forth and discover new lands; but there must be some effective act immediately following, such as systematic occupation, in order to bind other peoples to respect the discovering nation's claim.

During the latter part of the century which had elapsed between the time of Cook's proclamation to the world and the day when the Melbourne Cabinet decided that Britain must assume in earnest her responsibilities in the South Pacific there had not only been no systematic occupation of New Zealand by Britain, but rather a systematic renunciation of the nation's intention in that direction. The Duke of Wellington had petulantly declared that England had colonies enough, and Minister after Minister who had presided over the Colonial Office had in deeds, if not in words, endorsed this policy of anti-Imperialism. There were at this time none amongst the British statesmen blessed with that broader grasp, that wider vision of an Empire "extending over every sea, swaying many diverse races, and combining many diverse forms of religion," which afterwards animated the colonial policy of Lord John Russell.¹ The courage and capacity which that planter of Imperial outposts declared were necessary to build such an Empire – to effect such a wholesome blending of peoples – were wanting, and there was even an imminent danger that in this negatory attitude towards colonising other Powers would come to regard Britain not as an equal, nor with the fear that an equal can inspire, but as a timorous weakling, a nation destitute of enterprise, the product of a waning courage and of a pusillanimous hand.

Thus it came about that when in 1839 the Ministry of Lord Melbourne found themselves coerced by circumstances into recognising the need for systematic colonisation, they discovered themselves destitute of what most people believed they possessed – a title to sovereignty in New Zealand "by right of discovery."

¹ On one occasion when Lord John Russell was asked by a French Diplomat how much of Australia Britain claimed, he promptly replied, "The whole of it."

The spirit of the British nation had not, however, been as idle as the British statesman, and inherent enterprise, combined with an inherent love of adventure, had sown and matured the seed which continuous Ministries had persistently declined to nourish. The elements which had contributed to the irregular settlement of New Zealand were faithfully recorded in Lord Palmerston's letter to Captain Hobson, and a more unpropitious beginning for any colony could scarcely be imagined. The number of British subjects who, up to 1839, had resorted to New Zealand for the purposes of legitimate and respectable trade were comparatively few, but it is estimated that even earlier than this there were over five hundred escaped convicts living along the sea coast in and around the Bay of Islands, the point at which settlement had, up to that time, chiefly congregated. Of those directly and indirectly concerned in the whaling industry there must have been a considerable number, for it is officially recorded that in the year 1836 no less than one hundred and fifty-one vessels had visited the Bay of Islands alone, and the proportion was even larger in the first half of the succeeding year.

The combination of whaler and convict was not one calculated to strengthen the morality of the community, and so large a leaven of the lawless class, together with the insatiable desire of the natives to procure muskets, had the effect of creating a state of society which, in the words of the Foreign Secretary, "indispensably required the check of some contending authority." In the absence of any such authority the more respectable settlers at the Bay of Islands had organised themselves into a self-constituted Association, into whose hands was committed the administration of a rude justice, which recognised a liberal application of tar and feathers as meet punishment for some of the offences against society. A steadying influence had also been supplied by the appointment at intervals since 1814 of gentlemen empowered to act as Justices of the Peace, their authority being derived from a Commission issued by the Governor of New South Wales, and, if illegal, was on more than one occasion acted upon with salutary effect.²

Although it has been a popular sport on the part of many writers to throw darts of sarcasm at the labours of the Missionaries, they, too, must be accounted a tremendous influence for good, not so much, perhaps, in checking the licentiousness of the Europeans, as in preventing the natives from becoming contaminated by it. Destructive internecine wars had been waging "with fiendish determination" for many years under the conquering leadership of Hongi, Te Wherowhero, Te Waharoa and Te Rauparaha, by which whole districts had been depopulated, and tribe after tribe practically annihilated. Still the Maori people were a numerous, virile and warlike race, capable of deeds of blackest barbarism, or equally adaptable to the softening influences of Christianity and civilisation.

So far as the darker side of their history is concerned, we have it on the irreproachable authority of the Rev. Samuel Marsden that the tragedies in which the natives made war upon the Europeans were in almost every instance merely acts of retaliation for earlier outrages.³ The killing of Marian du Fresne and the massacre on board the *Boyd* were unquestionably so; and the dread of the natives which for several years after these events almost suspended the sea trade with New Zealand was the natural fruit of that cruelty which trusting Maori seamen had suffered at the hands of unscrupulous captains, who had either inveigled them or forced them on board their whalers. Dark as the history of New Zealand was during these Alsatian days, there is no chapter quite so dark, or which redounds less to the credit of the white race, than the story of the sea-going natives who were taken away from

² As indicating the state into which society had fallen it may be mentioned that one Master of a trading vessel who had no muskets to sell, gave a chief a packet of corrosive sublimate wherewith to destroy his enemies. To correct this condition of affairs a proclamation was published in the New South Wales Government *Gazette* in 1814 appointing the Rev. Mr. Kendall and the chiefs, Ruatara, Hongi and Korokoro, Magistrates at the Bay of Islands, for the purpose of suppressing outrages. This authority was subsequently revoked as being illegal.

³ "The Rev. Mr. Kendall has received a commission to act as a Magistrate, but it does not appear that he possesses the means of rendering effective assistance to the natives against the oppressions of the crews of European vessels, and of controlling in any degree the intercourse that subsists between them." – Commissioner Bigge to Earl Bathurst, 1823.

these sunny shores,⁴ and abandoned in foreign countries, or driven at the end of the lash to tasks far beyond their physical strength, resulting in the premature death of many, while the poison of undying hatred entered into the souls of the survivors.

The position on shore was scarcely less disgraceful, for the natives resident in the seaward *pas* were cruelly ill-treated by the crews of the European vessels who visited them; and it is stated in the records of the Church Missionary Society that within the first two or three years of the arrival of the Missionaries not less than one thousand Maoris had been murdered by Europeans, the natives unhappily not infrequently visiting upon the innocent who came within their reach revenge for crimes perpetrated by the guilty who had evaded their vengeance.

But apart from the commission of actual outrage there was debauchery of several kinds, and always of a pronounced type. "They lead a most reckless life, keeping grog shops, selling spirituous liquors to both Europeans and natives, living with the native females in a most discreditable way, so that the natives have told me to teach my own countrymen first before I taught them. They have called us a nation of drunkards from their seeing a majority of Europeans of that stamp in New Zealand." Such was the testimony of an erstwhile Missionary, Mr. John Flatt, when giving evidence before the House of Lords regarding the northern portion of the colony; and not less unsatisfactory was the position in the South Island, where the whalers were the preponderating section of the white population.

At both Cloudy Bay and Queen Charlotte Sound there was, in 1837, a considerable white settlement, each man being a law unto himself, except in so far as he was under the dominion of the head man of the station. This at least was the opinion formed by Captain Hobson when visiting those parts in H.M.S. *Rattlesnake*. In describing the result of his enquiries to Governor Bourke, he dismissed the probability of these settlements being attacked by the natives, because they were so confederated by their employment; but he significantly added: "The only danger they have to apprehend is from themselves, and that is in a great measure neutralised by the contending influences of their own reckless and desperate character."

The Rev. Mr. Stack, then labouring in the north, in writing home to the parent Society, complained bitterly of the unprincipled white men who had escaped from the chain gangs at Sydney, and who had recently shown themselves so desperate that two were seized and taken to Sydney to be tried at the Assizes on a charge of attempted robbery and murder.⁵ Mr. Stack pleaded for the intervention of the British Government, which he hoped would not leave the country at the mercy of the escaped convicts, or the natives to the influence of a commerce carried on with so many circumstances destructive to the moral health of the people, that if unchecked, would effectually do the work of depopulation. "We have no law or justice," wrote Mr. Stack, "no punishment for crime but private revenge."

In the beginning of the year 1840 Kororareka, the settlement at the Bay of Islands which had the greatest right to claim the dignity of a township, contained about three hundred inhabitants of all ages, exclusive of the numerous sailors, whose nightly revels constituted the only interruption to the peace and harmony which generally prevailed. These gentry resorted in great numbers to the native village at the inner anchorage, where the principal chief carried on the lucrative business of grog-selling, besides another of a still more discreditable kind, for the convenience of his reckless customers – French, English, and American. "Here," according to Dr. Jameson, "might be seen the curious spectacle of a still savage chief enriching himself at the expense of individuals who, although belonging to the most civilised and powerful nations in the world, were reduced to a lower degree of barbarism by the influence of their unbridled licentiousness."

⁴ This practice was prohibited by the Governor of New South Wales by Proclamation, on November 9, 1814.

⁵ Edward Doyle underwent the extreme penalty of the law at Sydney for a burglary committed at the Bay of Islands on June 18, 1836, the sentence being imposed under a statute of George IV.

Contact with such social degenerates was not calculated to inspire the natives with a high ideal of European morality, nor with a conspicuous example of rectitude; but where the influences destructive of decency and order were less virulent the Missionaries had a more hopeful tale to tell. "The door is opening before us in every direction, and the people are pressing and entreating us to enter. Had we only more help, where we have now a hundred natives under our care, we would soon have a thousand." Such was the report of the Rev. Mr. Turner, one of the Wesleyan Missionaries⁶ at Hokianga, in urging his Society to send more workers to this corner of the human vineyard. The attendance and attention of the natives at Divine worship were regular and fixed, while it is recorded that their responses to the reading of the Litany were particularly devout.

The sincerity of many of these early converts was one of the most remarkable features of the evangelising of the Maori; and the Rev. Dr. Beecham, in giving evidence before the Lords' Committee in 1838, quoted this eloquent passage from one of the letters of the Rev. Mr. Hobbs to illustrate the warmth of Maori piety. "The beauty of the Liturgy, as translated by our brethren at the Bay of Islands into the Native tongue, is most exquisite, and to me hardly loses any of the force of original composition, and, I have no doubt, has been made a great blessing unto many by putting words of prayer into their mouths, and thus teaching them to pray. Many times has my heart gloried within me while repeating the 'Te Deum Laudamus,' and especially that part —

Tapu tapu tapu rawa E Ihowa te Atua o nga mano tuauriuri whaioio,

that is —

Holy, holy, holy, Lord God of Sabaoth,

and hear them respond —

E kiki ana te Rangi me te whenua i te kahanga o tou kororia

Heaven and Earth are full of the majesty of Thy Glory

"I have been informed," continued Dr. Beecham, "by those who have witnessed the celebration of public worship in the principal church at Mangungu, that to hear 700 or 800 of the Christian natives correctly and promptly utter the responses, and then sing the praises of the True God, is highly affecting. Another feature of their character is their strict observance of daily social prayer. At dawn of day all the inhabitants of the villages assemble together in the chapel at the sound of the bell, or some piece of metal used as a substitute, to read the scriptures and to pray. The same order is observed in the evening. When the evening approaches the whole of the population moves to the house of God, and close the day with devotions. Their reverence for the Sabbath is remarkable. Those who come from a distance to attend Divine worship at Mangungu do not travel on the Sunday, but on the Saturday, and return on the Monday. They refrain from all work on the Lord's Day. So strict are their views on the sanctity of the Sabbath they do not even prepare their food on that day. The arrival of a vessel is always a matter of considerable excitement to the natives of New Zealand, but if a vessel arrives on the Sunday no stir is made."

⁶ The Wesleyan mission in New Zealand originated in a visit made to this country in the year 1819 by the Rev. Mr. Leigh, a missionary of the Wesleyan Society then stationed in New South Wales. He made the visit for the benefit of his health on the recommendation of the Rev. Mr. Marsden.

It would be difficult to find any description quite so touching concerning the religious observances of the *Pakehas*, whose irreverence more than once roused the righteous indignation of the Rev. Mr. Marsden.

Although the British authorities had as yet taken no decisive step towards acquiring sovereignty in New Zealand, it cannot be said that the state of society in the country had entirely escaped their notice. Especially were the successive Governors of New South Wales vigilant in keeping Ministers posted as to passing events. Many must have been their anxious moments, for they being the nearest representatives of the Crown were naturally most solicitous for the conduct and fate of their countrymen. As far back as 1814 Governor Macquarie had declared New Zealand to be a part of that colony, and it was thought that the jurisdiction of the Supreme Court had also been extended to this country. These proceedings were, however, almost a nullity, for had they been formal and constitutional – which they were not – the practical difficulties in the way of bringing offenders to justice were so great that the attempt was only made in a few isolated and extreme instances.

This state of official negation continued until the tidings of the part played by Captain Stewart and his brig *Elizabeth* in Te Rauparaha's Akaroa raid reached Sydney. Then Governor Darling and his successor, Sir Richard Bourke, realised that this game of glorified bluff could not go on indefinitely. The strongest possible representations were accordingly made to the Home authorities, and these representations were followed by a pathetic petition from the natives to King William IV., which was transmitted to Sir Richard Bourke through Mr. Yate, one of the principal members of the Church Missionary Society's staff then labouring in the colony.

The leading chiefs of the northern part of the Islands had long ere this realised the ineffectiveness of their tribal system to cope with the altered state of society. The Missionaries on their part watched with anxiety the unhappy trend of affairs, knowing that if some more enlightened course was not given to events, a serious collision would in all probability arise between the two races, which could scarcely terminate otherwise than in the extermination or expulsion of the one or the other.

Being fully persuaded that to maintain the chiefs and their tribes as an independent people was the most effective safeguard against foreign aggression, they saw with deepest regret the intestine warfare which was going on amongst the natives, thinning their ranks, and rendering them every day less able to resist the pretensions of a foreign power. Stung by a sense of failure, and excited by a rumour that the French were at hand, the chiefs placed themselves under Missionary direction and addressed themselves to the King in the following diplomatic terms⁷: —

TO KING WILLIAM, THE GRACIOUS CHIEF OF ENGLAND

King William – We, the chiefs of New Zealand assembled at this place, called the Kerikeri, write to thee, for we hear that thou art the great Chief of the other side of the water, since the many ships which come to our land are from thee.

We are a people without possessions. We have nothing but timber, flax, pork and potatoes, we sell these things, however, to your people, and then we see the property of Europeans. It is only thy land which is liberal towards us. From thee also come the Missionaries who teach us to believe on Jehovah God, and on Jesus Christ His Son.

We have heard that the tribe of Marian⁸ is at hand coming to take away our land, therefore we pray thee to become our friend and guardian of these Islands, lest through the teasing of other

⁷ Petition sent to King William through Mr. Yate, per Colonial Secretary of New South Wales, November 16, 1831.

⁸ The French were called by the natives "the tribe of Marian" after Captain Marian du Fresne, who met his untimely death at their hands in 1772. To show that these fears were not altogether unfounded, it may be mentioned that the French ship *La Favourite* anchored in the Bay of Islands the day after the petition was signed.

tribes should come war to us, and lest strangers should come and take away our land. And if any of thy people should be troublesome or vicious towards us (for some persons are living here who have run away from ships), we pray thee to be angry with them that they may be obedient, lest the anger of the people of this land fall upon them.

This letter is from us the chiefs of the natives of New Zealand:

Warerahi,	chief of	Paroa.
Rewa,	"	Waimate.
Patuone,	"	Hokianga.
Nēne,	"	Hokianga.
Kekeao,	"	Ahuahu.
Titore,	"	Kororareka.
Tamaranga,	"	Taiamai
Ripe,	"	Mapere.
Hara,	"	Ohaeawai
Atuahaere,	"	Kaikohe.
Moetara,	"	Pakanae.
Matangi,	"	Waima.
Taunui,	"	Utakura.

The accumulating reports of increasing disorder, the strenuous recommendations of Governor Bourke, added to the touching appeal of the chiefs, at length moved the Colonial Office to acquiesce in the contention that some one should be sent to New Zealand directly charged with the duty of representing the British Crown. In replying to the Native petition, Lord Goderich,⁹ who was then at the Colonial Office, after expressing the gratification the petition had afforded the King, accordingly intimated that it had been decided to appoint as British Resident Mr. James Busby, whose duty it would be to investigate all complaints which might be made to him. "It will also be his endeavour," wrote his Lordship, "to prevent the arrival amongst you of men who have been guilty of crimes in their own country, and who may effect their escape from the place to which they have been banished, as likewise to apprehend such persons of this description who may be found at present at large. In return for the anxious desire which will be manifested by the British Resident to afford his protection to the inhabitants of New Zealand, against any acts of outrage which may be attempted against them

⁹ He afterwards became Earl of Ripon.

by British subjects, it is confidently expected by His Majesty that on your part you will render to the British Resident that assistance and support which are calculated to promote the objects of his appointment, and to extend to your country all the benefits which it is capable of receiving from its friendship and alliance with Great Britain."

Mr. Busby, who had thus been chosen for the responsible task of guarding both British and Native interests, was the son of a successful civil engineer in Australia, but it is doubtful whether he had passed through the administrative experience necessary to fit him in all respects for his arduous post.¹⁰ His position was rendered still more difficult by reason of the fact that, much as Ministers might have wished to do so, it had been found impossible to sweep away the constitutional difficulties which faced them on every side. Indeed so hampered was the situation by the circumstance that Britain had not acquired, or claimed Sovereign rights in New Zealand, that when Governor Bourke came to direct Mr. Busby upon the scope of his office, he was compelled to lay greater stress upon the things he could not do, than upon the powers he was at liberty to exercise.

