

COMPLETED

WHAKATOHEA CLAIM.

AIDE MEMOIR.

1920. Jones-Strauchan-Ormsby Commission reported that penalty imposed on Whakatoheas was greater than their deserts.

1927. Confiscated Lands Commission reported that confiscation was, in the case of Whakatoheas, excessive to a small extent and recommended that a yearly sum of £300. 0. 0 should be paid for the purpose of providing higher education for the children of the members of that tribe.

1928. Maori M's.P. recommended yearly payment of £450. 0. 0.

1938. In discussions with Hon. Mr. Langstone, representatives suggested an annual payment of £1000. 0. 0. About 1,300-1,400 members in tribe.

Amount suggested for settlement is £15,000. 0. 0 to be used in purchase of land.

WHAKATOEHA (OPOTIKI) CONFISCATIONS.

The question of the justice of the confiscation of the lands of the Whakatohea tribe was one of the matters which was submitted to the Royal Commission appointed on the 19th July, 1920 for inquiry and report. The personnel of this Commission comprised Chief Judge Jones of the Native Land Court, Mr. John Strachan, a former Under-Secretary for Lands and Mr. John Ormsby an enlightened half-caste Maori.

The opening sentence of this Commission's report reads as follows, namely:-

"This is a complaint from the Whakatohea Native Tribe, who belonged to Opotiki. They say that when their lands were confiscated in 1866, for the murder of the Rev. Mr. Volkner on the 2nd March 1865, they were unfairly punished by the deprivation of so much of their lands."

The report of the Commission then proceeds to give a careful review of the facts which gave rise to the action taken by the Government to confiscate the lands and after discussing at length the opposing views as to justification for the policy of confiscation concludes as follows, namely:-

"It would seem to us that righteous indignation at a very diabolical murder partly swayed the judgment of those who advised and authorized the confiscation of such a large area. The punishment of the actual perpetrators was an after event, and could not have been taken into account in assessing the amount of land that should be confiscated. Nor, apparently, was the fact sufficiently considered that the arch-criminal was of another tribe altogether. No doubt the Whakatohea tribe was carried away by fanaticism and was equally responsible.

In our opinion the fact that punishment was inflicted on the Whakatohea by a punitive expedition in

1865, and that the actual offenders were captured and dealt with according to the civil law, should have had some effect in lightening the punishment that was imposed on the tribe by confiscating so much of their land. But as a fact the lands were cut up and partly sold and dealt with before the principal offender (Kareopa) was brought to justice. We have not sufficient material before us to say what would have been a fair and just area to confiscate nor do we think it wise to go into that question. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea Tribe, great as was their offence, was heavier than their deserts."

The report of Chief Judge Jones' Commission, it will be observed, found that the penalty imposed on the Whakatohea tribe for the acts of rebellion of its members was excessive. But the Commission did not express any opinion as to the extent of excess neither did it make any recommendation nor venture any suggestion as to what would be a reasonable compensation to make to the members of the tribe by way of relief.

The petitions which were submitted to the Royal Commission presided over by Chief Judge Jones were therefore amongst those included in the schedule to the Royal Commission appointed on the 18th October, 1926 the members of which comprised the Hon. Mr. Justice Sim, the Hon. Mr. Vernon E. Reed and Mr. William Gordon.

It has already been mentioned that the Rev. Mr. Volkner was murdered by the Natives at Opetiki on the 2nd March, 1865 but owing to the disturbed state of the District no immediate attempt was made to punish the murderers, although a skirmish took place about the 21st May, 1865, by an expedition under Captain Fremantle in an attempt to seize one of those implicated. But on the 27th July, 1865, Mr. Fulloon and others were murdered at Whakatane by another tribe and it was decided

to despatch a punitive expedition. In the Proclamation of Peace in respect of the previous war, dated the 2nd September, 1865, the following reference is made to these murders, namely:-

"The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr. Volkner and Mr. Fulloon. If they are given up to justice the Governor will be satisfied; if not the Governor will seize a part of the lands of the tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and for providing for the widows and relatives of the murdered people."

