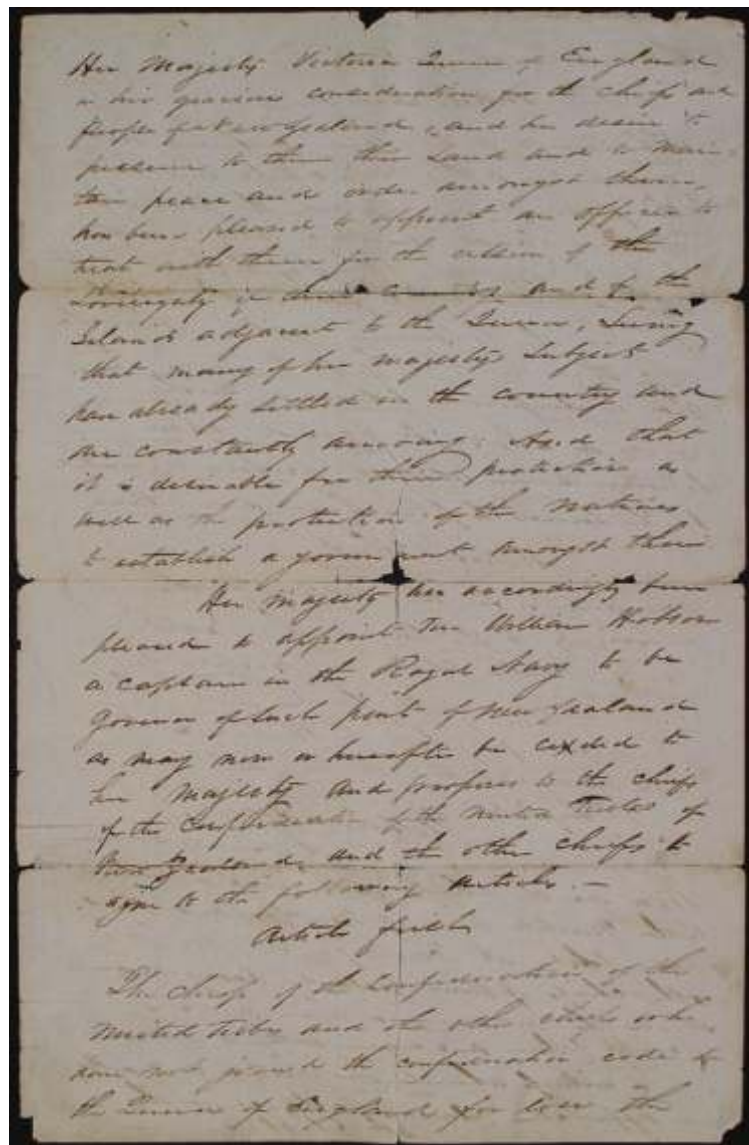


**THE TREATY
OF WAITANGI
AN EXPLANATION**

**BY THE HON.
SIR APIRANA NGATA
M.A., LL.B. LIT.D.**



Foreword

The Treaty of Waitangi is said to be our nation's founding document. As such, it should be a document that unites all New Zealanders. Regrettably it has become a document of division, becoming grounds for an increasingly litigious grievance industry.

The question remains - what was the intent of the Treaty?

The acclaimed Maori Leader Sir Apirana Ngata explains the intent in the pages of this book, the "Treaty of Waitangi". He concludes with the words:

"The Treaty made the one law for the Maori and Pakeha. If you think these things are wrong and bad then blame our ancestors who gave away their rights in the days when they were powerful".

I hope you enjoy the book.

A handwritten signature in blue ink, which reads "Muriel Newman". The signature is written in a fluid, cursive style and is positioned above a horizontal line.

Dr Muriel Newman
(Director of the New Zealand Centre for Political Research)



Sir Apirana Ngata has been described as New Zealand's greatest Maori Leader. Born in 1874 in the East Cape town of Kawaka, he was the oldest of fifteen children. In 1893 he became the first Maori to graduate from a New Zealand University. He was a prominent politician and lawyer, serving as a Member of Parliament from 1905 to 1943, much of that time as the Minister of Maori Affairs. He died in 1950.