Mr. Busby was instructed to leave Sydney by H.M.S. *Imogene*, commanded by Captain Blackwood, and on arrival at the Bay of Islands he was to present to the chiefs the King's reply to their petition, "with as much formality as circumstances may permit." This instruction Mr. Busby used his best endeavours to obey, for after a stormy passage across the Tasman Sea he reached the Bay of Islands on Sunday, May 5, 1833. Here he at once made arrangements with the settlers and Missionaries to invest his landing with an importance which was its due; but continued storms made it impossible to perform any kind of open-air ceremony with comfort and dignity until the 17th. On that day, however, the weather had moderated, and at an early hour preparations were afoot for the inevitable feast, a proclivity to which both Maori and European appear equally addicted. At a later hour Mr. Busby, accompanied by the first lieutenant of the *Imogene*, landed under a salute of seven guns, and no sooner had he set foot on shore than he was claimed by the old chief, Tohitapu, as his *Pakeha*. A cordial greeting awaited the Resident by the Missionaries, to whose village at Paihia, but a short distance off, the party at once adjourned. Here three hoary-headed chiefs delivered speeches of welcome, a *haka* was danced, and still more speeches were made in honour of a stranger whose coming was regarded as the event of first importance since the landing of Samuel Marsden seventeen years before. With these evidences of native hospitality at an end, the formal proceedings were commenced in front of the little mission chapel round which the people crowded in motley throng, shouting songs of welcome, and discharging fitful volleys of musketry. By dint of lively exertion order was at length restored, and standing at a table, with Captain Blackwood on his right and Mr. Henry Williams, who interpreted, on his left, Mr. Busby read the King's reply to the people's Petition for protection. The reading of this document was listened to with profound respect by the Europeans, who rose and uncovered their heads, while the natives hung upon the words of Mr. Williams as he explained the professions of the King's good-will, of the sincerity of which Mr. Busby was a living evidence. Then followed Mr. Busby's own address, which was listened to by the wondering crowd with no less rapt attention:

My Friends – You will perceive by the letter which I have been honoured with the commands of the King of Great Britain to deliver to you, that it is His Majesty's most anxious wish that the most friendly feeling should subsist between his subjects and yourselves, and how much he regrets that you should have cause to complain of the conduct of any of his subjects. To foster and maintain this friendly feeling, to prevent as much as possible the recurrence of those misunderstandings and quarrels which have unfortunately taken place, and to give a greater assurance of safety and just dealing both to his own subjects and the people of New Zealand in their commercial transactions

¹⁰ Mr. Busby's father had been appointed in 1823 as a Mineral Surveyor and Civil Engineer for the colony of New South Wales, by Earl Bathurst, and Mr. Busby accompanied him as a settler, taking with him capital to the extent of about £1000. At the time of his appointment Mr. Busby was Collector of Internal Revenue and a Member of the Land Board of New South Wales.

with each other, these are the purposes for which His Majesty has sent me to reside amongst you, and I hope and trust that when any opportunities of doing a service to the people of this country shall arise I shall be able to prove to you how much it is my own desire to be the friend of those amongst whom I am come to reside. It is the custom of His Majesty the King of Great Britain to send one or more of his servants to reside as his representatives in all those countries in Europe and America with which he is on terms of friendship, and in sending one of his servants to reside amongst the chiefs of New Zealand, they ought to be sensible not only of the advantages which will result to the people of New Zealand by extending their commercial intercourse with the people of England, but of the honour the King of a great and powerful nation like Great Britain has done their country in adopting it into the number of those countries with which he is in friendship and alliance. I am, however, commanded to inform you that in every country to which His Majesty sends his servants to reside as his representatives, their persons and their families, and all that belongs to them are considered sacred. Their duty is the cultivation of peace and friendship and goodwill, and not only the King of Great Britain, but the whole civilised world would resent any violence which his representative might suffer in any of the countries to which they are sent to reside in his name. I have heard that the chiefs and people of New Zealand have proved the faithful friends of those who have come among them to do them good, and I therefore trust myself to their protection and friendship with confidence. All good Englishmen are desirous that the New Zealanders should be a rich and happy people, and it is my wish when I shall have erected my house that all the chiefs will come and visit me and be my friends. We will then consult together by what means they can make their country a flourishing country, and their people a rich and wise people like the people of Great Britain. At one time Great Britain differed but little from what New Zealand is now. The people had no large houses nor good clothing nor good food. They painted their bodies and clothed themselves with the skins of wild beasts; every chief went to war with his neighbour, and the people perished in the wars of their chiefs even as the people of New Zealand do now. But after God sent His Son into the world to teach mankind that all the tribes of the earth are brethren, and that they ought not to hate and destroy, but to love and do good to one another, and when the people of England learned His words of wisdom, they ceased to go to war against each other, and all the tribes became one people. The peaceful inhabitants of the country began to build large houses because there was no enemy to pull them down. They cultivated their land and had abundance of bread, because no hostile tribe entered into their fields to destroy the fruit of their labours. They increased the numbers of their cattle because no one came to drive them away. They also became industrious and rich, and had all good things they desired. Do you then, O chiefs and tribes of New Zealand, desire to become like the people of England? Listen first to the Word of God which He has put into the hearts of His servants the missionaries to come here and teach you. Learn that it is the will of God that you should all love each other as brethren, and when wars shall cease among you then shall your country flourish. Instead of the roots of the fern you shall eat bread, because the land shall be tilled without fear, and its fruits shall be eaten in peace. When there is an abundance of bread we shall labour to preserve flax and timber and provisions for the ships which come to trade, and the ships that come to trade will bring clothing and all other things which you desire. Thus you become rich, for there are no riches without labour, and men will not labour unless there is peace, that they may enjoy the fruits of their labour.

The Resident's address was received with an outburst of wild applause, and soon the smoke of discharging muskets again hung heavy on the morning air. But there was still other diversion for the natives, to whom the proceedings had proved a great novelty. The mental feast which was to provide them with food for discussion for many days was now supplanted by a more material repast, at which fifty settlers were entertained at Mr. Williams's house, while the Maoris were fed with a sumptuousness that made memorable to them the coming and the installation of the first British Resident.

As an adjunct to his slender authority, Mr. Busby had been informed by Governor Bourke that Sir John Gore, the Vice-Admiral commanding the Indian Squadron of the Navy, would be instructed to permit his ships to call in at New Zealand ports as frequently as possible, and offer him what support they could during these fitful visits. But upon neither naval nor civil power was Mr. Busby to rely overmuch. He was to depend for his authority rather upon his moral influence and his co-operation with the Missionaries, to whom he went specially accredited.

Mr. Busby has frequently been made the butt of the humorist, because his bark was necessarily worse than his bite. The Maori cynic of his day chuckled as he dubbed him "*He manuwa pu kore*" ("A man-of-war without guns"), and many a playful jest has since been made at his expense, all of which is both unfair and ungenerous to Mr. Busby. The difficulty in the way of investing him with legal power was thus tersely explained by Sir Richard Bourke during the course of his initial instructions to the Resident:

You are aware that you cannot be clothed with any legal power or jurisdiction, by virtue of which you might be enabled to arrest British subjects offending against British or Colonial law in New Zealand. It was proposed to supply this want of power and to provide further enforcement of the criminal law as it exists amongst ourselves, and further to adapt it to the new and peculiar exigencies of the country to which you are going, by means of a Colonial Act of Council grafted on a statute of the Imperial Parliament. Circumstances which I am not at present competent to explain have prevented the enactment of the Statute in question.¹¹ You can therefore rely but little on the force of law, and must lay the foundation of your measures upon the influence which you shall obtain over the Native Chiefs. Something, however, may be effected under the law as it stands at present. By the 9th Geo. IV., cap. 83, sec. A, the Supreme Courts of N. S. Wales and Van Dieman's Land have power to enquire of, hear and determine, all offences committed in N.Z. by the Master and crew of any British ship or vessel, or by any British subject living there, and persons convicted of such offences may be punished as if the offence has been committed in England... If therefore you should at any time have the means of sending to this colony any one or more persons capable of lodging an information before the proper authorities here, of an offence committed in N.Z. you will, if you think the case of sufficient magnitude and importance, send a detailed report of the transaction to the Colonial Secretary by such persons who will be required to depose to the facts sufficient to support an information upon which a bench Warrant may be obtained from the Supreme Court for the apprehension of the offender, and transmitted to you for execution. You will perceive at once that this process, which is at best a prolix and inconvenient operation and may incur some considerable expense, will be totally useless unless you should have some well-founded expectation of securing the offender upon or after the arrival of the warrant, and of being able to effect his conveyance here for trial, and that you have provided the necessary evidence to ensure his conviction.

Shorn of everything which suggested practical power, except the name of British Resident, Mr. Busby soon found himself in no very enviable position. He was ignored by the whites and laughed at by the natives. To add still further to his difficulties he was slow to recognise that the Missionaries in the long years of their labour had naturally acquired more influence with the natives than he could possibly have, and he was reluctant to achieve his object by appearing to play a subordinate part to them. He had been explicitly instructed to seek their hearty co-operation, and take every advantage of the high respect in which they were held by the natives. It was not long, however, before he began to develop ideas of his own and to formulate a policy which he could not enforce, because it was at variance with that of the Missions.

He had also been accredited to the thirteen chiefs who had signed the memorial to the King in the previous year, and had been advised to seek their assistance in arresting those offenders whom he had power to transmit to Sydney for trial. The number of such persons whom he might have

¹¹ The Bill was not passed, because it was found that Parliament was legislating in a "foreign country," and this it has no power to do.

apprehended now totalled, we are assured, to several hundreds; but the process was, as Sir Richard Bourke had suggested, so obviously "prolix and inconvenient," that Mr. Busby exercised to the full the measure of discretion given him by the Governor, and left them severely alone.¹²

According to Captain Fitzroy, who visited the Bay of Islands during the cruise of H.M.S. *Beagle* in 1835, he preferred to fold his hands and allow events to shape their own course. "He chose to tell every one who went to him that he had no authority; that he was not even allowed to act as a Magistrate, and that he could do nothing. The consequence was that whenever anything did occur, those who were aggrieved went to the Missionaries. Mr. Busby might have very considerable power, because the Missionaries have such influence over the whole body of natives they could support him. If Mr. Busby wanted a person taken up he had only to express his wish to the Missionaries, and the natives would have done it for them, but he was slow to act in that way. He was sent there in a high character, and was accredited to the Missionaries, and had he communicated with them freely and allowed them to be cognisant of, if not the agents in all that took place, while he remained as the head, and the understanding had been that all that the Missionaries did was done in concert with Mr. Busby, and all that eventuated was from him as the head, his influence would have been far too great for any individuals in that part of the Islands to resist. By dividing the two influences Mr. Busby lost his power of preventing mischief. He remained on tolerably good terms with them, but separated himself in an unnecessary degree from them, and thought he might differ from them sometimes, even to taking a precisely opposite course of conduct to that which they recommended. The consequences were that while the natives retained their opinion of the Missionaries, they found that the Resident was a nonentity, and that he was there to look on and nothing more."

As illustrating the class of difference which sometimes arose between the Resident and the Missionaries, and which must have appreciably hampered the activities of both, Captain Fitzroy stated to the Committee of the House of Lords that when he was at the Bay of Islands in 1835 there was then a serious difference between the real and the nominal head of the community, with respect to the stopping or discouraging the sale of ardent spirits. The Missionaries wanted to carry into effect a regulation similar to one established in the Society Islands, namely, that no spirits should be imported into the country. Mr. Busby would not be a party to such a rule, contending that it was an unnecessary measure; while the Missionaries, on the other hand, were unanimous in declaring it was one of the most useful precautions they could take, but no amount of argument could induce Mr. Busby to cooperate with them.¹³

Mr. Busby at all times expressed the most profound respect for the Missionaries and veneration for their labours. He also cheerfully acknowledged that if the British Government expected them to accord their influence to its Representative they must be given a specified share in the government of the country. But when it came to a point of difference, he plainly let it be known that he considered himself possessed of a sounder judgment than they. After detailing to Governor Bourke a discussion in which he claimed to have got the better of the Missionaries, he wrote: "I thought they would naturally conclude in future that it was possible for the conclusions of a single mind, when directed

¹² Mr. Busby's difficulties in this connection were considerably increased by the fact that when British subjects were accused they frequently sheltered themselves under the American flag, saying, "We are Americans, you have no right to interfere with us." – Captain Fitzroy.

¹³ "After ardent spirits were introduced in the neighbourhood of Hokianga the Christian natives themselves became so sensible of the evils resulting from the use of them, that under the influence of the Missionaries the chiefs assembled and agreed to certain regulations, the effect of which was to prohibit the introduction and sale of ardent spirits. Those regulations received the sanction of the Governor of New South Wales, and were for a time partially carried into effect. Our Missionaries have transmitted a copy of the resolutions adopted at a meeting of the natives at Hokianga for the formation of a Temperance Society. Those resolutions were signed by fifteen native chiefs. One chief who was present declined for a time, but at length he agreed, and also signed them. Another chief remarked that it would be desirable that wine and porter should also be prohibited, for if they were allowed the English would say when the rum casks came that they were wine and porter, and by that means spirits would continue to be smuggled into the river. The later accounts give us reason to fear that notwithstanding these regulations spirits continued to be introduced there in defiance of the laws made by the native chiefs." – Rev. Dr. Beecham before Committee of House of Lords.

to one object, to be more correct than the collective opinions of many persons whose minds are altogether engrossed with the multitude of details which fill up the attention of men, occupied as they are, leaving neither leisure nor capacity for more enlarged and comprehensive views."

Mr. Busby might have said more in fewer words, but he could scarcely have depreciated the mental powers of the Missionaries in a more delightfully prolix sentence. Skilfully, however, as the sting was sheathed within a cloud of words, the barb came through, with the not unnatural result that he had to confess the Missionaries afterwards neither respected his opinions nor appeared anxious to co-operate with him in what he described as "the furtherance of matters connected with the King's service in this country."

Though severely handicapped by his inability to coordinate his ideas with those of the Missionaries, or to sink his individuality before theirs, it does not follow that Mr. Busby was entirely idle. He lent himself with considerable industry to the task of placing the shipping of the country upon a basis more satisfactory than it had up to that time been. At the date of his arrival there were a number of New Zealand owned craft trading on our coasts, and several vessels were building on the Hokianga River. Sailing as these vessels were under no recognised register, and without the protection of the British ensign, which they were prohibited from hoisting, they were liable to seizure at any time by any enterprising pirate.¹⁴ Equally impossible was it for these owners to register their craft in New Zealand, for there was as yet no acknowledged flag of the nation.

These facts were made the subject of representation by Mr. Busby to the Governor of New South Wales, who accorded a hearty approval to his suggestion that the commerce of the country warranted some protection of this nature. Flags of three separate designs were accordingly entrusted to Captain Lambert of H.M.S. *Alligator*, who brought them from Sydney and submitted them to the chiefs for approval.

This event took place at Waitangi, on March 20, 1834, the natives having been gathered from all the surrounding *pas* into a large marquee erected in front of the British Residency, and gaily decorated with flags from the *Alligator*. Wisely or unwisely the proceedings were not conducted upon the democratic basis of our present-day politics; for upon some principle which has not been made clear the tent was divided by a barrier into two areas, into one of which only the *rangatiras* were admitted, and to them the right of selection was confined. No debate was permitted, but Mr. Busby read to the chiefs a speech in which he dwelt upon the advantages to be anticipated from the adoption of a national flag, and then invited them to take a vote for the choice of design.

This mode of procedure created considerable dissatisfaction amongst the plutocracy of the tribes, who resented the doubtful privilege of being permitted to look on without the consequential right to exercise their voice. The stifling of discussion also tended to breed distrust in the minds of some of the chiefs, to whom the settlement of so important a matter without a *korero*¹⁵ was a suspicious innovation. Two of the head men declined to record their votes, believing that under a ceremony conducted in such a manner there must be concealed some sinister motive. Despite these protests, the British Resident and Captain Lambert had their way, and at the conclusion of Mr. Busby's address, the flags were displayed and the electors invited to vote. The great warrior chief Hongi, acting as poll-clerk, took down in writing the preference of each chief. Twelve votes were recorded for the most popular ensign, ten for the next in favour, and six only for the third. It was then found that the choice of the majority had fallen upon the flag with a white ground divided by St. George's Cross, the upper quarter of which was again divided by St. George's cross, a white star on a blue field appearing in each of the smaller squares.¹⁶

¹⁴ The British Admiralty agreed to respect and protect the New Zealand ships' registers after the National flag had been hoisted.

¹⁵ *Korero* = talk, debate, discussion.

¹⁶ Dr. Marshall, surgeon of H.M.S. *Alligator*, mentions that during his visit to the district he had become interested in a chief named Hau, who, prior to the voting, asked the Doctor for his opinion, on the designs. The Doctor favoured the one ultimately chosen, and Hau "having discovered how my taste lay, paid me the compliment of adopting it, and canvassed others for their votes also." This

The election over, the rejected flags were close furled, and the selected ensign flung out to the breeze beside the Union Jack of Old England.

In the name of the chiefs Mr. Busby declared the ensign to be the national flag of New Zealand. As the symbol of the new-born nation was run up upon the halyards, it was received with a salute of twenty-one guns from the warship *Alligator*, and by cheers from her officers and the goodly crowd of sailors, settlers, and Missionaries who had assembled to participate in the ceremony.

As is usual with most such functions where Britons are concerned, the event was celebrated by a feast. The Europeans were regaled at a cold luncheon at Mr. Busby's house, while the Maoris had pork, potatoes, and *kororirori*¹⁷ served upon the lawn in front of the Residency, which delicacies they devoured *sans* knives *sans* forks.

These proceedings subsequently received on behalf of the British Government the entire approbation of Lord Aberdeen;¹⁸ and the countenance thus lent to what at the time was regarded as no more than a protection to the commerce of the country was discovered to have a most important bearing upon the question of Britain's sovereignty over these islands.

Though Mr. Busby found himself destitute of legal power or military force to make good his authority, and equally lacking in the tact necessary to secure by policy what he could not achieve by any other means, he was sincerely and even enthusiastically loyal to the main principle underlying his office – the preservation of British interests. Thus when the tidings came that Baron de Thierry intended to set up his kingdom at Hokianga, he took immediate and, as far as lay in his power, effective steps to defeat what he regarded as a wanton piece of French aggression.

Baron de Thierry was not a Frenchman in the narrow sense of the term, and his foreign associations were more imaginary than real. He was the son of a French noble refugee who had fled his country and had resided in England for many years. The Baron had been educated at Cambridge, had acquired English sympathies, and had been an officer in the 23rd Lancers, so that he was in sentiment if not by birth a subject of the King. When Hongi, the great Nga-Puhi chief, visited Cambridge in company with his compatriot Waikato and Mr. Kendall, to assist Professor Lee in the compilation of the Maori vocabulary, the Baron met the warrior chief, and became fired with the romance of the Pacific. There was much that was quixotic in his scheme of becoming a potentate amongst the savages of the South Seas, and it is possible it was not altogether devoid of benevolence.¹⁹ There is at least reason to believe that Baron de Thierry had persuaded himself that he also had a mission for the uplifting of the benighted, and that when he arranged with Mr. Kendall to purchase him an area of land at Hokianga whereon he proposed to set up his "kingdom," he did so more in the spirit of philanthropy than of mercenary adventure. The area alleged to be purchased by Mr. Kendall on behalf of the Baron was the considerable one of 40,000 acres, and the price paid was the inconsiderable one of 36 axes. The transaction was accompanied by the usual misunderstanding as to the real nature of the deal, the Baron declaring that the axes were payment in full, the natives contending they were but a deposit, or at the best payment for a much smaller area.