An expedition followed, assisted by the officers and men of H.M.S. "Triak" and some of the murderers of Mr. Fulloon and Mr. Volkner were secured. On the 30th December, 1865, Mr. Stafford decided that the prisoners should be tried by the Civil Courts, which event took place a few months later.

On the 17th January 1866, an Order in Council was issued confiscating all the lands of the Natives within the Bay of Plenty district as defined in the schedule to the Order in Council. This was later amended - on the 1st September 1866 - by altering the boundaries and dating the taking as from that date. Any defect in the Proclamation was apparently relieved by the Act of 1866, passed later, which expressly validated all Proclamations theretofore made.

On the 23rd March, 1866, the Governor reported that he had visited Opotiki, among other places, and that he had found the Hauhaui fanatics entirely subdued, and tranquility fully established.

With regard to the area of land confiscated in the Bay of Plenty, Judge Jones' Commission in its report has said:

"As far as we can gather, about 440,000 acres in all were taken from the Whakatane and Opotiki Natives. The latter are the Whakatohea Tribe. In the first Proclamation

about 87,000 acres as we understand it, belonging to the Arawa Tribe, were erroneously included, and were restored to them; and about 40,832 acres at the eastern end were abandoned. This left about 318,168 acres, out of which 3,832 acres were absorbed by old land claims leaving 308,336 acres. From the information supplied us we have reason to believe that the area taken within the Whakatohea Block was 173,000 acres, or about half their total possessions, and all the flat and useful land. Out of both blocks there was required for the military settlers an area of 23,461 acres, and apparently 201,213 acres, including 96,261 acres awarded to loyal Natives were returned to Natives. As far as we can learn only the Opape Block, 20,326 acres in all, were returned to Whakatohea. The consequence is that after various sales to the Crown, the Whakatohea have, including the land returned to them, a total area of 35,449 acres. The Government is not, of course, responsible for the sales, but the land sold was the inland portion of the land left, and which was not so useful to the Natives as the former settlements from which they had been removed to Opape."

The question of the area of land confiscated and taken from the Whakatohea Tribes is set out in the report of the Commission of the 18th October, 1926. The figures given differ slightly from those given in Judge Jones' Commission and for that reason the extract from the report of the former Commission is here quoted, which is as follows, namely:-

"The total area included in the proclaimed district was 448,000 acres. Of this, 118,300 acres were restored to loyal Natives and 112,300 acres to rebel Natives. There was an area of 6,340 acres which had been sold privately before the confiscation, so that the area finally confiscated was 211,060 acres (? 210,060). The territory

confiscated included an area of 67,000 acres which was claimed by the Arawas, and was ceded to them. This claim was disputed by the Ngatimaras, who said that this area belonged to them. If the area be treated as belonging to the Arawas, the Ngatimara had originally 107,120 acres, and were left with 50,321 acres, which was increased by grants to 77,870 acres. The Whakatoheas had originally 491,000 acres and were left with 347,130 acres. The Tuhoes had originally, 1,269,280 acres, and were left with 1,234,549 acres. These figures are based on the tribal boundaries as given on what is known as Heaphy's plan. There is some dispute as to the correctness of the boundaries as shown on this plan."

The confiscations in the Bay of Plenty included the lands of the tribes at Whakatane as well as those of the Whakatohea tribe, which is the tribe which occupied the lands in the Opotiki Districts. The Military operations of the Colony had been carried out against the tribes in both districts. The murder of Mr. Volkner occurred at Opotiki and that of Mr. Fulloon at Whakatane. Both acts may be ascribed to the fanaticism of the adherents of the Maheua religion introduced into the districts from Taranaki by Kereopa who later suffered the extreme penalty for his part in the murders, having been tried and convicted for the murders in the Supreme Court at Auckland where he was hanged in 1871.