THE TREATY OF WAITANGI
AN EXPLANATION

TE TIRITI O WAITANGI
HE WHAKAMARAMA

BY THE HON.
SIR APIRANA NGATA
M.A., LL.B., LIT.D.

PUBLISHED 1922 FOR
THE MAORI PURPOSES FUND BOARD
TRANSLATED INTO ENGLISH BY M. R. JONES



Hone Heke, the first Maori chief to sign the Treaty.

It was on the 6th day of February, 1840, when the Treaty of Waitangi was made. Waitangi is part of the Bay of Islands in the northern part of the North Island. It was made between Governor William Hobson on behalf of Queen Victoria and Maori Chiefs who gathered there on that day. It was afterwards that some copies of the Treaty were taken to various parts of the island even to the South Island and was signed by Maori Chiefs of the various tribes.

Altogether there were 512 signatories. From then to now the Treaty and the provisions therein have been the subject of discussion by learned men and administrators of Maori affairs. At the present time the Treaty is widely discussed on all maraes. It is on the lips of the humble and the great, of the ignorant and of the thoughtful.

It was an old lady who asked me quite recently, "Now you tell me what are its conditions and why is it the subject of discussion on the maraes?" I wondered then whether she was right and it was wrong for the name of the Treaty to be so freely discussed on the lips of our womenfolk, when the provisions contained therein were not clear to them.

The Treaty of Waitangi was first written in the English language and then translated into the Maori language. The draft was actually written by Governor Hobson and Busby (who was the previous administrator for the

Queen before Governor Hobson) corrected it. This is what Busby said and it was printed in the Parliamentary papers for the year 1861:

"The draft of the Treaty was made by me and was approved by Captain Hobson. He made a few alterations but the fundamental provisions were not altered."

Some of Busby's descendants lived at Kairakau near the coast in the Hawkes Bay, and later at Tokomaru (Waiapu) where some of the grandchildren still reside. The Maori version of the Treaty was by Henry Williams, referred to as the Four-eyed Williams, one of the ancestors of the subtribe of the Williams.

The English expressions in the Treaty were not adequately rendered into Maori. There were minor parts left out. However, the Maori version clearly explained the main provisions of the Treaty, therefore, let the Maori version of the Treaty explain itself.

What is a Treaty? In accordance with the Maori language, it is an agreement between two or more peoples having authority and agreeing between themselves to certain wide powers affecting them all. The document on which these powers and agreements are recorded is called a treaty. Let the actual Maori version of the Treaty now show.

THE HEADING OF THE TREATY

This is the heading of the Treaty setting out the reasons for the making of the Treaty:

"Victoria, the Queen of England, in Her feeling of affection towards the Chiefs of the Tribes of New Zealand and in Her desire to retain for them their Chieftainships and also that peace may reign and they live happily, has thought it wise to send a High Personage as her representative to negotiate with the Maori people of New Zealand, the Maori Chiefs, to agree to the Government of the Queen having access to all parts of the land including the islands. This is by reason of the fact, that so many members of Her race were living in this land, and many more were coming. Now, the Queen has thought it good to send me, William Hobson, a Captain of the Royal Navy to be Governor for all parts of New Zealand, to be ceded now and for ever to the Queen and she invites the Chiefs of the assembled tribes of New Zealand and other Chiefs to accept the following provisions."

This is the heading explaining the reasons why Governor Hobson was sent by Queen Victoria, Queen of England and Her other lands to arrange conditions between the Queen and the Chiefs of the Maori people. The main purport is in the words, "This is by reason of the fact that so many members of Her race were living in this land and many more were coming". Therefore

the Queen was desirous to establish a Government with a few to avert the evil consequences to the Maori people and to Europeans living under no laws.