The chiefs treated his "sovereign rights and powers" with undisguised derision. They disavowed his territorial claims because they were made regardless of the fundamental principle underlying the

influence in all probability decided the election. After cession of sovereignty to the Queen in 1840 this flag was of course superseded by the Union Jack as a National ensign. It was then adopted by the Shaw Savill & Albion Shipping Company, and is now flown by them as their house flag.

¹⁷ *Kororirori* was a mixture of flour and water, sweetened with sugar, of which the natives had become very fond. While the feast was in progress word came that Pomare had arrived at the Bay at the head of a large armed party. Mr. Williams was sent to enquire why he had brought arms to a peaceable gathering? He replied, "It is New Zealand custom," and then added, "The *Rangatira* from the warships have their swords, and we ought not for shame to be without our guns," an observation which left little room for an effective rejoinder. Pomare, who was a great stickler for etiquette, was offended because he thought he had not been properly invited, and took this method of showing his displeasure. He was however soon placated by the Missionary.

¹⁸ *Vide* his despatch of November 21, 1834.

¹⁹ The Baron has been described as a crotchety enthusiast rather than a knavish schemer.

Maori law of property – that all the people who have an interest in the land must consent to its sale. Subsequently the matter was compromised by Tamati Waaka Nēne conceding him a small area,²⁰ to which he retired destitute of retainers, and surrounded only by the members of his own family.

The story of the Baron's landing in 1837, with much pomp and circumstance, under a salute of twenty-one guns, his dispute regarding Kendall's purchase, his final disappearance into obscurity, are, however, of secondary importance to our purpose. What is of vital interest is that the announcement in 1835 of his approaching advent galvanised the British Resident and the native chiefs into a state of anxious activity. Living as they were on the confines of civilisation, their information concerning events outside their own little world was necessarily of the scantiest. Their fears were thus often greater than their knowledge of the facts, and so in this emergency they had no difficulty in persuading themselves that an invasion by the French was at hand.

As a counterblast, Mr. Busby counselled that the chiefs should immediately crystallise the position taken up by Britain – that New Zealand was not a British possession – by unequivocally declaring their own independence. His policy was approved, and for the purpose of giving effect to it, thirty-five chiefs assembled at Mr. Busby's house at Waitangi, where in the presence of the resident Missionaries and merchants they evolved the following declaration,²¹ which brought into existence the much-questioned and questionable authority known as The Confederated Tribes of New Zealand.

It is not difficult to trace the Roman hand of the Resident throughout the document, especially as the Maori had no word in their language to express the idea of sovereignty; but it is only just to remark that in a subsequent despatch Mr. Busby drew the attention of Governor Bourke to the fact that the concluding paragraph, both in language and sentiment, originated with the chiefs:

DECLARATION OF INDEPENDENCE OF NEW ZEALAND

(1) We, the hereditary chiefs and head of the tribes of the Northern parts of New Zealand, being assembled at "Waitangi" in the Bay of Islands on this 28th day of October 1835, declare the independence of our country, which is hereby constituted and declared to be an independent state, under the designation of the United tribes of New Zealand.

(2) All Sovereign powers and authority within the territories of the United tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of the tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of Government to be exercised within the said territories unless by persons appointed by them and acting under the authority of laws regularly enacted by them in Congress assembled.

(3) The hereditary chiefs and heads of the tribes agree to meet in Congress at Waitangi, in the autumn of each year, for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade, and they cordially invite the Southern tribes to lay aside their private animosities, and to consult the safety and welfare of our common country by joining the confederation of the United tribes.

(4) They also agree to send a copy of this declaration to His Majesty the King of England, to thank him for his acknowledgment of their flag, and in return for the friendship and protection they have shown and are prepared to show to such of his subjects as have settled in their country, or resorted to its shores for the purpose of trade, they entreat that he will continue to be the parent of their infant State, and that he will become its protector from all attempts upon its independence.

²⁰ Nēne gave him 5000 acres, which was subsequently reduced by quarrels and quibbles to 1000 acres.

²¹ Sir George Gipps, Governor of New South Wales, in succession to Sir Richard Bourke, in a despatch dated August 1840, speaks of the Declaration, as entirely a measure of Mr. Busby's concoction, and designates it "a silly as well as an unauthorised act – a paper pellet fired off at the Baron de Thierry."

Agreed unanimously on this 28th day of October 1835 in the presence of His Britannic Majesty's Resident.

English Witnesses:

HENRY WILLIAMS, Missionary C.M.S.
GEORGE CLARKE, " "
JAMES C. CLENDON, Merchant.
GILBERT MAIR, "

(Translated by the Missionaries and certified to by James Busby, British Resident.)

Names of Chiefs signing Declaration of Independence, October 28, 1835

Awaroa.
Hare Hongi.
Hemi Kepa Tupe.
Ware Poaka.
Waikato.
Titore.
Moka.
Wharerahi.
Kewa.
Wai.
Reweti Atuaahaere.
Awa.
Wiremu Te Ti Taunui.
Te Nana.
Pi.
Kaua.
Tareha.
Kawiti.
Pumuka.
Ke Keae.
Te Kamara.
Pomare.
Wiwia.
Te Tao.
Marupo.
Kopiu.
Warau.
Ngere.
Moetara.
Hiamoe.
Pukututu.
Te Peka.
Hone Wiremu Heke.
Paerara.

Erera Pare (te kai-tuhituhi).

Subsequent Signatures to the Declaration Of Independence

Nēne (Tamati Waaka).

Huhu.

Patuone.

Parore, June 25, 1837.

Towa.

Panakareao (Nopera).

Kiwi Kiwi, Jan. 13, 1836.

Tirarau, Feb. 9, 1836.

Hamurea Pita, March 29, 1836.

Tawhai.

Mate.

Kaha, June 25, 1837.

Te Morenga, July 12, 1837.

Mahia.

Taonui, Jan. 16, 1838.

Papahia, Sept. 24, 1838.

Hapuku, Sept. 25, 1838.

Te Wherowhero, July 22, 1839.²²

A few days prior to this meeting at Waitangi and the proclamation of their independence by the chiefs, Mr. Busby issued (on October 10, 1835) a stirring appeal to his scattered countrymen, in which he announced that he had received from "a person who styles himself Charles Baron de Thierry, Sovereign chief of New Zealand, and King of Nukuheva, one of the Marquesas Islands, a formal declaration of his intention to establish in his own person an independent sovereignty in this country, which intention he states he has declared to their Majesties the Kings of Great Britain and France, and to the President of the United States, and that he is now waiting at Otaheite the arrival of an armed ship from Panama to enable him to proceed to the Bay of Islands with strength to maintain his assumed authority. His intention is founded on an alleged invitation given to him in England by Shunghee (Hongi) and other chiefs, none of whom as individuals had any right to the sovereignty of the country, and consequently possessed no authority to convey a right of sovereignty to another; also upon an alleged purchase made for him in 1822 by a Mr. Kendall of three districts on the Hokianga River from three chiefs who had only a partial property in these districts, parts of which are now settled by British subjects by virtue of purchase from the rightful proprietors. The British Resident has also seen an elaborate exposition of his views which this person has addressed to the Missionaries of the C.M.S., in which he makes the most ample promises to all persons, whether whites or natives, who will accept his invitation to live under his Government, and in which he offers a stipulated salary to each individual in order to induce him to act as his Magistrate. It is also supposed he may have made similar communications to other persons or classes of His Majesty's subjects, who are hereby invited to make such communications, or any information on this subject they may possess, known to the British Resident or to Lieutenant MacDonnell. The British Resident has too much confidence in the loyalty and good sense of his countrymen to think it necessary to caution them against turning a favourable ear to such insidious promises. He firmly believes that the paternal protection of the British Government which has never failed any of His Majesty's subjects, however remote, will not

²² The chiefs who signed this document were thoroughly representative of the tribes residing between the North Cape and the latitude of the River Thames.

be withheld from them, should it be necessary to prevent their lives, liberties, or property from being subjected to the caprice of any adventurer who may choose to make this country, in which British subjects have now by the most lawful means acquired so large a stake, the theatre of his ambitious projects; nor in the British Resident's opinion will His Majesty, after acknowledging the sovereignty of the New Zealand chiefs in their collective capacity, by the recognition of their flag, permit his humble and confiding allies to be deprived of their independence upon such pretensions. But although the British Resident is of opinion that such an attempt as is now announced must ultimately fail, he nevertheless conceives that if such a person were once allowed to obtain a footing in the country, he might acquire such an influence over the simple-minded natives as would produce effects which could not be too much deprecated, or too anxiously provided against, and he has therefore considered it his duty to request the British settlers of all classes to use all the influence they possess with the natives of every rank in order to counteract the efforts of any emissaries who may have arrived or may arrive amongst them, and to inspire both chiefs and people with a spirit of the most determined resistance to the landing of a person on their shores who comes with the avowed intention of usurping a sovereignty over them. The British Resident will take immediate steps for calling together the native chiefs in order to inform them of this attempt upon their independence, and to advise them of what is due to themselves and to their country, and of the protection which British subjects are entitled to at their hands, and he has no doubt that such a manifestation will be exhibited of the characteristic spirit, courage, and independence of the New Zealanders, as will stop at the outset such an attempt upon their liberties, by demonstrating its utter hopelessness."

It is somewhat difficult to say, in the absence of contemporary newspapers, what impression was created in the public mind by the Resident's proclamation or by the native Declaration of Independence, but in due course the latter was, in accordance with the unanimous desire of the chiefs, "laid at the feet of His Majesty," and in the following year – so tardy was communication in those days – it was courteously, but guardedly acknowledged by Lord Glenelg, who wrote to Governor Bourke:

"With reference to the desire which the chiefs have expressed on this occasion, to maintain a good understanding with His Majesty's subjects, it will be proper that they be assured, in His Majesty's name, that he will not fail to avail himself of every opportunity of showing his goodwill, and of affording to those chiefs such support and protection as may be consistent with a due regard to others, and to the interests of His Majesty's subjects."

Left to its own devices, the native Confederation was faced with a task that proved altogether too exacting for its resources, and it cannot be claimed for the new authority that it remodelled the Government or reclaimed the dissolute society by which it was surrounded. Had it been possible to restrict the intercourse of the natives to the Missionaries and the more respectable portion of the settlers, they might, combined with the counsels of the Resident, have been speedily induced to form an effective administration amongst themselves, and that important stage once reached, they, with their quick intelligence, might have easily acquired a working knowledge of the higher principles of self-government. But thrust as they were in the midst of a strangely confused community, any such limitation was obviously impossible.

Even if it had been practicable, the irreconcilable differences which had sprung up between the Resident and the Missionaries, of which the natives were perfectly cognisant, necessarily detracted from the beneficial influence which an official in Mr. Busby's position might, and ought to have wielded.

The absence of the physical force which Mr. Busby pined for was unmistakably against the due observance of the ordinary decencies of life, for the people whom Captain Fitzroy had described as "ragamuffins," and Captain Hobson had still more emphatically condemned as "abandoned ruffians," were scarcely likely to be amenable to anything more gentle than the grip of the handcuff or the probe of the bayonet. It was therefore to but little purpose that the Confederation should pass ordinances which, if not respected, could not be enforced.

The difficulties of the Confederation accumulated with the increase of trade and population, both of which were growing rapidly. In the year 1836 no fewer than 93 British, 54 American, and 3 French ships put in at the Bay of Islands. The irregular settlement of white people at various spots along the coast had increased in like manner, until in the early part of 1838 a body of no less than 2000 British subjects had taken up their permanent abode in New Zealand. The part these people were playing in the scheme of civilisation was still small, if we are to accept as accurate the verdict of Dr. G. R. Jameson, who in his *Travels in New Zealand* has taken the responsibility of saying that from all he had seen and heard respecting the fixed traders, or the casual visitors for trade, it could be affirmed in the most positive terms that not one of them had ever attempted to teach a native to read or write, or to communicate to his mind one ray of Christian knowledge or of moral rectitude. With a few honourable exceptions they had been in their intercourse with the natives guided by one ruling impulse – the love of gain. Their predominant aim was ever and always to obtain the greatest possible quantity of pigs, potatoes, flax, maize, labour, or land in exchange for the smallest possible amount of tobacco, ammunition, and piece-goods.²³

It was not alone, however, by the criminal taint of a large section of the population and this excessive hunger for trade that the seeds of continued anarchy were sown. A new evil was at hand which threatened to sap the independence of the Maori, and reduce them to a condition of speedy and abject poverty. This was the land hunger which about this time seized the white population of Australia. There the opinion had gripped the public mind that under the Declaration of Independence it would be possible to pursue in New Zealand the schemes of land aggregation which Sir George Gipps had checked in New South Wales. Under his new land regulations the price of land in that colony had been raised from 3s. to 12s. per acre, and hearing that large areas were to be obtained in New Zealand for less than the proverbial song, the speculators swarmed over to the Bay of Islands, and in the year 1837 the land fever in all its phases of "sharking," "jobbing," and legitimate purchase literally raged throughout the country. "What gold was to the Spaniard in Mexico the land at this period became to the English in these islands, and as the warlike aborigines most coveted the acquisition of firearms, they divested themselves of their only possessions in order to obtain those deadly instruments, which, together with ardent spirits, were the most potent means for the destruction of their race. Almost every captain of a ship arriving in Sydney exhibited a piece of paper with a tattooed native head rudely drawn upon it, which he described as the title-deed of an estate bought for a few muskets, hatchets, or blankets."

Several years elapsed before it was possible to reduce these frenzied bargains to tabulated form, but during the debate on New Zealand affairs, which occupied the House of Commons for three days in 1845, the representative for Westminster, the Hon. Captain Rous, R.N., put forward the following startling figures as authentic. A Mr. Webster, an American, he said, claimed to have purchased forty miles of frontage on the west side of the river Piako;²⁴ a Mr. Painham claimed nearly the whole of the north coast of the Northern Island. Mr. Wentworth of New South Wales asserted his right to 20,100,000 acres in the Middle Island; Catlin & Co. to 7,000,000; Weller & Co. to 3,557,000; Jones & Co. to 1,930,000; Peacock & Co. to 1,450,000; Green & Co. to 1,377,000; Guard & Co. to 1,200,000, and the New Zealand Company to 20,000,000.

Yet another authority has stated that the whole of the South Island was claimed by a Company consisting of four gentlemen, in consideration of giving the chiefs a few hundred pounds in money and merchandise, and a life annuity of £100.²⁵ Another individual, representing a commercial firm in Sydney, claimed several hundred thousand acres, including the township of Auckland, for which

²³ Dr. Jameson concludes his unalluring picture, by the statement: "It is to the Missionary labour only that we can justly attribute the abolition of infanticide, polygamy, and the atrocities of native warfare which have disappeared before the dawn of Christianity."

²⁴ This claim is still the subject of negotiation between the British and United States Governments.

²⁵ Probably the Wentworth Purchase.

he paid as compensation one keg of gunpowder. The island of Kapiti was claimed by five different parties, each declaring they had purchased it, but each naming a different price. Some alleged they had paid £100, others goods to the value of £30, and so on, the only point of unanimity being that they were each able to produce something that resembled the signatures of Te Rauparaha or Te Rangihaeata.

In much the same way the district round Porirua was claimed by eight separate parties, each contending that Te Rauparaha had sold to them, and to them alone. Cooper, Holt & Rhodes of Sydney asserted they had paid merchandise to the value of £150 for a tract of country between the Otaki and Waikanae Rivers, running in an easterly direction forty miles from the mouth of the river, thirty miles in another direction, and ten miles along the coast. Mr. John Hughes, also of Sydney, claimed in part all the lands of Porirua for a distance of thirty miles, bounded by the sea on the one hand, and by the Tararua Range on the other.

In the general censure which followed upon the disclosure of these unseemly proceedings the Missionaries did not escape criticism, and are still, at times, subject to severest strictures on this question, as it affects public morals. Unjust as these strictures frequently are the purchase from Hongi, in 1819, of 13,000 acres at Kirikiri for forty-eight axes, by the Rev. Samuel Marsden,²⁶ was one amongst other transactions which on the face of it seems to leave room for the gravest enquiry as to its propriety.²⁷

If the Confederation of chiefs had been helpless in the face of social disorder, it was still more impotent to cope with the inroads of the speculator. The greed for land on the part of the *Pakeha*, and the hunger for muskets on that of the Maori, rendered futile all attempts to control the traffic by an already effete administration. The need for a wider application of authority and efficient Government at length found voice in a petition which was submitted to the King by the law-abiding settlers at Kororareka. The settlers, catechists, and Missionaries to the number of one hundred and ninety-two, headed by the Rev. Henry Williams, Chairman of the Church Mission, joined in the plea for protection.

During the course of their representations they made it clear that the attempt to evolve order out of chaos had utterly failed; that the Confederation of Chiefs was impotent in the face of existing evils; and, praying that His Majesty would graciously regard the peculiarity of their position, asked that he would afford them such relief as to him seemed most expedient.

TO THE KING'S MOST EXCELLENT MAJESTY

Sire – May it please Your Majesty to allow your faithful and loyal subjects at present residing in New Zealand to approach the throne, and crave your condescending attention to their petition which is called forth by their peculiar situation.

The present crisis of the threatened usurpation of power over New Zealand by Baron Charles de Thierry, the particulars of which have been forwarded to Your Majesty's Government by James Busby, Esquire, the British Resident, strongly urges us to make known our fears and apprehensions for ourselves and families, and the people amongst whom we dwell.

Your humble Petitioners would advert to the serious evils and perplexing grievances which surround and await them arising for the most part, if not entirely from some of Your Majesty's

²⁶ The deed confirming this transaction is now in the Hocken Collection at Dunedin.

²⁷ "The Missionaries have been successful, but I think a greater effect might be given to them if their minds were relieved from those secular things which press upon them on behalf of their children. If they could devote their lives to the service of Christianity instead of trying to better the condition of their own children. At present they are cultivating their land. To use the words of the Rev. Henry Williams – They are just holding on for their children, seeing no other prospect for them than the cultivation of those lands. They cannot send them home to England, for that would be too expensive; New South Wales would not be desirable for them, and this is their only chance." – Evidence of Mr. John Flatt (formerly a catechist of the C.M.S.) before a Parliamentary Committee.

subjects, who fearlessly commit all kinds of depredations upon other of Your Majesty's subjects who are peaceably disposed. British property in vessels, as well as on shore, is exposed without redress to every imaginable risk and plunder, which may be traced to the want of a power in the land to check and control evils, and preserve order amongst Your Majesty's subjects.