Counsel for the Natives before the Hon. Mr. Justice Sim's Commission submitted that there should have been no confiscations in the Bay of Plenty District; that the acts of the Natives in connection with the deaths of Mr. Volkner and Mr. Fulloon were cases of murder. On this point he submitted that:

"Volkner's death, which occurred on the 2nd March, 1865, was treated by the Government as murder and nothing less than murder: it was not treated as part of an armed

rising in this district. Some attempt may be made to show the contrary. My answer for the present at any rate, is I submit, a sufficient one: the Government treated it as murder and not as being in the nature of rebellion."

In support of his submission that the Government treated the deaths of these two men as a case of murder, Mr. Smith quoted an extract from a letter from the Native Minister (Mr. Fitzgerald) to the Resident Magistrate at Whatawhata dated the 22nd August, 1865, as follows, namely:-

"The murderers of Mr. Volkner and Mr. Fulloon must be arrested and brought to justice. The Government is about to issue a proclamation of peace, bringing the war to a final conclusion, and offering pardon to all except to those who have committed some of the worst murders - that is murders that no state of war could justify or excuse. With these exceptions peace will be offered to all, and no more land will be taken. At the same time, while no further steps will be taken against rebels, a strong expedition is sailing to Opotiki to arrest the murderers of Mr. Volkner and Mr. Fulloon, and if not given up, their lands will be taken to provide the cost of establishing a police force in the district. The same policy will be pursued in all future cases of murder, under an Act now passing, of which I send you a copy. All this you must explain to Thompson (Wiremu Tamihana) so that he may fully understand that whilst the Government will take no further steps to punish those who have been in arms against the Queen, it is resolved to put down all acts of violence."

Continuing his argument Counsel for the Natives said as follows:

"Following on that letter (Mr. Fitzgerald's quoted above), was the publication of the proclamation itself on the 2nd September, 1865, and the next was the proclamation of

martial law on the 4th September 1865, contained on page 267 of the Gazette of 1865, when martial law was proclaimed in Opotiki and Whakatane. The British force sent to capture these murderers landed at Opotiki on the 8th September 1865, just six months after the murder of Mr. Volkner; so the Government took a long time to consider that this was necessary. When the force came here they met with no fortifications or redoubts."

Counsel then proceeded to quote extracts from Cowan's History of New Zealand Wars to show that in reality the troops did not have many engagements in the district, and had no real trouble at all.

The delay on the part of the Government to take prompt and effective measures to apprehend the murderers of Mr. Volkner is referred to in the report of Judge Jones' Commission which is quoted earlier in this review and is there ascribed to the disturbed state of the district, and mention is made of a skirmish having taken place on the 21st May, 1865.

Counsel for the Crown in replying to the submissions of Counsel for the Natives after citing extracts from Cowan as to the fighting between the opposing forces said:

"Now, I have cited these extracts from Cowan to show that while before the murder of Fulloon and Volkner, at a time when there was no aggression nor the faintest hint of aggression on the tribes of the Bay of Plenty District, these tribes - namely the Whakatahea, Ngatiama, Tuhoe - were engaged in an active and well organised attempt to join the Waikato rebels in the Waikato, and I cite it further for the purpose of showing that the statement made by my friends, that the Whakatahea, Ngatiama and Tuhoe Tribes were loyal and peace loving tribes, is not correct. I shall now proceed to deal with the Opotiki expedition, which followed on the murder of Mr. Volkner.

But I do not purpose entering upon a detailed account of the murder because it is submitted that although the Government may have taken into account the murder of Volkner when making the confiscation, the real justification for the confiscation was the continued warlike hostilities to the Government by the tribes concerned, hostility which began long before the murder, and which continued after, and of which the murder may be said to have been symptomatic. I shall now proceed to show that following the murder there were serious acts of rebellion by the Whakatohea Tribe. When the Government attempted to enforce the Criminal Law by the arrest of the murderers they were met by what I think can be shown to be a very considerable opposition on the part of the Whakatohea Tribe."

In support of his submissions as above, Counsel for the Crown then proceeded to refer the Commission to certain citations from Cowan's History of the New Zealand Wars (Volume II commencing at page 102).