These are very wise words. It was correct that many Europeans had settled throughout both islands, missionaries and their families, European sellers of goods, the whalers, sailors, thieves and murderers. It had been stated that 500 convicts had escaped from Australia and were living in various parts of the Bay of Islands just prior to the Treaty. Maori authority had no affect on them but they often disturbed the Maori people. Neither did the laws of the Queen affect them by reason of the fact that the Queen had no authority over these islands. According to the records of the missionaries, one thousand of the Maori people were murdered by the Europeans in the years prior to the Treaty, and we have also heard of the Maori people murdering Europeans. These were lawless times. Therefore the Queen "was desirous to establish a Government with a view to avert the evil consequences to the Maori people and to the Europeans living under no laws".

Now these were important words "living under no laws". It was the European conscience of the man who formulated the words of the Treaty who saw that this was the main trouble throughout North

and South Islands. This was the trouble which was forcing itself to be remedied - lawlessness. This conflicted with Maori custom, the authority of Maori Chiefs of cannibal times, of illiterate days and the individualistic European idea of the European who had strayed out of the confines of his own laws and who had left behind the very lands from which he was nurtured. It was this law, then, which was stretching out to follow him - the long fingernails of Queen Victoria which she had attached to Governor William Hobson.

This was at a time when the Maori tribes were fighting fiercely among themselves. There was no peace following the wars of Hongki Hika, Te Wherowhero, Te Waharoa and Te Rauparaha. Guns and powder were the goods most desired by each tribe, when chiefly women were given away, and lands were sold. This was at a time when lands were sold on a broad scale. Europeans crowded to buy land for themselves in the Bay of Islands, Hauraki, Porirua and the South Island, guns, kegs of powder, blankets, tobacco and spirituous liquor were given in payment. Many claims were made by various Europeans for the one piece of land sold to each of them by various Maori chiefs. Where was the law in those times to decide what was right?

The Maori did not have any government when the European first came to these islands. There was no

unified chiefly authority over man or land, or any one person to decide life or death, one who could be designated a King, a leader, or some other designation. No, there was none, the people were still divided, Waikato, Ngai Naua, Te Arawa, Ngapuni and tribe after tribe. Within one tribe there were many divisions into sub-tribes each under their own chief. How could such an organisation, as a Government, be established under Maori custom? There was without doubt Maori chieftainship, but it was limited in its scope to its sub-tribe, and even to only a family group. The Maori did not have authority or a government which could make laws to govern the whole of the Maori Race.

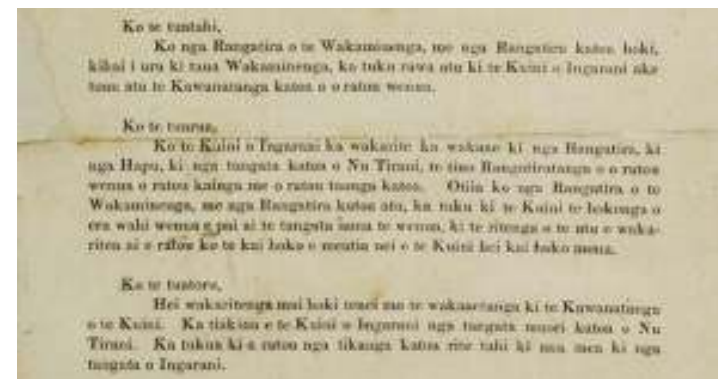
These were the reasons for the direct approach by Governor Hobson to the Maori Chiefs and for arranging for copies of the Treaty to be taken from end to end of each island, seeking to obtain the concurrence of chief after chief. It has been mentioned earlier that 512 Maori Chiefs subscribed their marks or their names to the Treaty of Waitangi.

I shall explain later the meaning of the term "Government" and of the words "Chiefly Authority", but let me say here that until the meaning of these words are clear, no one can consciously understand the full meaning of the Treaty of Waitangi.