Your Petitioners are aware that it is not the desire of Your Majesty to extend the colonies of Great Britain, but they would call Your Majesty's attention to the circumstance of several of Your Majesty's subjects having resided for more than twenty years past, since which their numbers have accumulated to more than five hundred, north of the River Thames alone, many of whom are heads of families. The frequent arrival of persons from England and the adjacent colonies is a fruitful source of further augmentation. Your Petitioners would therefore humbly call Your Majesty's attention to the fact that there is at present a considerable body of Your Majesty's subjects established in this Island, and that owing to the salubrity of the climate there is every reason to anticipate a rapidly rising colony of British subjects. Should this colony continue to advance, no doubt means would be devised whereby many of its internal expenses would be met as in other countries. There are numbers of land-holders, and the Kouri (Kauri) forests have become, for the most part, the private property of Your Majesty's subjects.

Your humble Petitioners would also entreat Your Majesty's attention to the important circumstance that the Bay of Islands has long been the resort of ships employed in the South Sea fishery and the Merchant Service, and is in itself a most noble anchorage for all classes of vessels, and is further highly important in affording supplies and refreshment to shipping. There are also several other harbours and anchorage of material importance to the shipping interests in situations where British subjects have possessions and property to a large amount. The number of arrivals of vessels in the Bay of Islands during the last three years has been considerably on the increase. At one period thirty-six were at anchor, and in the course of six months ending June 1836 no less than one hundred and one vessels visited the Bay.

Your Petitioners would further state that since the increase of the European population several evils have been growing upon them. The crews of vessels have frequently been desecrated on shore, to the great detriment of trade, and numberless robberies have been committed on shipboard and on shore by a lawless band of Europeans, who have not even scrupled to use firearms to support them in their depredations. Your humble Petitioners seriously lament that when complaints have been made to the British Resident of these acts of outrage, he has expressed his deep regret that he has not yet been furnished with authority and power to act, not even the authority of a civil Magistrate to administer an affidavit.

Your humble Petitioners express with much concern their conviction that unless Your Majesty's fostering care be extended towards them, they can only anticipate that both Your Majesty's subjects and also the aborigines of this land will be liable in an increased degree to murders, robberies, and every kind of evil.

Your Petitioners would observe that it has been considered that the confederate tribes of New Zealand were competent to enact laws for the proper Government of this land, whereby protection would be afforded in all cases of necessity; but experience evidently shows that in the infant state of the country this cannot be accomplished or expected. It is acknowledged by the chiefs themselves to be impracticable. Your Petitioners therefore feel persuaded that considerable time must elapse before the chiefs of this land can be capable of exercising the duties of an independent Government.

Your Petitioners would therefore pray that Your Majesty may graciously regard the peculiarity of their situation, and afford that relief which may appear most expedient to Your Majesty.

Relying upon Your Majesty's wisdom and clemency we shall ever pray Almighty God to behold with favour and preserve our Gracious Sovereign.

CHAPTER II

SEEKING A WAY

The cry for better Government was thus becoming imperative, and the demand was not a new one. Both the House of Lords and the House of Commons had entered upon exhaustive enquiries into the subject. The former had reported that the responsibility of extending the colonial possessions of the Crown was one that rested solely with the Government, while the latter had declared in spirited terms that "however pressing the nation's need for a vigorous emigration policy, and whatever action the Government might take to meet that need by finding a soil to which its surplus population might retreat, the House would tolerate no scheme which implied violence or fraud in taking possession of such territory." The reference to "surplus population" in the House of Commons' report introduces a new factor into the problem. It indicates internal as well as external pressure; it tells of clamour from the teeming cities, and a rural population discontented with their lot. It suggests that the nation's mind had moved faster than the politicians, and that already many of England's artisans were seeking to escape to some new country where they might live under freer conditions. The popular theory of the political economists of those days was "over population," and the panacea for the existing national poverty was emigration. In spite of the fact that people are the most precious asset a country can ever have, both doctrines found much favour with the different sections of the community whose interest they seemed best to serve; the spirit of colonisation had got into the air, and the question of finding new fields for the energies of the "surplus" people became a practical issue which no Government could afford to ignore. The necessity for doing something appeared impossible of evasion. Poverty at home and crime unchecked abroad clamoured for redress, but just what to do, or how to do it, was not easy of decision.

Sir Richard Bourke had told the Government in plainest terms that unless they were prepared to give the British Resident more power, and permanently station a ship of war on the coast to support him, it would be more in keeping with the dignity of the nation to withdraw him altogether. To give him more power was an impossibility, unless the Government was prepared to violate the express injunction of the House of Commons and all the precedents by which they had acknowledged the independence of the Maoris. It was therefore not practicable to supply the existing deficiency by extending the jurisdiction of Mr. Busby.

In their dilemma the Ministers turned for light and leading to the comparatively few people then in England who had previous experience of these far-away islands. Amongst these was Captain Hobson, who in 1837 had been sent over in H.M.S. *Rattlesnake* pell-mell to render what aid he could to British shipping and British interests generally, on news reaching Sydney of serious hostilities between two of the northern tribes.²⁸ Captain Hobson had on his return furnished the Governor with a report upon the condition of affairs as he found them at the settlements he had visited. He had also entered into the discussion of a scheme for the future government of the country, in which he favoured proceeding upon the plan of the Hudson Bay and East India Companies by establishing trading factories in different parts of the islands, and so fulfilling what he urged had become a solemn duty to apply a remedy for a growing evil. "It has occurred to me," he wrote, "that if factories were established at the Bay of Islands, at Cloudy Bay, and Hokianga, and in other places as the occupation by British subjects proceeds, a sufficient restraint could be constitutionally imposed on the licentious whites, without exciting the jealousy of the New Zealanders or of any other power. I will not presume to enter too deeply into the details of such a measure, but beg simply to suggest that sections of land be

²⁸ This war, it is said, arose through some one on board the *Roslyn Castle* carrying off a native woman of high rank to sea. Her friends at Kawakawa accused the people of Kororareka of killing and eating her in satisfaction of an old feud. This they denied, but a war ensued, 1500 fighting men being engaged, the war continuing for several months, eighty being killed.

purchased, enclosed, and placed within the influence of British jurisdiction as dependencies of this (New South Wales) colony. The heads of factories should be Magistrates, and the chief factor should, in addition, be accredited to the united chiefs of New Zealand as a political agent and consul. All communications with the British Government should take place through the chief factor, with whom alone the local factors should correspond. All British subjects should be required to register themselves and their landed property at the factories. Two or more respectable British residents nearest to each station should hold Commissions of the Peace to assist the factors. Prisons should be constructed within the factories and legally proclaimed in the colony. A treaty should be concluded with the New Zealand chiefs for the recognition of the factories and the protection of British subjects and property. To meet the expenses which the establishment of a system of factories upon the principle I have mentioned would necessarily entail, funds might be obtained from a variety of sources, such as a small fee on the registration of the purchase of land from the natives, on the entry and clearance of British shipping, and a small percentage on goods and produce imported and exported. The great security which would result from this system would, it is conceived, readily dispose the British subjects resident in New Zealand, to conform to such an impost."

After acknowledging the primary need for Imperial legislation to give effect to his suggested policy, he continues: "The benefit which may be supposed to arise from the establishment of factories in New Zealand is not confined to the mere legal protection they are supposed to afford; but we may hope they will be the means of introducing amongst the natives a system of civil Government which may hereafter be adopted and enlarged upon. Nor is it to be overlooked that in times of intestine war they will afford a safe retreat to our fellow-countrymen, who will then become powerful by concentration."

In the estimation of Sir Richard Bourke, Captain Hobson's scheme contained "suggestions of great value," and in transmitting it to the Colonial Office he not only gave it his full endorsement, but justified it because it was in his opinion "neither possible nor desirable to put a stop to the growing intercourse between the English colonies in these seas and New Zealand." He also raised his voice against the neutral policy which was being pursued, for while admitting the failure of the British Residency, he protested that "it would be difficult for His Majesty's or this Government to act for any length of time upon the stern principle of non-interference if the lives and property of British subjects appeared to be in jeopardy. Any plan, therefore, by which the intercourse may be sufficiently regulated, and usurpation, real or apparent, avoided, is well worthy of serious consideration."

Simultaneously with Captain Hobson's scheme, was sent a letter from Mr. Busby, written while the *Rattlesnake* was in New Zealand waters. In this communication the Resident also endeavoured, for the guidance of Ministers, to reduce to a system a scheme of government based upon his several years' experience of the people and the country. Governor Bourke evidently looked upon it with a less favourable eye than he did upon the report of the naval officer, and commended it merely as advancing "suggestions that were not without value."

This letter must, however, be regarded by all historians as the more valuable of the two, for in it will be found the germ of the treaty which was afterwards adopted by both *Pakeha* and Maori as the basis upon which New Zealand was taken into the British Empire; upon which her past progress has been built, and her future prosperity must depend.

In the previous year (1836) Mr. Busby had made a somewhat similar suggestion, founded upon the principle sanctioned by the Treaty of Paris in the case of Great Britain and the Ionian Isles, and also applied in various instances on Britain's Indian frontier. That principle recognised "a protecting state administering in chief the affairs of another State in trust for the inhabitants," and this condition he claimed could be, with but slight modification, applied to New Zealand both economically and efficiently. Mr. Busby was by no means of the opinion, afterwards so contemptuously expressed by Sir George Gipps, that the native Declaration of Independence was "a paper pellet fired off at Baron de Thierry." On the contrary, he attached considerable importance to it, proposing to make it the

authority on which the chiefs were entitled to enter into diplomatic relations with Great Britain for the cession of their administrative rights.

"The chiefs who were parties to the articles of Confederation, and to the Declaration of Independence," he wrote, "together with those who subsequently adhered to it, include, with very few exceptions, the whole of the chiefs of influence in the northern parts of the Islands, and the adhesion of the remainder could at any time be procured. Whatever acts approaching to acts of sovereignty or government have been exercised in the country, have been exercised by these chiefs in their individual capacity, as relates to their own people, and in their collective capacity as relates to their negotiations with the British Government, the only Government with which the chiefs or people of New Zealand have had any relations of a diplomatic character. The articles of Confederation having centralised the powers of sovereignty both *de jure* and *de facto* by the several chiefs, and having established and declared the basis of a constitution of government founded upon the union of those powers, I cannot, I think, greatly err in assuming that the congress of chiefs, the depositing of the powers of the State, as declared by its constitution, is competent to become a party to a treaty with a foreign power, and to avail itself of foreign assistance in reducing the country under its authority to order, and this principle being once admitted all difficulty appears to me to vanish."

It did not, however, enter into the proposal of Mr. Busby that the British Government should be both in theory and in fact the administrative authority. He still contemplated the retention of the federated chiefs as the nominal source of power, with himself as its presiding genius. "In theory and ostensibly the government would be that of the confederated chiefs, but in reality it must necessarily be that of the protecting power. The chiefs would meet annually, or oftener, and nominally enact the laws proposed to them, but in truth the present race of chiefs could not be entrusted with any discretion whatever in the adoption or rejection of any measure that might be submitted to them."

He proposed to constitute the chiefs guardians of the peace and public morals, and to pay them for their services. Schools were to be established, and the Missionaries and catechists were, as far as their duties would permit, to be appointed Justices of the Peace, whose decisions were, if needs must, to be supported by a military force. Even a periodical newspaper was provided for as a means of "instructing the natives in those relative duties of the people and their rulers, which are familiar to all ranks of the population under established Government, but of which the New Zealanders have scarcely yet formed an idea." Revenue was to be raised by an impost on shipping and a duty upon spirits and tobacco. Indeed, so modest was his contemplated civil establishment that he estimated an expenditure of not more than £1000 per annum would be sufficient to maintain it in adequate splendour. All existing land claims were to be settled by an independent commission, and after that all titles were to be void unless procured through the Government, whose special duty it would be to see that ample reserves were retained for the natives.

Mr. Busby, in submitting these proposals, ventured to suggest that they might be presumed to give an effective degree of protection to the British subjects resident in New Zealand, without infringing on the rights of the New Zealanders as an independent people and at the same time "satisfy the reasonable scruples of a foreign Government." This latter condition was one that in maturing their plans the British Cabinet could not leave out of their consideration; for already both France and America were factors to be counted upon in the South Pacific, and might with almost equal justice claim a share in the sovereignty of the country.

The Government were still wrestling with the perplexities of the position when the New Zealand Association rose into being, and served to still further complicate the issues. There was an opinion in political circles, afterwards crystallised into a definite recommendation by the House of Lords, that the colonisation of New Zealand was the duty of the State, if it was Britain's duty at all, but private enterprise had never been wholly disassociated from the scheme.²⁹ As far back as 1825 a

²⁹ In 1821 Mr. Henry Goulburn, by direction of Earl Bathurst, informed R. M. Sugden that his Lordship "did not feel he had any

New Zealand Company, "acting with the sanction and encouragement of the Government," had been formed under Lord Durham, and had acquired an estate on the banks of the Hokianga River. This settlement, under Captain Heard, had been of the most fugitive character; but the land still remained more or less an asset, and subsequently was acquired by the New Zealand Association, founded in 1837 by the Hon. Francis Baring, M.P. for Sheffield, in conjunction with other gentlemen prominent in English public life of that day. This Association grew out of an enquiry made at the instance of the House of Commons by a committee called the Committee on Colonial Lands, but the real subject of the enquiry was colonisation. One of the principal witnesses was Mr. Edward Gibbon Wakefield, who gave some account of the then existing state of New Zealand, and spoke of it as a country extremely eligible for the purpose of British colonisation, provided some regular system should be adopted in place of the lawless practices that were then rampant. In consequence of that statement, a member of the committee spoke to him upon the subject of colonising New Zealand. Subsequently other gentlemen were admitted to their discussions, and as a result of their joint deliberations they determined to form an Association for the purpose of obtaining from Parliament (for Parliamentary aid was considered essential) some regulation both for the colonisation and the government of the Islands, to take the place of the irregular practices that were then on foot.

There is little doubt that in its inception the Association had a large measure of philanthropy underlying its principles, for it was the outcome of the unsatisfactory social conditions existing in England at that period. The scheme attracted to its aid men of wealth and culture, and under the organising genius of Edward Gibbon Wakefield it acquired an influence, both social and political, which no government could safely regard with indifference.³⁰

To secure New Zealand as a British possession; to find a profitable investment for British capital; and to provide employment and opportunity for England's idle labour were the nominal objects for which the Association had been formed. To give these purposes practical effect the Association had, under the guiding hand of Wakefield, formulated definite theories upon the subject of colonisation; and to the end that their ideals might be achieved they sought the assistance of the Government and the sanction of Parliament.

On a day in June 1837 they secured an interview with the Prime Minister, Lord Melbourne, whom they found attended by Lord Howick, a member of the Government, though not of the Colonial Office, and who was present, so they were told, in the character of an adviser on the subject, he having paid considerable attention to colonial problems. The aims and purposes of the Association were laid before the Ministers by Mr. Baring, chairman of the society, and the result of the deputation was an assurance from the Premier that for himself he saw no objection to the scheme of the Association, and that he perceived in some of their purposes a laudable object, but that not being familiarly conversant with such subjects he did not care to do more than to express his general approbation, and to refer the deputation for the discussion of all matters of detail to Lord Howick, who was well informed on all such questions, and who possessed, in the office which he held, as much leisure as would enable him to attend to the subject. The committee was highly satisfied with their interview, and communicated in various ways with Lord Howick upon the details of their plan, amongst other things submitting to him a draft of the Bill which they proposed to introduce into the House of Commons. Lord Howick

power of approving any particular encouragement to the establishment of a colony in New Zealand." In 1822 Earl Bathurst informed Thomas England and Messrs. Taylor and Upton that no encouragement was given by the Government to settlers to proceed to New Zealand. In the same year Mr. John Thomson, A.M., Edinburgh, offered to found a colony of 50 sober men, 100 Sepoys, and 100 convicts, as "the inhabitants of New Zealand are just in that state of civilisation to be made useful." In November 1823 Lieutenant-Colonel Nicolls, an ex-Indian officer, made a proposal to Earl Bathurst to establish a colony of military pensioners. In the following month Baron de Thierry's scheme was brought under the notice of the Government. The year 1825 saw the first New Zealand Company established. Colonel R. Torrens, who afterwards did such good work in South Australia, applied in 1826 for the command of a military force in New Zealand, and so enable him to "make preliminary arrangements which would facilitate the future colonisation of these islands upon sound economical principles."

³⁰ It was said that at one period of its existence the New Zealand Association could command 42 votes in the House of Commons.

examined the Bill, and both in conversation and in writing suggested various modifications, which though not universally approved by the promoters, were adopted in their entirety rather than risk the loss of that influence which they considered essential to the success of their plan – the assistance of the Executive Government. The death of the King, William IV., at this juncture, put a sudden termination to their political proceedings; but the outlook for their negotiation appeared so satisfactory that, pending the assembly of the new Parliament, they published an invitation to all persons so disposed to join the Association for the purpose of emigrating to New Zealand. The publication of this resolution drew to their ranks a large body of wealthy and influential people; and when Parliament met again in December of the same year a very considerable number of persons had expressed their intention of settling in the new colony. Accordingly the committee, on December 13, again waited on Lord Melbourne with a view to obtaining his final approval upon the measure which they proposed to submit to the Commons. As at the previous interview, the object of the Association in seeking this second conference was stated by Mr. Baring, when Lord Melbourne, who appeared to have forgotten what had passed on the former occasion, referred the deputation to Lord Glenelg, who was present as Colonial Minister.