No attempt is being made in this review either to justify or condemn the confiscation of the Whakatohea Tribal lands but merely to give a brief outline of the main submissions which were made to the Royal Commission which was set up to inquire into and report upon certain aspects of the matter and out of the report of which the recommendation was made which is to be discussed by the representatives of the Natives and the Government.

The matters which the Commission was directed to inquire into and report upon were as follows:-

1. Whether having regard to all the circumstances and necessities of the period during which Proclamations and Orders in Council under the said Acts were made and confiscations effected, such confiscations or any of them exceeded in quantity what was fair and just,

whether as penalty for rebellion and other acts of that nature, or as providing for protection by settlement as defined in the said Acts.

2. Whether any lands included in any confiscation were of such a nature as that they should have been excluded for some special reason.
3. Whether any, and, if so, what Natives (having title or interest in the lands confiscated) are in your opinion justly entitled to claim compensation in respect of the confiscation of such title or interest, and, if so, what Natives or classes or families of Natives are now entitled by descent or otherwise to claim to receive such compensation.
4. Whether reserves or other provision subsequently made for the support and maintenance of Natives within one or more of the classes accepted by the said section five were in regard to any particular tribe or hapu inadequate for the purpose.

In its report to the Governor-General pursuant to the Commission issued to them, the Commission has said:

54. It is clear that the Natives of Opotiki and Whakatane were engaged in rebellion against Her Majesty's authority when they resisted with arms the advance of the forces sent out to capture the murderers. Their cases came, therefore, within the terms of The New Zealand Settlements Act, 1863, and the Governor was justified in confiscating their lands as a penalty for their rebellion.
57. The Whakatohea Tribe have in their favour the report of the Commission which sat in the year 1920. The concluding sentences of the report are these: "We have not sufficient material before us to say what would have been a fair and just area to confiscate, nor do we think it wise for us to go into that quest-

ion. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea, great as was their offence, was heavier than their deserts.

58. We have considered the matter carefully, and we think that, except in the case of the Whakatohea Tribe, the confiscations in the Bay of Plenty did not exceed what was fair and just. In the case of the Whakatohea Tribe it was excessive, we think, but only to a small extent, and we recommend that a yearly sum of £500 should be paid for the purpose of providing higher education for the children of the members of that tribe."

N 1945/2833

see L.S. 22/3122

Pet. no 235/15

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WHAKATOHEA CONFISCATION.

REPORT OF NATIVE LAND CLAIMS COMMISSION ON THE

See Parliamentary Paper G.-5/1921, Session I, pages 24-27.

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WHAKATOHEA CONFISCATION.

This is a complaint from the Whakatohea Native Tribe, who belonged to Opotiki. They say that when their lands were confiscated in 1866, for the murder of the Rev. Mr. Volkner on the 2nd March, 1865, they were unduly punished by the deprivation of so much of their lands.

1866, A.-1,
p. 68.

The facts which led up to the confiscation were shortly as follows: The people of the place had sympathized with the Natives engaged in the Waikato War, and some of them had taken part in that war. When the wave of Hauhau fanaticism passed over the Native race it is said that no spot was more prepared to receive it than Opotiki. "Their cultivations," it was said, "had been neglected, and a low fever caused by lack of food had carried off more than one hundred and fifty persons." It was in these circumstances that Rev. Mr. Volkner, who was not altogether in favour among the Natives, and despite warnings, resolved to leave Auckland and to revisit them, carrying with him wine and quinine, though he considered it doubtful whether they would take such things from his hands. Meantime, towards the end of February, 1865, the Hauhau apostles under Kereopa and Patara arrived from Taranaki and Taupo, carrying with them the head of Captain Lloyd. At Whakatane they expressed their intention of giving Mr. Volkner orders to leave, and if he refused he would be killed. The Hauhaus arrived at Opotiki about the 28th February, 1865, and Mr. Volkner about the 1st March; and on the 2nd March he was, after what may be termed a mock trial, murdered under most revolting circumstances. The actual murder was committed, it is said, by Kereopa, but there is no doubt others, partially influenced by the frenzy of their new religion, were concerned in it. Three of the perpetrators were sentenced to death in March, 1866, and another suffered imprisonment; and Kereopa himself was tried, convicted, and hanged in 1871, and died acknowledging the justice of his sentence.