Another part of the Heading of the Treaty which requires our consideration is, "Regarding with Her Royal favour -

the Native Chiefs and Tribes of New Zealand - are anxious to protect their just Rights and property and to secure to them the enjoyment of Peace and Good Order. These are the words which are embraced in the minds of the Maori people, "protect their just Rights and property". Let us wait until the three covenants of the Treaty are fully explained to see the full significance of this thought in the mind of Queen Victoria.

Let us conclude here the explanations of the Heading of the Treaty. It will be seen that the main purpose of the Government of Queen Victoria was for all New Zealand including the European and the Maori inhabitants, all men and the land to come under the authority of a specific government.



ARTICLE THE FIRST

These are the words of the first article of the Treaty of Waitangi. The First Article:

"The Chiefs assembled including Chiefs not present at the assembly hereby cede absolutely to the Queen of England for ever the government of all of their lands".

These are but a few words but they indicate a complete cession. This was the transfer by the Maori Chiefs to the Queen of England for ever of the Government of all their lands. What was the thing they transferred? What was the thing which they gave away so freely for ever? It was the Government of their lands. You are somewhat confused with the purport of those words "their lands" as being just a land matter. No, the real meaning includes "their boundaries or territories". The English word in the English version of the Treaty, "territories". What is a "Government?" The English word is "Sovereignty". The English word for such a personage as a King or Queen is "Sovereign". This is the same as the Maori words "Ariki Tapairu" and is referred to as the absolute authority. The "Sovereign Power" of the English rests with the King or Queen and his or her Council called Parliament. This gives a clearer understanding of the term "Government" as used in this article of the Treaty, that is, it is the absolute authority over the people which the article transmits into the hands of the Queen and her Parliamentary Council. It is Parliament which makes

laws for the people, for the land, for health, for sickness, for crime, for good order and for everything pertaining to the well being of all throughout the world. The Ministers of the Government, the officials, the Departments under their administration, the courts, the boards, the judges, the policemen, the inspectors, the surveyors, the schools, the hospitals, all other groups having authority as administrators, upholders of the law, and adjudicators are all within the laws made by Parliament. The laws made by Parliament affect all the people living on the face of this land, the land properly delineated and known as Aotearoa, the South Island and adjacent islands. They are made for the humble and the great, for the ignorant and for the chiefs without discrimination.

This first article of the Treaty of Waitangi carries out the wishes of the Queen, "to establish a settled form of Civil Government with a view to avert the evil consequences to the Maori people and to the Europeans living without laws". It is this article of the Treaty which leaves and embodies within these islands the Government of the Queen of England.

What was it that the Maori Chiefs ceded? This article states, "They do absolutely cede to the Queen of England for ever the Government of their lands". Well, it has been said that the Maori did not have any Government, how can he cede something he did not have? Let me explain again. The explanation is in the

meaning of the words "Chiefly authority". It was this chiefly authority held by each chief who subscribed his mark to the Treaty of Waitangi that each chief ceded to the common weal and to Governor William Hobson, as an offering to Queen Victoria. The sum total of the authorities of the Maori Chiefs ceded to the Queen was the Government of the Maori people.

Now what was the chiefly authority? What was the authority of the Maori chiefs at the time of the signing of the Treaty, to the people, to the land, and to the tribes under their separate authorities? That was the time of Te Hapuku, of Te Rauparaha, of Te Rangihaeata, of Te Wherowhero, of Te Waharoa, of the great Te Heuheu, of Kawiti, of Patuone, of Hone Heke, of Tupaea, of Te Amohau, of Te Pukuatua, of Mokonuiarangi, of Aporotanga, of Aopururangi, of Te Houkamau, of Te Kani-a-Takirau, of Te Potao-aute, of Te Eketuoterangi and of the many others who have departed to "the realms of night - the terror of the land, the power over man". One could make lengthy additions to this part of our explanations.