This gentleman at once adopted an attitude of hostility to the whole proposal, his objections being primarily that the jealousy of foreign powers might be excited by the extension of British colonies; that England had colonies enough; that they were very expensive to govern and to manage; and that they were not of sufficient value to make it worth while to increase their number.³¹ The rebuttal of these unexpected objections involved a discussion of over an hour, during which considerable feeling was displayed by some of the gentlemen present, who saw in the attitude of the Minister a grim prospect of their scheme being thwarted. Several of these had, during the interval since the previous interview, disposed of their property and quitted professions in which they were engaged, with a view to emigrating, and they now felt very strongly the position in which they were placed by the withdrawal of the Ministerial approval which they believed their enterprise was to receive. One of these was described to Lord Melbourne as having wound up his affairs with a view to emigrating, and as being likely to suffer very seriously from now finding himself unable to carry his plan into effect. Lord Melbourne, not knowing that he was present, said that such an individual must be mad. The gentleman immediately rose and, facing the Premier, said that he was the madman. This created a distinctly dramatic situation, and the conference was on the point of breaking up in excitement and disorder when Lord Melbourne was reminded of his former sympathetic reception of the Association's proposals, whereupon he held a further brief consultation with the leaders of the deputation, and gave them to understand that the matter would be again considered by the Government, and that if they would wait upon Lord Glenelg in a week's time they would get an answer more to their satisfaction. Pursuant to that arrangement, the same body of persons waited on the Colonial Secretary on that day week (Wednesday, December 20), when Lord Glenelg informed them that the subject of the colonisation of New Zealand had been reconsidered by the Cabinet, and that circumstances which had occurred during the interval had induced Ministers to think that their former view was not the correct one. What had happened to so influence the Ministerial mind was the receipt of those important despatches from Mr. Busby, the British Resident, and from Captain Hobson, in which both these officers urged the need for a more vigorous policy on the part of the Colonial Office in its relations with New Zealand. The opinions of the Government, therefore, now approximated somewhat more closely to those of the Association, but there was still some hesitancy in proceeding by way of Act of Parliament. The Colonial Department, Lord Glenelg said, had fully considered the matter, and were satisfied that the measures desired might be carried into complete effect without applying to Parliament at all; and that they were consequently prepared, in the exercise of the power of the Crown vested in the Secretary of State for the Colonial Department, to give to the

³¹ Lord Glenelg did not on this occasion urge as an objection that New Zealand was not a part of the British Empire.

Association a Charter of Incorporation, being a Charter of government similar to those which were granted in the sixteenth and seventeenth centuries to the companies which founded the thirteen great colonies in America. Nine days after this interview the Association received an official letter from Lord Glenelg, reiterating his offer of a Charter, and calling upon the committee to form their members into a Joint-Stock Company with a subscribed capital sufficient to qualify them for the Charter he proposed to issue. This proposition was wholly unacceptable to the Association for two vital reasons. They had from the beginning declared that they intended to take no private pecuniary interest in the undertaking, and yet in spite of their care in this direction they had been very untruly charged before the public with having no other object than that of private pecuniary gain for themselves. Again some of their most influential leaders were persons, such as distinguished clergymen of the Established Church, holding preferment, who were almost disqualified by that circumstance from becoming members of a Joint-Stock Company, and, therefore, it was unanimously resolved that the offer of the Colonial Secretary could not be accepted. But though this avenue of procedure was closed there was still another open to them, and it was determined to procure, if possible, the passage of a Bill through Parliament, based upon the plan which they had originally placed before the Government. Such a Bill was brought into the House of Commons by Mr. Baring, but owing to the opposition of the Ministers, including Lord Howick,³² and the widespread impression that the Association was nothing better than a land-sharking Company, the measure was defeated by a large majority.

The discussion which was provoked by this Bill was responsible for concentrating public attention upon two points, namely, the objects which animated the Association, and, secondly, the diversity of opinion which existed on the subject of British sovereignty in New Zealand. One of the most ardent advocates of the Association was the Rev. Dr. Hinds, a clergyman of the Established Church, who had been greatly impressed by the social stagnation in England, and who had joined the committee in the hope of providing some outlet for the country's allegedly "surplus" population. Dr. Hinds told the Committee of the House of Lords in 1838³³ that he considered the colonisation of New Zealand expedient because of the number of persons of various classes in Great Britain who were anxious to settle themselves in a colony in New Zealand; persons who from their character, station, and other considerations, had a claim on the British Parliament to facilitate that object. The feeling, he assured their Lordships, in favour of such a colony was deep seated and sincere, supporting his contention by quoting letters he had received from Scotland,³⁴ where, he said, existing conditions were clamant for an immediate remedy. That remedy, he contended, the colonisation of New Zealand would supply. "There is," he said, "an abundance of capital and an abundance of labour in Great Britain, and the abundance of capital the capitalists can hardly employ so as to be sufficiently remunerative by any investment in this country. At the same time there is a great mass of the labouring population who can no longer obtain sufficient wages to keep up what have become the necessaries of life to them. The proposed colony would therefore be a measure of relief to both the capitalists and labourers."s

Dr. Hinds concluded his instructive picture of social England at that date by urging the colonisation of New Zealand on the general ground that settlement was already proceeding there along irregular lines, and without any "combining principle." This fundamental requirement to all well-ordered societies, he thought, was provided for in the plan of the Association, and he proceeded

³² After the Association was formed into a Company Lord Howick became one of its most ardent supporters.

³³ A select Committee of the House of Lords was set up in 1838 "to enquire into the present state of the Islands of New Zealand and of the expediency of regulating the settlement of British subjects therein."

³⁴ "It was only within the last three months that I received a letter from Paisley, stating that if a colony were formed in New Zealand on the principles laid down in our publication in that neighbourhood alone there were a hundred respectable persons – indeed I am not sure the expression was not 'respectable families,' but I have not the letter with me – who would emigrate immediately" (Dr. Hinds before the House of Lords Committee). Mr. G. S. Evans, LL.D., in his evidence stated there was an Association in the West of Scotland consisting of 200 members, and another in the Carse of Gowrie consisting of at least 100 persons, all anxious to emigrate to New Zealand.

to explain in very explicit terms the two cardinal points of its constitution – its Government, and the principles which would control its land transactions.

The executive authority of the Association was, he said, to be placed in the hands of a Commission resident in England, which Commission was to be merely a provisional body to last so long as might be thought necessary to set the scheme on foot. It was proposed to delegate to these Commissioners the power to make laws, the Crown to determine the extent of the delegation, and many other important matters. A further power of delegation was to be given to a Council in New Zealand, but the responsibility for all that was done was to rest with the Commission at home. "Whatever the powers are, it is only required that they should be exercised for a period of twenty-one years, and the Association would not at all object if it should seem desirable to have the time shortened. At the end of that term the whole Government of the colony would revert to the Crown."

In its land dealings, the element of profit was to be eliminated by the fact that the whole of the money derived from the sale of land or other sources must be spent in the interests of the colony, and no member was to derive any advantage therefrom: "The money for which the land will be sold by the Commissioners will be a price made up of several sums. It will in the first place contain the sum paid for the land itself, which I conceive will be a very small proportion. It will contain then a sum which will be calculated as sufficient for bringing out labourers to cultivate the land purchased; that will be the largest amount. It is also proposed that there should be a further sum added for the purpose of making roads, bridges, and public works, and it is also proposed that one of the items should be a sum to be expended in making provision for the natives, such as procuring them medical assistance and some instruction in the arts. The price the settlers will pay for the land will be only the price paid for it to the natives, and the additions to that sum will be in fact the purchase money paid for certain benefits which are considered essential to the prosperity of the colony, more especially for a due supply of labour."

The House of Lords' Committee reported against this scheme on the broadly Imperial grounds that the extension of the colonial possessions of the Crown was a question of public policy with which the Government only should deal. The element of private enterprise was, in their Lordships' opinion, eminently undesirable, holding with Captain Fitzroy, whose personal experience they valued, that "colonisation to be useful must be entirely under the control of the Executive Government of the Mother Country."

At this point a new and vigorous opponent directed its energies against the plans of the Association. The Church Missionary Society had been watching its proceedings with a jealous eye, and from the moment of the Association's inception had adopted an attitude of hostility towards it. Rightly or wrongly the Society had conceived the notion that the colonisation of the country must have a detrimental effect upon its Missions, and that therefore a sacred duty devolved upon the Committee to frustrate its consummation if it were at all possible so to do.

Immediately following the publication of the Association's prospectus the Society had communicated with its Missionaries in New Zealand, calling their attention to the scheme, and urging them to furnish the Committee with their views upon it, and so assist the parent body in reaching a conclusion as to its merits. Without waiting for these replies the Committee proceeded to deliberate upon the evidence then available, and on June 6, 1837, formulated the following resolutions, which they ever afterwards consistently made the basis of their attitude towards the Association.

That the New Zealand Association appears to the Committee highly objectionable on the principle that it proposes to engage the British Legislature to sanction the disposal of portion of a foreign country over which it has no claim to sovereignty or jurisdiction whatever.

That the Association is further objectionable from its involving the colonisation of New Zealand by Europeans, such colonisation of countries inhabited by uncivilised tribes having been found by universal experience to lead to the infliction upon the aborigines of great wrongs and most severe injuries.

That the Committee consider the execution of such a scheme as that contemplated by the Association especially to be deprecated in the present case, from its unavoidable tendency, in their judgment, to interrupt if not to defeat, those measures for the religious improvement and civilisation of the natives of New Zealand, which are now in favourable progress through the labours of the Missionaries.

That for the reasons assigned in the preceding resolutions the Committee are of opinion that all suitable means should be employed to prevent the plan of the New Zealand Association from being carried into execution.

The Society again made declaration of its views in the following year, embodying in its annual report (May 1, 1838) a plea for the humane consideration of New Zealand's claims, and for their own disinterested services to the country:

Your Committee cannot close this report on the New Zealand Mission without adverting to the peculiar situation of that country as it is regarded by the public at large. What events may await this fair portion of the globe, whether England will regard with a sisterly eye so beautiful an Island, placed like herself in a commanding position, well harboured, well wooded, and fertile in resources; whether this country will stretch forth a friendly and vigorous arm, so that New Zealand may with her native population adorn the page of future history as an industrious, well-ordered, and Christian nation, it is not for the committee of the Church Missionary Society to anticipate – but this consolation they do possess. They know that the Society has for the past twenty years done good to the natives, hoping for nothing again, nothing save the delight of promoting the Glory of God and good-will among men. The Society has sent forth its heralds of peace and messengers of salvation, and has thus contracted such an obligation towards those whom it has sought to benefit that your Committee are constrained to lift up their voice on behalf of that Island, and to claim that no measures shall be adopted towards that interesting country which would involve any violation of the principles of justice on our part, or the rights and liberties of the natives of New Zealand.

The Society having once determined upon its attitude towards the Association never turned back. Their Secretary, Mr. Dandeson Coates, became a militant force whom they found it difficult to shake off, and together with the enormous influence he was able to wield in religious circles, constituted a power that might have made the Government pause had they been predisposed to afford the Association the shelter of their wing.

Harassed by the Church Missionary Society and repulsed by Parliament the Association turned to the hope of resuming the negotiations with the Government at the point at which they had broken with Lord Glenelg. In the previous year the Colonial Secretary had, it will be remembered, reluctantly professed sympathy with the objects of the organisation up to the point that it fell short of being a Joint-Stock Company. He had then informed Lord Durham³⁵ that colonisation having gone on in New Zealand to some extent, the only question was between allowing it to proceed along desultory lines, without law, and fatal to the natives, or a colonisation organised and salutary. "Her Majesty's Government are therefore," he said, "disposed to entertain the proposal of establishing such a colony. They are willing to consent to a Corporation by a Royal Charter, of various persons to whom the settlement and government of the projected colony for some short term of years would be confided. The Charter would be framed with reference to the precedents of the colonies established in North America by Great Britain in the sixteenth and seventeenth centuries."

The basis on which these Atlantic colonies had been established was that of business concerns; for it was officially stated that the Association's scheme was objected to because of the absence of an actual subscribed capital, and the consequent want of protection to those proceeding to the colony as emigrants. For the reasons already given, the stipulation that the Association should convert itself into a Joint-Stock Company was so contrary to the motives which had inspired it that it was at first, and

³⁵ *Vide* his letter to Lord Durham, December 29, 1837.

still was, hotly resented and resisted by its principal and truly philanthropic promoters. Many of these now withdrew from the ranks of the Association; but others, rather than give up the hope of colonising the Islands, consented to comply with the demand of the Minister, after Parliament had rejected their Bill, as they wrongly assumed, for the insufficient reason of a non-existent capital. The Association then, in 1838, became a Company, shares were issued, capital subscribed, the reorganisation changing its whole character from a quasi-benevolent to a strictly commercial concern, whose business it was to buy land at a low price in New Zealand, and sell it at a high price in England.³⁶

In the meantime a change had taken place at the Colonial Office. Lord Glenelg had fallen over his Canadian policy, and in the year following its reconstruction, the Company, on the ground that they had now complied with all that had been stipulated for, approached his successor, Lord Normanby, "with a view of obtaining, through his Lordship's intervention, a Royal Charter of Incorporation." Upon what took place at this interview the widest divergence of opinion appears to exist. The Company claimed that the Minister received them with the greatest affability and encouragement, and that in consequence they left the Colonial Office in high spirits at the very favourable reception they had met with, and were perfectly satisfied in their own minds that all opposition to their scheme had not only ceased, but that they could proceed with the full concurrence of the Government.

Their feelings may, therefore, be easily imagined when, within forty-eight hours of their meeting with the Minister, they received an official letter from Lord Normanby, dated March 11, 1839, in which his Lordship warmly repudiated the suggestion that the Government was in any way bound to give effect to his predecessor's promise. He pointed out that Lord Glenelg's offer had been distinctly rejected by those to whom it was made; that they had since applied to Parliament for powers which they had failed to procure from the Crown; and that the personnel of the Company had so completely changed that by no process of reasoning could it be argued that the promise of Ministerial approval had been given to the same people as were now making the application. He therefore claimed that he stood unfettered by any pledge, and was free to discuss the question in the public interests, and for the public as though the rejected offer of 1837 had not been made.

In thus sternly refusing to countenance the proceedings of the Company, the Minister may have been induced to adopt the course he took by a reason altogether different from that which he gave, but one which he found more difficult to diplomatically express. For directing his attention to the change in the personnel of the promoters he was indebted to his Departmental Secretary, Mr. Stephen, who had kept the strictest watch upon the correspondence of the Company, and when the request, now under review, was preferred, he wrote a Memorandum to his Minister which may have profoundly influenced the mind of Lord Normanby.

"You can see," he said, "from looking over the list of the proposed Directors, that the leading members are now Roman Catholics. If this business is committed to them, New Zealand will infallibly become a Roman Catholic country. I am convinced that this would give the most severe offence to all the religious bodies which have established Missions there. I cannot withhold expressing my own opinion that the objection would be perfectly just and well founded. As long as we have the choice of establishing Popery or Protestantism in any part of the world I cannot understand how any one, not a Roman Catholic, would hesitate what that choice should be."³⁷

How far the suggestion of Mr. Stephen weighed, or did not weigh, with his chief can now only be a matter of merest speculation, for unfortunately little in the way of record has been left to guide

³⁶ "I was the principal founder of the Company and the principal Managing Director from the time of its formation till the summer of 1846, allowing for intervals of absence occasioned by illness and other occupation at a distance from England. My incapacity changed the whole character of the direction of the New Zealand Company's affairs, which then fell into the hands of a few persons in whose minds sound principles of colonisation and colonial government were as nothing compared with pounds, shillings, and pence." – Evidence of E. G. Wakefield before a New Zealand Parliamentary Committee on New Zealand Company's debt – Sessions 1 and 2.

³⁷ For the text of the above Memorandum I am indebted to Mr. R. M'Nab, who copied it from the original in the Record Office, London. Mr. Stephen, who wrote the Memorandum, was, at the time, an officer of the Church Missionary Society.

us. It is possible that under the sway of the religious feeling which existed in England at that time he did not altogether disregard it, but it is more probable that the circumstance which weighed with him most was the fact that since Lord Glenelg's day the Government had received more serviceable advice as to their powers under the Law of Nations, and that finding it was not within their right to issue a Charter affecting New Zealand, they were then considering the suggestions made by Mr. Busby and Captain Hobson, and were even at that moment contemplating the steps which they afterwards took. Lord Normanby would, under these circumstances, find it difficult and inexpedient to refer in definite language to these immature plans, and consequently the general terms in which he was compelled to speak may have misled the members of the Company who waited on him to sue for a Charter. In considering a petition from the Merchants, Bankers, and Shipowners of the City of London respecting the colonisation of New Zealand, an effort was made by a Committee of the House of Commons, in 1840, to discover exactly what was the attitude of the Ministerial mind at this juncture. Mr. Gibbon Wakefield complained that the Company had been scurvily treated by Lord Normanby, who had led them to suppose that they had his sympathy and approval, and had then, within a comparatively few hours, despatched the letter in which he refused to be bound by the promise of his predecessor to issue a Charter. In reply to this accusation, Mr. Labouchere, who was then Under-Secretary at the Colonial Office, and might, therefore, be expected to have some inside knowledge, took the view that the Minister had been misunderstood, and asked whether the position was not this: That Lord Normanby had stated to the Company that he considered their objects very useful and laudable, and that he should have been disposed to give them his most favourable consideration, provided New Zealand were a British colony; that he intended to take steps that he believed would probably lead to the constitution of New Zealand, either wholly or in part as a British colony; but that till those steps had been taken it would be utterly inconsistent with his official duty, not only to give encouragement, as a Minister, to the proceedings of the Company, but even to recognise them in any way whatever?

To this Mr. Wakefield's answer was: "My impression has always been that when Lord Normanby received those gentlemen he sincerely felt what he said; that he was glad to see persons of so much influence, and of such station in society, engaged in such a work; but that after the interview he came into communication with the officers of his Department, and received information of what had passed before, for he was quite new in the office,³⁸ and that the letter written after the interview, which was so much at variance with it, was written rather by the office, I should say, than by Lord Normanby himself, for the purpose of maintaining the consistency of the course which the Government had pursued."