1865, E.-5,
p. 1.

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

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

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

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

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

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

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

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

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

1864, E.-2,
P. 77.

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

1864, E.-2,
P. 20.

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

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

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

In this case, as far as we can gather, about 440,000 acres in all were taken from the Whakatane and the Opotiki Natives. The latter are the Whakatohea Tribe. In the first Proclamation about 87,000 acres, as we understand it, belonging to the Arawa Tribe, were erroneously included, and were restored to them; and about 40,832 acres at the eastern end were abandoned. This left about 312,168 acres, out of which 3,832 acres were absorbed by old land claims, leaving 308,336 acres. From the information supplied us we have reason to believe that the area taken within Whakatohea Block was 173,000 acres, or about half their total possessions, and all the flat and useful land. Out of both blocks there was required for the military settlers an area of 23,461 acres, and apparently 201,213 acres, including 96,261 acres awarded to loyal Natives, were returned to Natives. As far as we can learn, only the Opape Block, 20,326 acres according to survey, and about 2,000 acres of other lands, or 22,000-odd acres in all, were returned to Whakatohea. The consequence is that, after various sales to the Crown, the Whakatohea have, including the land returned to them, a total area of 35,449 acres. The Government is not, of course, responsible for the sales, but the land sold was the inland portion of the land left, and which was not so useful to the Natives as the former settlements from which they had been removed to Opape.

Colonel
St. John's
report, 1872,
G.-4, p. 5.

Stout-Ngata,
1908, G.-1m,
p. 1.

Judging by later events it would appear that, as far as Whakatohea was concerned, the confiscation of such a large area came very close to that punishment or retaliation that in 1864 the Government avowed was not its principal object. The strong feeling at the time may be gathered from Mr. Stafford's speech in the House on the 19th August, 1868: "The honourable member possibly alluded to the confiscation of from 400,000 to 500,000 acres. He was prepared to say, if there ever was a confiscation which was deserved, it was that at Opotiki. If there were ever atrocities unprovoked and utterly wanton and diabolical in their character, they were to be found in connection with the murders of Mr. Volkner and Mr. Fulloon, which led to the confiscation. Those atrocities were committed upon unoffending men by a people whose lands had never been invaded, who had been left in peace, and against whom no threat had been held out. They were committed without the slightest provocation, by persons amongst whom Mr. Volkner had lived peacefully for a series of years, labouring solely for the benefit of the very people by whom he was barbarously murdered. If those acts did not call for confiscation, how could previous confiscations be justified?"

1864, E.-1,
p. 20.

Hansard,
1868, Vol. 2,
p. 521.

It would seem to us that righteous indignation at a very diabolical murder partly swayed the judgment of those who advised and authorized the confiscation of such a large area. The punishment of the actual perpetrators was an after-event, and could not have been taken into account in assessing the amount of land that should be confiscated. Nor, apparently, was the fact sufficiently considered that the arch-criminal was of another tribe altogether. No doubt the Whakatohea Tribe was carried away by fanaticism, and was equally responsible.

In our opinion the fact that punishment was inflicted on the Whakatohea by a punitive expedition in 1865, and that the actual offenders were captured and dealt with according to the civil law, should have had some effect in lightening the punishment that was imposed on the tribe by confiscating so much of their land. But as a fact the lands were actually cut up and partly sold and dealt with before the principal offender (Kereopa) was brought to justice. We have not sufficient material before us to say what would have been a fair and just area to confiscate, nor do we think it wise for us to go into that question. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea Tribe, great as was their offence, was heavier than their deserts.

SOUTH ISLAND CLAIMS.—KEMP'S PURCHASE.