Let us express in brief, the chiefs gave away to the common weal the kiwi cloak, the dog skin cloak, ornamental cloaks to hang in Museums for Europeans to view, and to expound the virtues of the Maori. "These were the treasures of the Maori while they had authority": now the Maori looked on, sighed, recited and uttered "Farewell to the abode of death, to England the abode of pleasure". Having received these treasures the Queen gave red blankets in return. It is said these made up the

greater part of the gifts laid by Governor Hobson, his officers and the missionaries before the Maori chiefs who signed the Treaty.

During the time when the Maori chiefs had authority and there was no authority of British law, the word of the chief was law to his tribe. It was he who declared war, and he who sued for peace. Here are some of the words of that period; "The fire burning yonder, go forth to put it out". A great number of the people thus disappeared - loss of man, loss of land. The chief was separated from his daughter who was used as an offering to the invaders to bring about peace. It was the chiefs who bespoken the land and gave it away. They had the power even for life or death. These were the powers they surrendered to the Queen. This was the understanding of each tribe. The main purport was the transferring of the authority of the Maori chiefs for making laws for their respective tribes and sub tribes under the Treaty of Waitangi to the Queen of England for ever. The embodiment today is Parliament, the Governor, his Ministers, the Members of the Lower House elected by the people and the Members of the House of Lords, appointed by the Governor, together they make the laws.

My dear old lady, this is part of the answer to your question "What is the Treaty of Waitangi?" It was the first article of the Treaty which transferred the chiefly authority of your ancestors, affecting you and future generations for ever. This is the reason for the

speeches in Parliament now in session in Wellington, making the laws, good laws, bad laws, laws for relief and harassing laws.



Apirana Ngata leading members of the Maori Battalion in a haka in front of the whare runanga on the Waitangi treaty house ground at the 1940 centennial celebrations. (Source: New Zealand History online)

ARTICLE THE SECOND

This is the second article of the Treaty of Waitangi.
The Second:

"The Queen of England confirms and guarantees to the Chiefs and Tribes and to all the people of New Zealand the full possession of their lands, their homes and all their positions, but the chiefs assembled and all other chiefs yield to the Queen the right to alienate such lands which the owners desire to dispose off at a price agreed upon between the owners and person or persons appointed by the Queen to purchase on her behalf".

I said at the beginning of my explanations that the Maori version was not a good translation of the English terms in the Treaty. There were small parts left out. Young students from among you can see for yourselves the English version of the second article of the Treaty as follows:

"Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their Lands and Estates, Forests, Fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and

the Individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf".

Now it will be seen there are several words in the English version which were not adequately rendered into the Maori language. This is my translation:

"Ko te Kuini o Ingarangi ka whakapumau, ka whakaoatia kia whakatuturutia ki nga Rangatira, ki nga Hapu o Niu Tireni, a ki ia whanau, ki ia tangata ranei o ratou, te mana te rangatiratanga o o ratou whenua, o o ratou ngahere, oo ratou taunga-ika, o era atu taonga ranei a ratou, a ia tangata ranei o ratou mo te wa e hiahia ai ratou ki te pupuri i aua mea; Oti ia e whataae ana nga Rangatira o te Whakaminenga, me era atu rangatira katoa ki te tuku atu ki te Kuini i te mana motuhake ki te hoko i nga wahi whenua e hiahiatia ana e nga tangata no ratou aua whenua kia hokona, mo nga utu e whakaritea i waenganui i nga tangata no ratou aua whenua me nga tangata e whakaritea e te Kuini hei kai hoko mana".

This is the article from which stems the matters which are discussed throughout the maraes in regard to the Treaty of Waitangi. When a bad law is made it is said to contravene the Treaty of Waitangi. The Government confiscates the land, it is said this is wrong, because it

contravenes the guarantee of the Queen under this article of the Treaty. This has given rise to wishful thinking on the part of many Maori groups, for the formation of Absolute Maori Authorities, variously called Kotahitanga (United Group) Kauhanganui (Open Forum) Maori Parliament or other designations. All this wishful thinking goes back to this article in the Treaty. Indeed these ideas were due to confusion as the authority of the Maori was set aside for ever by the first article of the Treaty.