It was therefore clearly the opinion of Mr. Wakefield that Mr. Stephen was a force to be reckoned with, and that whether he influenced it from the religious or the secular point of view, the Departmental head of the office was a powerful factor in moulding the policy which the Minister afterwards followed. But be that as it may, it still remains that from this date the Company and its colonising scheme received no quarter from the Colonial Secretary nor from the Department while he was at its head. Nothing daunted by official discouragement, the Company went steadily on with their arrangements; and within the year they had so far completed their plans that their pilot ship was ready to sail, all that was requisite being the extension of a helping hand to Colonel Wakefield, their pioneer representative, by Her Majesty's officers in Australia, in the event of things going badly with him. To this end, on April 29, Mr. William Hutt, who had now become chairman of the Company, Lord Petre and Mr. Somes waited upon Lord Normanby, preferring a request that letters might be given to the leader of their expedition, soliciting the good offices of the Governors of New South Wales and Van Dieman's land, should Colonel Wakefield require their aid. Their request was accompanied by a copy of the Company's instructions to Wakefield, all of which came as a violent surprise to the Colonial Secretary, who immediately pronounced with unmistakable emphasis, the Government's hostility to

³⁸ Lord Normanby became Colonial Secretary on February 8, 1839.

these unauthorised proceedings. He protested that this was the first he had heard of the Company's matured plans to proceed to New Zealand and there set up a system of Government independent of the authority of the British Crown, therefore it was impossible that he could do any act which might be construed into a direct, or even indirect, sanction of such a proceeding. He further made it plain that the Government could not recognise the authority of any agents whom the Company might send out to New Zealand, nor would they give future recognition to any proprietary titles to land within that country, which the Company might obtain by grant or purchase from the natives. Indeed, so far had matters, he said, now been pushed, that he had no option but to indicate that the time had arrived when Her Majesty must be advised by her Ministers to adopt one of the last of Lord Glenelg's recommendations, before he left the Colonial Office,³⁹ and take measures without delay to obtain cession in sovereignty to the British Crown of such parts of New Zealand as are, or might be, occupied by British subjects, and that officers selected by the Queen, and not by the Company, would be appointed to administer the executive Government within such territory. "Under these circumstances," the Colonial Secretary concluded, "I must decline to furnish the Company with the introductory letters for which they apply."

This intimation was given to the Company in the dying days of April 1839, and by the 13th of June Lords Normanby and Palmerston had, after consultation with the Law Officers of the Crown, agreed not only that the moment was ripe for official action, but that the proper course to take was to send to New Zealand an officer with Consular powers, whose first duty would be to secure the cession in sovereignty from the chiefs. The territory so ceded was then to be annexed to New South Wales, the Consul to be raised to the rank of Lieut. – Governor, acting under the Governor of the Mother colony, but invested with sufficient authority to preserve law and order in the country. His salary of £500 per annum was at first to be a charge upon the revenues of New South Wales, to be refunded so soon as the necessary arrangements could be made for the collection of taxation in New Zealand.

On July 19 these proposals were confirmed by the Lords of the Treasury, whereupon Lord Palmerston penned the letter to Captain Hobson of which the opening paragraph of the previous chapter is a brief extract.

In the meantime a clipper brig of 400 tons, named the *Tory* had been quietly fitted out by the Company for a dash to New Zealand. She was armed with eight big guns, and as a precaution against a hostile reception, small arms were provided for all the members of the crew, a specially selected body of men. Under the command of Captain Chaffers, who had been round the world with Fitzroy in the *Beagle*, she left Plymouth Sound on May 12 (1839) and proving a smart sailer, crossed the equator twenty-six days out, the high land of the South Island being sighted in the vicinity of Cape Farewell on August 16. This pioneer ship of the Company's fleet carried in her cabin their official representative in the person of Colonel William Wakefield, and in her hold a full complement of pots, pipes, and Jews' harps, which that gentleman proposed to exchange as full value for the land he hoped to acquire by barter from the natives.

The sailing of the *Tory* was the New Zealand Company's challenge to the Government, and in any estimate of its subsequent policy this precipitate event must be accounted an important factor in endowing the Colonial Office with a vital force which had hitherto been sadly lacking.

³⁹ *Vide* his letter to Lord Palmerston, December 12, 1838.

CHAPTER III

FINDING A WAY

The favour of Ministerial selection for the onerous task of bringing New Zealand within the realms of Britain fell upon Captain Hobson, because his record in the Navy had justified the opinion expressed of him by Sir Richard Bourke, that he was an experienced and judicious officer. Moreover, his visit to the country in the *Rattlesnake* had given him a local knowledge of which few men of eminence and character were at that time possessed. There is no reason to suppose that the appointment was in any way a party one, and except that the new Consul was the victim of indifferent health, it was probably the best that could have been made at the time, its greatest justification being the complete success which attended his mission up to the time of his early decease.⁴⁰ Captain Hobson left England in the H.M.S. *Druid* commanded by Lord John Churchill. He went out fortified for his task by a series of instructions which left little doubt that if Ministers had been slow to move, they had at least endeavoured to take a statesman-like view of the position when circumstances compelled them to act, the breadth of which can be best understood from the instructions themselves. After adverting to the social conditions existing in New Zealand, with which Captain Hobson was perfectly cognisant and which Lord Normanby assured him the Government had watched with attention and solicitude, the Colonial Secretary proceeded to explain the attitude which the Government had adopted in regard to this branch of Imperial policy.

We have not been insensible to the importance of New Zealand to the interests of Great Britain in Australia, nor unaware of the great natural resources by which that country is distinguished, or that its geographical position must in seasons, either of peace or war, enable it in the hands of civilised men to exercise a paramount influence in that quarter of the globe. There is probably no part of the earth in which colonisation could be effected with a greater or surer prospect of national advantage.

On the other hand, the Ministers of the Crown have been restrained by still higher motives from engaging in such an enterprise. They have deferred to the advice of the Committee of the House of Commons in the year 1836 to enquire into the state of the Aborigines residing in the vicinity of our colonial settlements, and have concurred with that Committee in thinking that the increase in national wealth and power, promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people whose title to the soil and to the sovereignty of New Zealand is undisputable and has been solemnly recognised by the British Government. We retain these opinions in unimpaired force, and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance.

The necessity for the interposition of the Government has, however, become too evident to admit of any further inaction. The reports which have reached this office within the last few months establish the facts that about the commencement of 1838 a body of not less than two thousand British subjects had become permanent inhabitants of New Zealand, that amongst them were many persons of bad and doubtful character, – convicts who had fled from our penal settlements, or seamen who had

⁴⁰ Captain Hobson had acquired some distinction in the Navy by the capture of a band of pirates in the Mediterranean, the personal bravery displayed by him on that occasion being decidedly meritorious. He was afterwards engaged with the sloop-of-war *Rattlesnake*, and first attracted political notice by his report to the Government on the state of Society in New Zealand. Major Bunbury, who had considerable personal knowledge of him, describes him as an officer who wrote a good despatch, was fluent of speech, and was not without abilities, but had not the necessary grasp of thought to seize the main point of a question – to separate the grain from the chaff. He was very jealous of his authority and obstinate, particularly as disease made encroachment on his frame and intellect. He was of social habits and had the faculty of making private friends and also of creating public enemies. Mrs. Hobson is described as "an interesting person."

deserted their ships, – and that these people, unrestrained by any law and amenable to no tribunals, were alternately the authors and victims of every species of crime and outrage. It further appears that extensive cessions of land have been obtained from the natives, and that several hundred persons have recently sailed from this country to occupy and cultivate these lands. The spirit of adventure having been effectually roused it can be no longer doubted that an extensive settlement of British subjects will be rapidly established in New Zealand, and that unless protected and restrained by necessary laws and institutions they will repeat unchecked in that quarter of the Globe the same process of war and spoliation under which uncivilised tribes have almost invariably disappeared, as often as they have been brought into the immediate vicinity of emigrants from the nations of Christendom. To mitigate, and if possible to avert these disasters, and to rescue the emigrants themselves from the evils of a lawless state of society, it has been resolved to adopt the most effective measures for establishing amongst them a settled form of Government. To accomplish this design is the principal object of your mission.

I have already stated that we acknowledge New Zealand as a sovereign and independent state so far at least as it is possible to make that acknowledgment in favour of a people composed of numerous dispersed and petty tribes, who possess few political relations to each other, and are incompetent to act or even deliberate in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen, in common with Her Majesty's predecessor, disclaims for herself and her subjects every pretension to seize on the Islands of New Zealand, or to govern them as a part of the Dominions of Great Britain unless the free intelligent consent of the natives, expressed according to their established usages, shall be first obtained. Believing, however, that their own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious, and little more than nominal, and persuaded that the benefits of British protection and of laws administered by British judges would far more than compensate for the sacrifice by the natives of a national independence which they are no longer able to maintain, Her Majesty's Government have resolved to authorise you to treat with the aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty's dominion. I am not unaware of the difficulties by which such a treaty may be encountered. The motives by which it is recommended are, of course, open to suspicion. The natives may probably regard with distrust a proposal which may carry on the face of it the appearance of humiliation on their side, and of a formidable encroachment on ours: and their ignorance even of the technical terms in which that proposal must be conveyed, may enhance their aversion to an arrangement of which they may be unable to comprehend the exact meaning, or the probable results. These are, however, impediments to be gradually overcome by the exercise on your part of mildness, justice, and perfect sincerity in your intercourse with them. You will, I trust, find powerful auxiliaries amongst the Missionaries who have won and deserved their confidence; and amongst the older British residents who have studied their character and acquired their language. It is almost superfluous to say that, in selecting you for the discharge of this duty, I have been guided by a firm reliance on your uprightness and plain dealing. You will therefore frankly and unreservedly explain to the natives or their chiefs the reasons which should urge them to acquiesce in the proposals you will make to them. Especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable to no laws or tribunals of their own and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the Sovereign of their country, or at least of those districts within, or adjacent to which Her Majesty's subjects may acquire lands or habitations. If it should be necessary to propitiate their consent by presents, or other pecuniary arrangements, you will be authorised to advance at once to a certain extent in meeting such demands, and beyond those limits you will refer them for the decision of Her Majesty's Government.

It is not, however, to the mere recognition of the sovereign authority of the Queen that your endeavours are to be confined, or your negotiations directed. It is further necessary that the chiefs should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain. Contemplating the future growth and extension of a British colony in New Zealand, it is an object of the first importance that the alienation of the unsettled lands within its limits should be conducted from its commencement upon that system of sale of which experience has proved the wisdom, and the disregard of which has been so fatal to the prosperity of other British Settlements. With a view to those interests it is obviously the same thing whether large tracts of land be acquired by the mere gift of the Government or by purchases effected on nominal considerations from the aborigines. On either supposition the land revenue must be wasted, the introduction of emigrants delayed or prevented, and the country parcelled out amongst large land-owners whose possession must long remain unprofitable, or rather a pernicious waste. Indeed, in a comparison of the two methods of acquiring land gratuitously, that of grants from the Crown, mischievous as it is, would be the less inconvenient, as such grants must be made with at least some kind of system, with some degree of responsibility, subject to some conditions, and recorded for general information. But in the case of purchases from the natives even these securities against abuse must be omitted, and none could be substituted for them. You will, therefore, immediately on your arrival announce, by a proclamation⁴¹ addressed to all the Queen's subjects in New Zealand that Her Majesty will not acknowledge as valid any title to land which either has been, or shall hereafter be acquired in that country which is either not derived from or confirmed by a grant to be made in Her Majesty's name and on her behalf. You will, however, at the same time take care to dispel any apprehensions which may be created in the minds of the settlers that it is intended to dispossess the owners of any property which has been acquired on equitable conditions, and which is not upon a scale which must be prejudicial to the latent interests of the community. Extensive acquisitions of such lands have undoubtedly been already obtained, and it is probable before your arrival a great addition will have been made to them. The embarrassments occasioned by such claims will demand your earliest and most careful attention.

I shall in the sequel explain the relation in which the proposed colony will stand to the Government of New South Wales. From that relation I propose to derive the resources necessary for encountering the difficulty I have mentioned. The Governor of that country will, with the advice of the Legislative Council, be instructed to appoint a Legislative Commission to investigate and ascertain what are the lands held by British subjects under grants from the natives; how far such grants were lawfully acquired and ought to be respected; and what may have been the price or other valuable consideration given for them. The Commissioners will make their report to the Governor, and it will then be decided by him how far the claimants, or any of them, may be entitled to confirmatory grants from the Crown, and on what conditions such confirmations ought to be made.

The propriety of immediately subjecting to a small annual tax all uncleared lands within the British settlements in New Zealand will also engage the attention of the Governor and Council of New South Wales. The forfeiture of all lands in respect of which the tax shall remain for a certain period in arrear would probably before long restore to the demesne of the Crown so much of the waste land as may be held unprofitably to themselves, and the public, by the actual claimants. Having by these measures obviated the dangers of the acquisition of large tracts of country by mere land-jobbers, it will be your duty to obtain by fair and equal contracts with the natives the cession to the Crown of such waste lands as may be progressively required for the occupation of settlers resorting to New Zealand. All such contracts should be made by yourself, through the intervention of an officer expressly appointed to watch over the interests of the aborigines as their protector. The resales of

⁴¹ This Proclamation was not enclosed amongst the official correspondence delivered to Captain Hobson upon his leaving England, and the deficiency was supplied by one drafted by Sir George Gipps and his Executive.

the first purchases that may be made will provide the funds necessary for future acquisitions; and beyond the original investment of a comparatively small sum of money no other resource would be necessary for this purpose. I thus assume that the price to be paid to the natives by the local Government will bear an exceedingly small proportion to the price for which the same lands will be resold by the Government to the settlers, nor is there any real injustice in this inequality. To the natives or their chiefs much of the land in the country is of no actual use, and in their hands it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased by the introduction of capital and of settlers from this country. In the benefits from that increase the natives themselves will gradually participate.

All dealings with the natives for their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential or highly conducive to their own comfort, safety, or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their Official Protector.

There are yet other duties owing to the aborigines of New Zealand which may be all comprised in the comprehensive expression of promoting their civilisation, understanding by that term whatever relates to the religious, intellectual, and social advancement of mankind. For their religious instruction liberal provision has already been made by the zeal of the Missionaries, and of the Missionary Societies in this Kingdom, and it will be at once the most important and the most grateful of your duties to this ignorant race of men to afford the utmost encouragement, support, and protection to their Christian teachers. I acknowledge also the obligation of rendering to the Missions such pecuniary aid as the local Government may be able to afford, and as their increased labours may reasonably entitle them to expect. The establishment of schools for the education of the aborigines in the elements of literature will be another object of your solicitude, and until they can be brought within the pale of civilised life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice and cannibalism must be promptly and decisively interdicted; such atrocities, under whatever plea of religion they may take place, are not to be tolerated in any part of the dominions of the British Crown.

It remains to be considered in what manner provision is to be made for carrying these instructions into effect as for the establishment and exercise of your authority over Her Majesty's subjects who may settle in New Zealand, or who are already there. Numerous projects for the establishment of a constitution for the proposed colony have at different times been suggested to myself and to my immediate predecessor in office, and during the last session of Parliament, a Bill for the same purpose was introduced into the House of Commons at the instance of some persons immediately connected with the emigrations then contemplated. The same object was carefully examined by a Committee of the House of Lords. But the common result of all enquiries, both in this office and in either House of Parliament, was to show the impracticability of the schemes proposed for adoption, and the extreme difficulty of establishing at New Zealand any institutions, legislative, judicial, or fiscal without some more effective control than could be found amongst the settlers themselves in the infancy of their settlement. It has therefore been resolved to place whatever territories may be acquired in the sovereignty by the Queen in New Zealand in the relation of a dependency to the Government of New South Wales. I am of course fully aware of the objections which may be reasonably urged against this measure; but after the most ample investigation I am

convinced that for the present there is no other practicable course which would not be opposed by difficulties still more considerable, although I trust that the time is not distant when it may be proper to establish in New Zealand itself a local legislative authority.

In New South Wales there is a Colonial Government possessing comparatively long experience, sustained by a large revenue, and constituted in such a manner as is best adapted to enable the legislative and executive authorities to act with promptitude and decision. It presents the opportunity of bringing the internal economy of the proposed new colony under the constant revision of a power sufficiently near to obtain early and accurate intelligence, and sufficiently remote to be removed from the influence of the passions and prejudices by which the first colonists must in the commencement of their enterprise be agitated. It is impossible to confide to an indiscriminate body of persons who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of government to which the British settlers in New Zealand are to be subject, it is essential to their own welfare, not less than that of the aborigines, that they should at first be placed under a rule which is at once effective and to a considerable degree external. The proposed connection with New South Wales will not, however, involve the extension to New Zealand of the character of a penal settlement. Every motive concurs in forbidding this, and it is to be understood as a fundamental principle of the new colony that no convict is ever to be sent thither to undergo his punishment.

The accompanying correspondence with the Law Officers will explain to you the grounds of law on which it is to be concluded that by the annexation of New Zealand to New South Wales the powers vested by Parliament in the Governor and Legislative Council of the older settlement might be exercised over the inhabitants of the new colony. The accompanying Commission under the Great Seal will give effect to this arrangement, and the warrant which I enclose under Her Majesty's sign manual will constitute you Lieut. – Governor of that part of the New South Wales colony which has thus been extended over the New Zealand Islands. These instructions you will deliver to Sir George Gipps, who on your proceeding to New Zealand will place them in your hands to be published there. You will then return it to him to be deposited amongst the archives of the New South Wales Government.

In the event of your death or absence the officer administering the Government of New South Wales will, provisionally, and until Her Majesty's pleasure can be known, appoint a Lieut. – Governor in your place, by an instrument under the public seal of his Government.

It is not for the present proposed to appoint any subordinate officers for your assistance. That such appointments will be indispensable is not, indeed, to be doubted. But I am unwilling at first to advance beyond the strict limits of the necessity which alone induces the Ministers of the Crown to interfere at all on this subject. You will confer with Sir George Gipps as to the number and nature of the official appointments which would be made at the commencement of the undertaking and as to the proper rate of their emoluments. These must be fixed with the most anxious regard for frugality in the expenditure of public resources. The selection of the individuals by whom such offices are to be borne must be made by yourself from the colonists either of New South Wales or New Zealand, but upon the full and distinct understanding that their tenure of office, and even the existence of the offices which they are to hold must be provisional and dependent upon the future pleasure of the Crown. Amongst the offices thus to be created, the most evidently indispensable are those of a Judge, a Public Prosecutor, a Protector of the Aborigines, a Colonial Secretary, a Surveyor-General of Lands, and a Superintendent of Police. Of these, the Judge alone will require the enactment of a law to create and define his functions. The Act now pending in Parliament, for the revival, with amendments, of the New South Wales Act will, if passed into law, enable the Governor and Legislative Council to make all necessary provision for the establishment in New Zealand of a Court

of Justice and a judicial system separate from and independent of the existing Supreme Court. The other functionaries I have mentioned can be appointed by the Governor in the unaided exercise of the delegated prerogative of the Crown. Whatever laws may be required for the Government of the new colony will be enacted by the Governor and Legislative Council. It will be his duty to bring under their notice such recommendations as you may see cause to convey to him on subjects of this nature. The absolute necessity of the revenue being raised to defray the expenses of the Government of the proposed settlement in New Zealand has not, of course, escaped my careful attention. Having consulted the Lords of the Treasury on this subject I have arranged with their Lordships that until the sources of such revenue shall have been set in action, you should be authorised to draw on the Government of New South Wales for your unavoidable expenditure. Separate accounts, however, will be kept of the public revenue of New Zealand and of the application of it and whatever debt may be contracted to New South Wales, must be replaced by the earliest possible opportunity. Duties of impost on tobacco, spirits, wine, and sugar will probably supersede the necessity of any other taxation, and such duties except on spirits will probably be of a very moderate amount.