This is a matter which arises out of a transaction entered into some seventy-two years ago.

In the year 1848 the New Zealand Company was anxious to form a settlement on that part of the east coast of the South (or, as it was then known,

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1888, I.—8,
p. 8.

1888, I.—8,
p. 8.

1888, I.—8,
p. 9.

"Middle") Island now mostly included in Canterbury. Being by law debarred from dealing directly for the land with the Native owners, they approached the Governor-in-Chief, who in turn gave instructions to the Lieutenant-Governor of New Munster (which included the land in question) to promote the purchase from the Maori owners. That the New Zealand Company was the moving spirit in the matter seems clear from Lieutenant-Governor Eyre's letter of the 25th April, 1848, in which he acknowledges receipt of Colonel Wakefield's letter, on behalf of the New Zealand Company, "with respect to the contemplated purchase of lands in the Middle Island; and stating the limits within which you are willing to undertake payments in extinguishment of the Native title to the land referred to." So, in the instructions to Mr. Kemp of even date the latter is referred to as "Commissioner to negotiate the purchase from the Natives of certain lands required by the New Zealand Company"; while Mr. Kemp himself in his report of the 19th June, 1848, ventures "to hope that the arrangements I have made will meet with His Excellency's approbation, and at the same time prove satisfactory to the principal agent of the New Zealand Company, on whose behalf the land has been acquired." In addition, it is quite clear that the New Zealand Company found the money required for this and adjoining purchases.

1888, I.—8,
p. 10.

The question of whether the Company or the Crown acquired the land is not now of much moment as far as the actual ownership of the land is concerned, since the Crown adopted and treated the contract as its own. But it does have considerable bearing on the question of how much land the Natives thought they were selling. They claim that they were told that it was a sale of, and they were only treated with for, the eastern seaboard between two former purchases, and that the consideration was never intended for more than that. Some colour is given to this view by Lieutenant-Governor Eyre's strongly expressed indignation at Mr. Kemp's action in recognizing Native rights over a large area, after being specially warned in a personal interview to guard against the "error of acknowledging a validity of title in the few resident Natives to vast tracts the larger portion of which had probably never even been seen, and certainly never had been made use of, by them; and that he [Lieutenant-Governor Eyre] repeatedly and distinctly enunciated to you that it was only rights or titles of the Natives, to the extent these might be found to exist, to the tract of country referred to which were to be purchased"—evidently referring to the theory (afterwards abandoned) that all land not actually occupied by the aboriginals belonged to the Crown. Whatever may have been intended, it is quite evident that the conveyance was drawn and executed so as to cover all the land lying between the former purchases on the north and south, and the east and west coasts of the South Island, except Banks Peninsula—somewhere about 20,000,000 acres in all.

1 MacKay,
p. 208.

1888, I.—8,
p. 7.

From the records we gather the following history of the events leading up to the sale: Somewhere before the 17th March, 1848, Governor Sir George Grey visited the South Island, and there "found, upon conversing with the principal chiefs of that Island, that they had all acquiesced in the propriety of an immediate settlement of their claims to land upon the following basis: that the requisite reserves for their present and reasonable future wants should be set apart for themselves and their descendants, and should be registered as reserves for such purposes, and that they should then relinquish all other claims whatever to any lands lying between the Nelson and Otago Blocks, receiving for so doing such sums as might be arranged, in four annual payments. Upon considering the number of Natives between whom the payment agreed upon was to be divided, it appeared to me that a total sum of £2,000, in four annual payments of £500 each, would be as large an amount as they could profitably spend, or was likely to be of any real benefit to them." On his return to Wellington he communicated verbally with the Lieutenant-Governor, promising to send down the Surveyor-General to conduct the purchase. Finding, however, that officer could not be dispensed with, he subsequently (8th April, 1848) sent word to Lieutenant-Governor Eyre that he found that the services of the Surveyor-General could not be spared, and instructed the Lieutenant-Governor to appoint some other person, stipulating it should be Mr. Kemp—or, at least, he should be the