What is this authority, this sovereignty that is referred to in the second article? It is quite clear, the right of a Maori to his land, to his property, to his individual right to such possessions whereby he could declare, "This is my land, there are the boundaries, descended from my ancestor so and so, or conquered by him, or as the first occupier, or so and so gave it to him, or it had been occupied by his descendents down to me. These properties are mine, this canoe, that taiaha (combination spear and club), that greenstone patu (club), that kumera (sweet potato) pit, that cultivation. These things are mine and do not belong to anyone else".

At the time of the Treaty both islands were widely inhabited by Maori tribes. They had partitioned all the lands and had named all the various parts. At the time of the Treaty the chiefs and tribes were disputing among themselves the titles and boundaries between

their lands. They fought with guns, with patu (clubs), to take by conquest the lands of the others, or to bar the way of others intent on conquest.

The Queen did not do anything, to take away the rights of the Maori over his lands, instead she made the ownership permanent and truly established. This is the reason dear old lady you appear before the Maori Land Court to show your rights, whether of land not yet clothed with title, or by long occupation, when you related the trails, the fern root hills, the tawhara (young shoots of kiekie) swamps or other token and relics of your ancestors.

There are two main provisions in this article of the Treaty, they are:

- (1) The permanent establishment to the Maori of title to his land and his property.
- (2) The giving of the right to the Queen to acquire Maori land.

I shall first explain the provisions affecting Maori land. You are all fully aware of our rights to land. It is not just now that disputes have arisen between Maori and Maori over land. "Is it mine or is it yours?" and claims would go back to the realms of darkness and to ancient ancestral rights.

This is what Sir William Martin, Chief Judge of the Supreme Court said some time ago in regard to the rights over Maori land:

"From what I have seen the rights of the Maori affected the whole face of the land, there is not a part unaffected by the claims of the Maori people except those parts which have been sold by them. I have never seen or heard of any part which is not affected by the claims of the Maori people. There have been many disputes among themselves as to their rights, but no one would be mistaken that the matter under dispute would be in regard to land".

Now having established under this article of the Treaty the rights of the Maori, the law poses a question to the Maori, "Now, to whom does this land belong?" The reply would be noisy, there would be calls from this one, calls from that one. Blood would be spilt, that was Waitara, the repercussions spread to Waikato, and the fire spread to the far ends of Aotearoa (North Island). The chiefs arose and began selling the lands, whether it was their own or someone else. This was selling without proper title, the Court had not enquired into the ownership of the land that had been sold. There was Heretaunga (Hawkes Bay), Wairarapa, Otaki and many other lands sold before the Maori Land Court sat in any part of these islands. Owing to the many problems which arose it was considered necessary to appoint an authoritative body to enquire and to decide the rights of Maori claimants to their lands. Parliament then enacted the Maori Land Act of the year 1862. This is what was stated by Section 5 of that Act:

"The Governor shall from time to time have the right to set up a court to enquire and to decide who are the Maori people entitled under Maori custom to the Maori lands, to apportion their interests in such land, and issue certificates of Title to them for such lands".

This was the beginning of the Maori Land Court as it is today. Until it had adjudicated upon lands not clothed with title, and had given judgement, would it carry out the provisions of the second article of the Treaty of Waitangi, which established to us our Maori rights to our lands.

The part that is not clear of this portion of the second article to the Treaty is in regard to fishing grounds. This part should include the lakes, that is, fresh water lakes, mud flats, pipi (cockle) beds and oyster rocks. As to fishing grounds they are out in the open sea or at the mouths of rivers. Parliament and the Courts have been side stepping these matters. In some cases the Courts have given judgement, that is, in regard to oyster rocks and the Maori people have been judged to be in the wrong. The case for the fresh water lakes is at present being considered. I shall hold up my explanations of these matters until the third article of the Treaty.