The system at present established in New South Wales regarding land will be applied to all the waste lands which may be kept by the Crown in New Zealand.

Separate accounts must be kept of the Land revenue, subject to the necessary reductions for the expense of surveys and management, and for the improvement by roads and otherwise the unsold territory, and subject to any deductions which may be required to meet the indispensable exigencies of the local Government. The surplus of this revenue will be applicable, as in New South Wales, to the charge of removing emigrants from this kingdom to the new colony.

The system established in New South Wales to provide for the religious instruction of the inhabitants has so fully justified the policy by which it was dictated that I could suggest no better means of providing for this all-important object in New Zealand. It is, however, gratifying to know that the spiritual wants of the settlers will, in the commencement of the undertaking, be readily and amply provided for by the Missionaries of the Established Church of England and of other Christian communions, who have been so long settled in those Islands. It will not be difficult to secure for the European inhabitants some portion of that time and attention which the Missionaries have hitherto devoted exclusively to the aborigines.

I enclose, for your information and guidance, copies of a correspondence between this department and the Treasury, referring you to Sir George Gipps for additional instructions as may enable you to give full effect to the view of Her Majesty's Government on the subject of finance. You will observe that the general principle is that of maintaining in the proposed colony a system of revenue, expenditure, and account entirely separate from that of New South Wales, though corresponding with it as far as that correspondence can be maintained.

After briefly describing the rules to be observed by Captain Hobson in conducting his correspondence with his immediate superior, Governor Gipps, and the Colonial Office, Lord Normanby concluded his instructions as follows:

I have thus attempted to touch on all the topics on which it seems to me necessary to address you on your departure from this country. Many questions have been unavoidably passed over in silence, and others have been adverted to in a brief and cursory manner, because I am fully impressed with the conviction that in such an undertaking as that in which you are about to engage much must be left to your own discretion, and many questions must occur which no foresight could anticipate or properly resolve beforehand. Reposing the utmost confidence in your judgment, experience, and zeal for Her Majesty's service, and aware how powerful a coadjutor and how able a guide you will have in Sir George Gipps, I willingly leave for consultation between you many subjects on which I feel my own incompetency, at this distance from the scene of action, to form an opinion.⁴²

⁴² *Vide* his instructions to Captain Hobson, August 14, 1839.

The publication of this document brought down upon the head of the Minister a storm of criticism from the committee of the New Zealand Company, who attacked with especial bitterness that portion of the instructions wherein Lord Normanby made it especially clear that Britain claimed no right of sovereignty in or over New Zealand. In the previous year, when the Company was promoting its Bill in the House of Commons, and when the organisation was less mercenary in its nature, the promoters had taken a modified view of this question of sovereignty, and were prepared to concede something to the natives which, as a Company, they were now eager to deny.

This earlier attitude was admirably expressed by the Rev. Dr. Hinds, who in discussing the matter before the Committee of the House of Lords, boldly stated that he believed civilised people had a right – an inherent right – over countries that have not been subject to civilisation, whether those countries were uninhabited or partially inhabited by savages who were never likely themselves to cultivate the country. "Here," he said, "is a country considered to be populous for a savage country. According to an estimate made by a respectable Missionary of the C.M.S. the inhabitants of the Northern Island amount to about 105,000. This Northern Island is probably about the size of England, and this its population of 105,000 stated to be decreasing in number without the least chance of their becoming cultivators or sovereigns of the soil. I hold it not to be an infringement of any natural rights to claim the sovereignty of the Island, and this is a claim which until lately would never have been questioned. There has been often a question as to the mode in which sovereign rights over savage countries should be distributed among civilised people, but it has been a question between one civilised country and another. Formerly the Pope used to claim the disposal of sovereignty. Subsequently it has been more conveniently settled by allowing the priority of claim to the first discoverers – a course as convenient probably as can be advised. Within the last few years, however, the justice of this claim has been questioned, and it has been asserted that savage as well as civilised men have sovereign rights. I do not, myself, think they have; but it has been the wish of the Association not to offend any scruples, and therefore they have carefully in this Bill waived the question, and allowed the claim to a sovereign right of some kind to exist in those savages. I say a sovereign right of some kind, because it is clear in the instance just mentioned, the giving the flag to the Bay of Islands, that the very assumption on the part of Great Britain of a right to give that flag supposes the New Zealanders not to be altogether a sovereign power. Many probably who may be willing to cede to them the right of sovereignty as far as concerns themselves would not go to such lengths as to say that Great Britain should not cede the sovereignty as regards any right which may be put in by other nations; and I do not know on what principle we should draw a distinction, and say how much or how little of this right of sovereignty we should claim. The French have been attracted by the flax: suppose they were to say 'If you relinquish your rights of sovereignty we will put in our claim, we stand next,' or the Dutch may say so. I do not know which visited the country first, but I cannot see on what principle we could interfere with the French or Dutch unless we contend that we had some disposal over the sovereignty of the Islands. The question, however, has been waived in the Bill; we suppose the New Zealanders and not Great Britain to be in possession of the right of sovereignty, and we propose accordingly that a purchase should be made of the sovereignty as well as the fee simple of the land. We have some precedents for this. I do not know whether it is of consequence to bring forward precedents, but even at a late period a purchase of this kind has been made; Sir Stafford Canning took possession in 1815 of Singapore; it was at that time in possession of the Malays, the subjects of the Sultan of Jahore. In 1825 he found, I think, some inconvenience arising from the Sultan's claims, and the English bought the Domain of the Sultan for a sum of money, and so clear was the understanding about it, that the Sultan made some reservations; some exceptional laws, as they are called in this Bill, were made. There was a clause that the Sultan's slaves should not be emancipated, and certain lands were reserved and became entailed property and inalienable. When Penn purchased Pennsylvania he no doubt understood he purchased the sovereignty as well as the fee simple of the land, for I can conceive no one mad enough to found a colony in the midst of barbarians without

securing the colonists against their interference as sovereigns. Vattel certainly speaks of Penn's treaty as if he understood him to have purchased the sovereign rights as well as the fee simple. These are precedents which may not be considered as carrying any great authority. The question has not been very much discussed; it has been taken for granted, and I think with reason, that the savage is in a state of pupillage, and must be treated as we treat children. The only principle which it is important to maintain is this: If you go into a country at all inhabited by savages and take possession of their land and become sovereigns of it, you infringe their rights if you do not consider their benefit as well as your own. If you were treating with a child you would not infringe the rights of that child simply by acting and deciding for him, but you would infringe his rights if you acted and decided for your benefit and not his. So with respect to savages; they are compared with civilised men, like children. They are of themselves incapable of acquiring the arts and habits of civilised life; unless some interference that amongst civilised men would be considered unjust, takes place, they never can, by themselves, rise to that higher condition. The injustice to be deprecated is that of seeking our own benefit solely and not theirs; and with respect to the New Zealanders our purchase of the sovereignty of their country ought not to be represented as being the same kind of bargain as if the French, for instance, were bargained with to cede the sovereignty over any portion of their territory. When the French ceded their sovereign rights over Martinique, Guadaloupe, and the Mauritius, they strictly ceded all their sovereign rights; but in the present instance what is meant by the cession of sovereignty amounts to this – that we purchase the right to participate in the sovereignty with them; we do not wish to exclude them, but pay them a price to partake in the sovereignty with them. Of course, in the first instance, the civilised man will be the only sovereign, but that is because he only will be fit and capable of exercising sovereign rights. As the savage advances in civilisation he will come in for his share; and I see no reason, as soon as the New Zealander is capable of it, against his being Chief Justice, Governor, or Bishop, or holding any other office. It is not therefore that we take the sovereignty from him; we purchase the right of participating with him in the sovereignty, and by so doing we enable him to become Sovereign of the country, which he is not at present."

In the meantime the Government had unmistakably demonstrated their intention not to recognise the Company, and with all hope of political patronage gone the Company saw no reason why they should spare the Government. There was now in their opinion no possible room to doubt that the sovereignty over New Zealand rested in Great Britain, and that the Colonial Department was betraying a national trust in conceding any rights to the natives, thereby opening the door to foreign intervention. They first showered their protests against this supposed surrender of a national asset upon the Colonial Office, but when they discovered themselves ignored in this direction they turned with renewed complaint to the Foreign Minister. "We are assured," they wrote to him, on November 7, 1839, "that this question of the sovereignty of New Zealand engages the attention of various commercial bodies and a large portion of the public press in France; that the sovereignty in England is denied; that the French Government is urged either to join in that denial, by protesting against the colonisation of the Islands by England, or to claim an equal right with England to plant settlements there. We are not without fear that some such protest or claim should be admitted by your Lordship's Department, as it appears to have been admitted by the Colonial Department. It appears that the agitation of this question in France has been produced by the publication of a Minute of the British Treasury made at the instance of the Colonial Department (July 19), and also of an extract of certain instructions recently given by that Department to Captain Hobson, – two documents by which the Crown of England seems to repudiate the sovereignty of New Zealand. The apparent repudiation consists of an acknowledgment of sovereignty in the native chiefs from whom Captain Hobson is instructed to procure, if possible, a cession to Her Majesty. It is this acknowledgment, according to all our information, which has given occasion to the pretensions now urged in France."⁴³ That which

⁴³ The *Journal de Havre* was particularly active in discussing New Zealand at this time.

England, it is contended, instructs her officer to procure, if possible, she admits she does not possess, and she thereby admits the right of France either to obtain sovereign jurisdiction in New Zealand, by the means which Captain Hobson is instructed to employ, or if France should prefer that course, to sustain the independent sovereignty of the natives. The argument appears conclusive. It becomes very important, therefore, if it is of great importance to England, to prevent the establishment of a French power in the midst of the English colonies of Australasia that your Lordship should be made aware of the acts of the British Crown which lead to a conclusion directly at variance from that which may be drawn from the said minute and instructions."

The Company's nominal⁴⁴ advocate on this occasion was their Deputy-Governor, Mr. Somes, who apparently possessed a faculty for stating strongly a weak case; and in the course of this letter to Lord Palmerston he taxed his ability to show that the right of sovereignty in New Zealand had vested in Britain since the discovery of the Islands by Captain Cook; that it had been confirmed by numerous diplomatic acts in all the years since then, and could not now be abandoned on the mere whim of a Minister.

During the course of his trenchant review of the position Mr. Somes declared that the sovereignty of England in New Zealand had been over and over again asserted and exercised. Whether it could be subsequently abandoned by such documents as the Treasury Minute and instructions was a question in constitutional and international law on which his Lordship was of course far more competent to judge than they could pretend to be. But that there was recently a British sovereignty either to maintain or to abandon the Company had no sort of doubt. He pointed out that in the year 1769, Captain Cook, acting under a commission from the Crown of England, took possession of the Islands of New Zealand, in the name of His Majesty, George III. This act was performed in the most formal manner, and was published to the world. "We are not aware," he wrote, "that it was ever questioned by any foreign power. It constituted sovereignty by possession. The Law of Nations, we believe, recognises no other mode of assuming dominion in a country, of which the inhabitants are so barbarous as to be ignorant of the meaning of the word sovereignty, and therefore incapable of ceding sovereign rights. This was the case with the New Zealanders, from whom it would have been impossible for Captain Cook to have obtained, except in mockery of truth, a British sovereignty by cession. Sovereignty by possession is that which the British Crown maintains in a large portion of its foreign dependencies. In this year, 1787, a Royal Commission was granted to Captain Philip appointing him in pursuance of the British sovereignty in possession, which had previously been established by Captain Cook, "Captain-General and Governor-in-Chief in and over the territory of New South Wales and its dependencies." This territory was described in the commission as "Extending from Cape York, latitude 11° 37' south, to the South Cape, latitude 43° 30' south, and inland to the westward as far as 135° east longitude, comprehending all the Islands adjacent in the Pacific Ocean, within the latitudes of the above-named capes." This is the Act by which the Crown first assumed the Government of New South Wales and the other barbarous lands of which Captain Cook had taken possession in the name of the King. The Islands of New Zealand are as clearly within the prescribed limits as Norfolk Island, Van Dieman's Land, or even New South Wales itself. On November 9, 1814, the Governor and Captain-General of New South Wales and its dependencies, acting on the representation of the Crown, by public proclamation, declared New Zealand to be a Dependency of his Government, and by regular commission of *dedimus potestatem* appointed Justices of the Peace to act there. Some of the Magistrates so appointed were aboriginal natives of the country. It is plain that they were treated as British subjects. In 1819 again Governor Macquarrie appointed an English Magistrate in New Zealand. This Justice of the Peace exercised the authority so bestowed on him by apprehending offenders and sending them for trial to the seat of Government. In 1823 a British Act of Parliament (4 George IV. cap. 96) extended the jurisdiction of the Courts of New South Wales

⁴⁴ It is suggested that the real advocate was Edward Gibbon Wakefield.

to New Zealand by name, and also to other places in the Southern Pacific not within the latitudes previously mentioned. Under this authority several persons, we understand, have been tried in New South Wales for offences committed in New Zealand, and we have been informed that property in New Zealand, as well real as personal, has been made the subject of the Bankruptcy law of New South Wales. The authority of the British Crown was frequently enforced by means of ships of war, and although it cannot be asserted that regular government was ever established in New Zealand, far more than was essential to creating British dependency seems to have been performed. The Islands thus continued in a state of dependency until the year 1831, when a series of proceedings commenced by which the sovereignty of Britain may perhaps have been forfeited. An officer was appointed to reside at the Bay of Islands. He presented to certain native chiefs, as from the Crown of England, what was termed "a national flag." This might have been considered a transfer to these chiefs of the British sovereignty, if the Resident had not been 'accredited' to certain officers of the Church Missionary Society, then settled at the Bay of Islands. By the latter act the sovereignty of the Islands would almost seem to have been transferred to these Missionaries. But in October 1835 this diplomatic agent assembled certain native chiefs residing in the Northern part of the North Island, called them a "Confederation," and sanctioned a declaration of Native Independence, to which their names were appended. This last act appears, by all accounts, to have been a mere mockery of its ostensible purport. The tribes of New Zealand are so entirely distinct, so utterly destitute of nationality, as to have no name for the whole country which they inhabit. A national name was invented for this occasion – the words *Na Terrene* which express the native pronunciation of the English words "New Zealand." The only parties besides to the so-called Declaration of Independence were the chiefs of a few tribes then inhabiting a small part of one of the Islands. These even, inasmuch as their language contains no words to express nationality, sovereignty, or independence, must have been unconscious instruments of the Resident, or of the Missionaries, to whom that officer was accredited, as if they (the Missionaries) had been the sovereigns of New Zealand. If indeed the sovereignty was delegated to the Missionaries they could, being British subjects, have held it as trustees for the Crown. If the sovereignty of the natives was then acknowledged it extended only to a small part of one Island inhabited by the parties to the Declaration. And in either case this mockery of an independent sovereign nationality has been set at naught by the power in whose name it took place, inasmuch as the jurisdiction of British law, and the armed authority of British warships have been exercised since in the same way as before the Bay of Islands' Declaration of Independence.

"I beg leave," continued Mr. Somes, "to assure your Lordship in the name of my colleagues that we intrude on you with the greatest reluctance. But we have felt that it was incumbent on us especially during the recess of Parliament to convey to your Lordship the information that we have received as to the state of feeling in France on this subject, so that if unhappily the British sovereignty of New Zealand were lost it should be through no fault of ours. We fear that the measures recently adopted by the Colonial Department may, unless promptly remedied, lead to very disastrous results. We are deeply concerned for the fate of a large and most respectable body of our countrymen, who have emigrated under our auspices. Connected as several of us are with the commercial and shipping interests of the country, and knowing therefore how much importance they attach to the British possession of New Zealand, as they have frequently stated in memorials to the Treasury and Board of Trade, we have felt that it was a duty to express to your Lordship the apprehensions which we entertain. We have been told that a French frigate recently sailed for the South Seas with sealed orders, and some of the French newspapers report, with expressions of satisfaction, that the Government of the United States of America has appointed a Consul in New Zealand, to be accredited to 'the Confederation of chiefs,' and has sent him to his destination in a man-of-war, which is to remain under his orders. These statements may be untrue, or only premature, but in either case Captain Hobson's instructions which attach two conditions, either or both of which may be unattainable, to the exercise of any authority by him in New Zealand, namely possession of the land by British subjects, and

cession by the natives of the sovereignty over such land, are calculated to invite foreign pretensions which otherwise would never have been imagined."

This protest was taken most philosophically by Lord Palmerston, who merely passed it on to Lord John Russell, who had now succeeded Lord Normanby at the Colonial Office. Lord John treated it even more philosophically, for it was not for several months (March 11, 1840) that he deigned to reply, and then only after he had been reminded of the omission by the Foreign Office. In the meantime all need of further argument had been obviated by the success of Captain Hobson's mission, and so the Colonial Secretary wasted no words in rhetoric, but forwarded to his colleague a memorandum couched in concise official terms, setting out in sequence the events which in the light of International law would be used as evidence against any claim to British sovereignty, and which contained all the information it appeared necessary to afford in answer to the communication from Mr. Somes.

It is easy to understand the indignation of the Company on learning of the Minister's repudiation of British sovereignty in New Zealand, because it sapped the very foundations of their scheme, seeing that it was illegal for British subjects to establish colonies outside the limits of the Empire without the sanction of the Crown. They had always presupposed the existence of a British sovereignty over New Zealand and upon that supposition all their calculations had been built. Now the basis of their building had gone, they adroitly pretended that what grieved them was not so much their loss as that the repudiation of British authority was a national calamity, and that what was the neglect of Britain became the opportunity of France.

The position taken up by the Government was, however, perfectly sound, and was the only logical one they could occupy. Whether previous Governments had acted wisely and well in declining to embrace the opportunity to colonise which Cook's discovery had opened to them, may be a debatable question, but the fact at this date was that the golden opportunity had passed, and that by subsequent diplomatic acts, deliberately taken, the independence of the Maori people had been clearly and emphatically acknowledged. "The answers," wrote Lord John Russell to Lord Palmerston, "which would be made by foreign nations to such a claim as that put forward by Mr. Somes are two. First that the British Statute Book has, in the present century, in three distinct enactments, declared that New Zealand is not a part of the British Dominions, and secondly that King William IV. made the most public, solemn, and authentic declaration which it was possible to make that New Zealand was a substantive and independent state. The resolution by the King, Lords, and Commons of Great Britain of the fact that New Zealand is not a part of the British Dominions will be found in the Statutes 57 George III. cap. 53, 4 George IV. cap. 96, sec. 3, and 9 George IV. cap. 83, sec. 4."

The Act of 57 George III. cap. 53 is entitled "An Act for the more effectual punishment of murders and manslaughters committed in places not within His Majesty's dominions." It sets forth – "Whereas grievous murders and manslaughters have been committed at the settlement of the Bay of Honduras in South America, etc.," "and the like offences have also been committed in the South Pacific Ocean, as well on the high seas as on land, in the Islands of New Zealand and Otaheite, and in other Islands, countries, and places not within His Majesty's dominions, by the Masters and crews of British ships, and other persons who have for the most part deserted from or left their ships, and have continued to live and reside amongst the inhabitants of those Islands, etc.," and the Act then provides for the punishment of offences so committed "in the said Islands of New Zealand and Otaheite, or within any other Islands, countries, or places, not within His Majesty's dominions, nor subject to any other European State or power," etc.

The Statute 4 George IV. cap. 96, sec. 3 enacts that the Supreme Courts in the colonies of New South Wales and Van Dieman's Land may try offences "committed in the islands of New Zealand, Otaheite, or any other Island, country, or place, situate in the Indian or Pacific Oceans, and not subject to His Majesty or to any European State," if such offences were committed by British subjects.

The Statute 9 George IV. cap. 83, sec. 4 repeats that enactment in the same words, adding only that the punishment of the offence shall be the same as if the crime had been committed in England.

The recognition by King William IV. of New Zealand as a substantive and independent state is shown in the following narrative:

"On November 16 a letter to King William IV. from thirteen of the chiefs of New Zealand was transmitted to Lord Goderich, praying the protection of the British Crown against the neighbouring tribes and against British subjects residing in the Islands. On June 14, 1832, Lord Ripon despatched Mr. Busby as British Resident, partly to protect British Commerce, and partly to repress the outrages of British subjects on the natives. His Lordship sent with Mr. Busby a letter to the chiefs, in which the King was made to address them as an independent people. Their support was requested for Mr. Busby, and they were reminded of the benefits which they would derive from 'the friendship and alliance with Great Britain.'

"In the month of June 1832 a Bill was brought into the House of Commons for the prevention of crimes committed by His Majesty's subjects 'in New Zealand, and in other Islands in the Pacific not being within His Majesty's dominions.' The Bill was rejected because Parliament could not lawfully legislate for a foreign country.

"On April 13, 1833, the Governor of New South Wales, in obedience to Lord Ripon's (formerly Lord Goderich) orders, addressed instructions to Mr. Busby, in which New Zealand was expressly mentioned as a foreign country, and Mr. Busby himself as being accredited to the chiefs. That document throughout assumes the independence of New Zealand.

"On April 29, 1834, General Bourke transmitted to Lord Stanley a proposal from Mr. Busby for establishing a national flag for the tribes of New Zealand, 'in their collective capacity,' and advised that ships built in the Island and registered by the chiefs should have their registers respected in their intercourse with British possessions. Sir R. Bourke reported that he had sent three patterns of flags, one of which had been selected by the chiefs; that the chiefs had accordingly assembled with the commanders of the British and three American ships, to witness the inauguration of the flag, at which the officers of H.M.S. *Alligator* were also present. The flag had been declared to be 'the national flag' of New Zealand, and being hoisted, was saluted with twenty-one guns by the *Alligator*, a British ship-of-war.

"On November 21, 1834, a despatch was addressed to Sir Richard Bourke by Lord Aberdeen, approving of all these proceedings in the name of the King, and sending a copy of a letter from the Admiralty, stating that they had instructed their officers to give effect to the New Zealand Registers, and to acknowledge and respect the national flag of New Zealand.

"If these solemn Acts⁴⁵ of Parliament, and of the King of Great Britain, are not enough to show that the pretension made on behalf of Her Majesty by this Company is unfounded, it might still further be repelled by a minute narrative of all the relations between New Zealand and the adjacent British colonies. It is presumed, however, that after the preceding statement it would be superfluous to accumulate arguments of that nature and the rather because they could not be intelligibly stated without entering into long and tedious details."

While this discussion was proceeding in England, Captain Hobson was happily on his way to Sydney, with his instructions rendered still more explicit⁴⁶ by further explanation from Lord Normanby, thus eliminating, as far as human forethought could provide, the possibility of misunderstanding as to the extent of his authority, or to the sincerity of the broad humanitarian principles which were to govern his conduct towards the natives.

⁴⁵ These Acts were quoted as evidences of Britain's repudiation of sovereignty in New Zealand, by M. Guizot, the French Foreign Minister, during the debate on the sovereignty question in the Chamber of Deputies on May 29, 1844.

⁴⁶ After perusing the original draft of his instructions, Captain Hobson referred several matters therein back to the Minister for further explanation, and on August 15, 1839, Lord Normanby replied in a memorandum which amplified his intentions, but in no way changed their spirit.

Reaching Sydney late in December 1839⁴⁷ he immediately himself to Sir George Gipps, who entered into the spirit of the enterprise with his characteristic enthusiasm for the service of the Empire. During their official negotiations the final arrangements were completed agreeably to the intentions of the Colonial Secretary. Captain Hobson was placed in the possession of the Proclamation under the Great Seal, by which the Government of New South Wales was extended to any territory which might be acquired as the result of Hobson's mission "in those Islands commonly called New Zealand." Simultaneously he was presented with his own Commission as Lieutenant-Governor of any such territory, and with the proclamations he was to issue in New Zealand, as circumstances rendered necessary or advisable. He was also placed in possession of further instructions from Sir George Gipps, who laid special stress upon the financial relations existing between the two colonies. "My responsibility for the due expenditure of the public money of this colony," he said, "is one of which I cannot divest myself, and where responsibility is there also must be control. The extent to which establishments are to be erected in New Zealand, the salaries to be paid to public officers, and the expenditure of public money on public works, must for the present be fixed by myself on estimates and reports or proposals to be forwarded by you." Close enquiry was also made into the legal question which Captain Hobson had raised with Lord Normanby when seeking fuller information regarding his powers of administration. Hobson desired the power to appoint and suspend Magistrates; to pardon offences and remit sentences, and to exercise original control, which the insular position of New Zealand seemed to demand, but which was seldom conferred upon those holding the subordinate office of Lieutenant-Governor. To this request Lord Normanby had replied that all the powers necessary for the proper conduct of his office would be conferred upon him by acts of the Governor and Legislature of New South Wales. Hobson was unconvinced, but deferentially refrained from pitting his lay opinion against that which he naturally assumed was based upon the wider knowledge possessed by the Department. Sir George Gipps had no such reservations, and at once declared his inability to delegate to another powers which had only been delegated to him.

In communicating his final instructions to the Lieutenant-Governor, Gipps wrote: "With respect to certain powers or prerogations of the Crown, with which Governors of colonies are usually entrusted, it is necessary for me to point out to you that though I am myself authorised by Her Majesty to exercise them in her name, and on her behalf, I have no power to delegate the exercise of them to another. From this, which is an inherent maxim in law, it will, I believe follow:

"(1) That you will not have power to pardon offences, or to remit sentences pronounced on offenders in due course of law, though you may stay the execution of the law.

"(2) That you will not be authorised to suspend officers holding appointments direct from Her Majesty, though you may recommend to me the suspension of them. With respect to persons holding appointments from me you will have the power of suspension, and over such as hold appointments from yourself a power of dismissal unless they may have been previously recommended by you for confirmation in the service, in which case your power will extend only to suspension.

"(3) You will not have power of appointing Magistrates, though of course you will recommend to me such persons as you may think fit to be appointed.

"(4) In the event of the enrolment of a militia, the same will hold good respecting the appointment of officers."

A staff of officials for the due conduct of the civil business of the country was also appointed,⁴⁸ even to a small force of policemen, and with an almost prophetic punctiliousness for detail, a

⁴⁷ On arrival at Sydney Captain Hobson was waited on by a deputation of New Zealand landowners, who requested to know his views regarding their lands. With his answers to their questions the deputation was in general satisfied, as he encouraged them to occupy their lands and proceed with their improvements. Subsequently an address of Welcome was presented to him at Government House, and he appeared highly flattered by the compliment paid him.

⁴⁸ "Captain Hobson is accompanied by several officers, selected for their known incompetency by Sir George Gipps. What assistance he is to expect from these persons I do not know, but they are evidently sent to New Zealand because Sir George Gipps has

Commission was prepared for his successor in the event of Hobson's death, so that there might be no break in the continuity of official control.

With these preliminaries settled, Governor Gipps, on January 14, issued three proclamations: (1) extending the boundaries of New South Wales to New Zealand; (2) proclaiming Captain Hobson Lieutenant-Governor of those Islands, and "calling upon all British subjects to the aiding and assisting of the said William Hobson in the exercise of his said duty"; (3) to put an end to the speculation in New Zealand lands then being openly carried on in Sydney.

The *Herald*, a frigate of twenty guns, commanded by Captain Nias, lay in Spring Cove, waiting to convey the Queen's representative and his party to New Zealand.⁴⁹ At six o'clock on the evening of Saturday the 18th the staff appointed to accompany the Consul joined the vessel, and at a somewhat later hour Captain Hobson himself went on board. Under the influence of a fine N.E. wind, a full moon shining down upon the harbour, the *Herald* left Port Jackson and headed for the Bay of Islands. Fine weather was experienced in the Tasman Sea and on Sunday the 26th, while a gentle breeze filled the sails and soft zephyrs whispered through the cordage, Captain Nias conducted Divine service on the gun deck, which was attended by the whole ship's company, and "a more beautiful and impressive scene I never witnessed," is the description of the ceremony given by Mr. Felton Mathew, who was coming with Hobson as the Surveyor-General to the new colony. At daylight on the following morning the Three Kings were sighted, and shortly after the mainland came into view. Two days were spent in beating up the coast, and again at daylight on the 29th, the *Herald* entered the Bay of Islands, drifting with the tide, there being not a breath of wind. All the morning was spent in this tedious process, and it was not till eleven o'clock that the anchor was cast in front of the little town of Kororareka.⁵⁰ Across the Bay the Union Jack was flying in front of Mr. Busby's residence, but what most attracted the attention and excited the interest of those on board was the French tricolour floating from a staff upon the hill-side above the township. "What this may indicate," wrote Mr. Mathew in his diary, "we have yet to learn – whether it is merely a French Missionary establishment or whether a French frigate is at anchor in the Bay and has anticipated us, we shall soon discover."

no use for their services here, and was consequently anxious to get rid of them." Dr. Martin's *New Zealand Letters*.

⁴⁹ The ship *Westminster* was also engaged to convey stores to New Zealand so soon as word should be received of the success of Captain Hobson's mission. The *Westminster* reached the Bay of Islands on March 17, 1840, bringing with her Mr. and Mrs. Burrows and Mr. and Mrs. Matthew for the C.M.S. Mission.

⁵⁰ I am indebted to Mr. H. M. Stowell (Hare Hongi) for the following note on the origin and meaning of *Kororareka*; the ancient name of the town of Russell. *Kororareka* has several original native names: 1. *O-kiato*: *kiato* means confined, of circumscribed area; and this describes its situation exactly. 2. *Wai-taha-rua*: This means, two-sided water, or, the double waterside. This also describes its situation for it has a fine frontage to the Bay itself, and an arm of the Bay runs up to its back-door (so to speak). 3. *Kororareka*: *Korora-reka*, means Sweet-penguin. This has remained its favourite name, and it originated in the following incident: An old high chief lay here dying. He expressed a wish to taste a little of the penguin bird before dying. Now this bird is a rarity in those waters. So many young men of the tribe went off in their canoes and scoured the headlands, isles, and islets for miles around the Bay. At length two young men were fortunate enough to discover a penguin, a real *Korora*, or blue penguin, which they managed to capture. They hastened back with their catch, and the bird was feathered and cleaned and boiled in the ancient manner of boiling. This was to place the bird in a deep wooden bowl, cover it well with water, and keep that water boiling by dropping red-hot stones in it from an oven by its side. The bird being cooked in this way was served up to the old chief, but being unable to chew or to eat any portion he begged for a little of the water (soup) in which it had been boiled. This was brought to him, and having been assisted to a partially seated position he drank some of the "soup," after which he sank back on his pillow, murmured: "*Ka reka te Korora*" and immediately expired. Now, *Ka reka te Korora*, means: How sweet is the Penguin.

CHAPTER IV

THE MAORI MAGNA CHARTA

So soon as the *Herald* was come to anchor she was boarded by Mr. Busby and three of the resident Missionaries, from whom Captain Hobson learned that his apprehensions regarding French occupancy were groundless, the tricolour on the hill indicating no more than the whereabouts of Bishop Pompallier's church. One of the visitors who had come thus early to pay his respects to the new Governor was Mr. Colenso, with whom Captain Hobson entered into an arrangement for the printing, at the press of the Church Missionary Society, of circular letters inviting the chiefs to meet him at Mr. Busby's residence at Waitangi on the following Wednesday, for the purpose of discussing the proposals of the British Government; and to all the British residents requesting their presence at the Mission church at Kororareka on the following day, there to hear Her Majesty's Commission under the Great Seal, extending the limits of the colony of New South Wales, and also Her Majesty's Commission under the Royal signet and Sign manual, appointing Captain Hobson as Lieutenant-Governor over such part of that colony as might be acquired in Sovereignty in New Zealand. These invitations were in circulation on the following morning, messengers being despatched to inform the chiefs, while the European residents perused the notice issued to them with marked interest and mixed feelings. During the afternoon Captain Hobson, accompanied by Captain Nias and his officers, landed on the Kororareka beach, and walking to the church there read his Letters Patent in the presence of the assembled people, forty of whom so far signified their approval of the proceedings as to subscribe their names to the document. The proclamations framed by Sir George Gipps and his Executive were also read, the first announcing that Her Majesty's authority had been asserted over British subjects in New Zealand; the second, which was by no means so popular, acquainting the public of the fact that Her Majesty did not deem it expedient to acknowledge as valid any titles to land in New Zealand which were not derived from, or confirmed by, a grant from the Crown.

These ceremonies concluded, the intervening days were spent in completing arrangements for the fateful gathering on the 5th, not the least arduous duty being the drafting of the treaty, upon the acceptance or rejection of which everything would depend. The exigencies of the position demanded that the greatest care should be exercised in framing the terms of the document,⁵¹ because while it was desired that the proposal of the Crown should be stated with the utmost frankness, the least looseness of expression might imperil the whole project by raising ungrounded alarm in the minds of the natives.

To guard against this it was necessary that those concerned in the preparation of the treaty should have not only a full knowledge of the Crown's intentions, but also an intimate acquaintance with the subtleties of the native character. This latter qualification neither Captain Hobson nor the members of his staff possessed even in a remote degree. To add to their difficulties, Captain Hobson began now to experience the first symptoms of that illness which in less than three years proved fatal to him. He became indisposed, and was unable to leave the *Herald*. In the seclusion of his cabin, however, he devoted himself to an effort to reduce to concrete terms the obligations in which the Crown was prepared to involve itself, and the reciprocating advantages it would require from the natives. In this he achieved but meagre success, and conscious of failure he despatched his chief clerk, Mr. George Cooper, to Mr. Busby, giving him his rough notes together with a request that the erstwhile Resident might favour him with his opinion as to their suitability as the basis of the treaty.

⁵¹ The number and extent of the erasures in the original draft indicate that the greatest care was taken in its composition by those concerned.

Mr. Busby had no hesitation in saying that he regarded them as quite unsuitable, but offered to prepare the draft treaty for Captain Hobson's consideration, if such a service would be acceptable. To this Mr. Cooper replied that nothing would afford His Excellency greater pleasure, as he recognised that Mr. Busby's seven years of official training and native experience had furnished him with many qualifications for the task. The result was entirely satisfactory. The draft prepared by Mr. Busby was adopted by Captain Hobson without alteration beyond the transposition of certain paragraphs, which did not in any degree affect the spirit or the sense of what has long been regarded as the Maori Magna Charta.

A pleasant interlude was afforded by the presentation to Captain Hobson of an Address of Welcome by forty-five of the settlers, in which they expressed their gratification at his safe arrival, and at the early prospect of the establishment of British law and authority in the Islands, which had long been the desire nearest to their hearts. They expressed equal gratification at the appointment of a gentleman as Lieutenant-Governor so distinguished for courage, firmness, justice, and humanity as Captain Hobson, presaging as it did a bright era of prosperity for the colony. They expressed their readiness to await with patience the unfolding of a scheme of government in which the best interests of all were involved, and promised not only to continue the service of loyal subjects of the Queen, but to aid with their best exertions her representative in establishing order, law, and security for life and property in what they were pleased to designate "this improving and important colony."

As was becoming of him, Captain Hobson replied in most gracious terms, which seemed to indicate the existence of a useful harmony between the new Governor and the more decently-disposed settlers.

Not so the speculative element, who were deeply chagrined at the unexpected turn affairs had taken. To these law-breakers the arrival of Hobson meant the complete suspension of their future operations, and what was equally distasteful, a revision of their past transactions. Their hope, therefore, lay in preventing the consummation of the official plan, and before the Lieutenant-Governor had been at the Bay twelve hours, the lawless and the land-grabber were busy poisoning the native mind against the Governor's proposal, telling them with many dark insinuations and bitter taunts, that now they were to be made *taurekareka*— the "slaves" of the Queen.

These mischievous suggestions naturally had a disquieting influence upon the minds of many of the chiefs, who had not as yet gathered the full purport of the impending change, and whose haughty spirit rebelled against the prospect of any loss in tribal dignity. Fortunately they were able to appeal with confidence to the Missionaries, and to the credit of that body it must be said that they were as loyal to their country as they had already proved themselves faithful to their church. Mr. Henry Williams, the head of the Church Missionary Society's group of Missionaries, than whom no man wielded greater influence with the natives at this period, was not at the Bay of Islands when the *Herald*

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