In regard to that part of this article of the Treaty affecting the acquisition by the Queen, its main purpose is to confine to the Crown only the right acquire Maori lands subject to the price being properly arranged between Maori owners of the land and the Crown Purchase

Officer. This has been a matter which successive Governments have greatly disputed in the past and up to the present. As each Government is elected it is mooted that purchases of Maori land should be curtailed, and for all purchases to be confined to the Crown. Another Government is elected and it is mooted that purchases of Maori land should be permitted to enable any European or anybody else to purchase. This was the law from 1862 down to the year 1892. In the year 1892 acquisitions were confined to the Crown only. When the Government wanted to acquire a block of land, a prohibition was placed on the land, it was gazette in the same way as is being done by the present Government. In the year 1900 there was complete prohibition of purchases by the Crown. In the year 1905 purchases by the Crown began again in various parts of the island and in 1909 purchases by the Crown and Europeans greatly increased. In the year 1913 the present Government enacted the present law which now directs sales to the Crown and confines the sales of land to the crown only. This takes it back to the position in the year 1892. That was the basis of the Treaty of Waitangi. We object to such purchases as it restricts the Maori owner to the low price offered by the Crown, and it also restricts the land owner in doing what he wishes to do with his land, as he has to wait for very long periods until the Crown has fully bought up the interests of all the willing sellers before it applied for partition of the interests it had acquired. The objections to these oppressive measures are fully justified, but the blame

cannot be placed on the Treaty of Waitangi which laid down this basis.

These, dear old lady, are the main features of this part of the Treaty of Waitangi setting forth the conditions affecting these islands, the Maori Land Court and its activities, the purchases by the Crown which are biting into the land.

These are the words of Nopera Panakareao, a Chief of the Rarawa when a copy of the Treaty reached Kaitaia for Te Rarawa and the Aupouri Tribes to sign:-

"It is the shadow of the land which had been given to the Queen while the soil remains."

These are very wise words, an old time saying. The saying of the elderly chief has combined the words of the first article with those of the second article of the Treaty. It is the shadow, that is, the main authority covering the land; it is the power to make laws, the power to say this group shall adjudicate, that authority should see that the purchase is right, while that one leads the individual through the many intricacies of the law, that was the shadow ceded to the Queen by the first article of the Treaty. As for the soil, it is yours, it is mine inherited from our ancestors. It was the second article that firmly established this to the Maori people.

ARTICLE THE THIRD

This is the third article of the Treaty:

"In consideration thereof, Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal Protection, and imparts to them all the rights and privileges of British subjects".

This article explains what Her Majesty the Queen gives in return for what the Maori Chiefs have ceded to Her Majesty's Government. Here is the explanation.

- (1) The Queen of England extends to the Maori people of New Zealand Her Royal protection.
- (2) She imparts to them all the rights and privileges of British subjects.

These are very important and formidable words. The first part is that all the Maori people would receive protection. Looking beyond the shores of New Zealand we find that it was through the Queen and her descendents, through their prestige and might that we have been protected against invasion by foreign powers, namely the French in its time when it attempted to take the South Island and had actually settled at Akaroa; and after that came the Russians and its attempts to conquer us were staved off; and only yesterday we faced up to the Germans and only

after a bitter struggle were they defeated; who knows we may have to face up to the Japanese. The might of England has protected us, the King has given us his protection.

When we look at ourselves we realise the full significance of this protection. The Treaty found us in the throes of cannibalism, that was murder a crime punishable by death, be the murderer rich or poor. That was the British law which became law for the Maori under the provisions of the second part of the above article "and imparts on them all the rights and privileges of British subjects". The Treaty found the strong committing outrageous acts against the weak, the chiefs against the commoner, the Pakeha against the Maori, and such acts were breaches of the law punishable by imprisonment with hard labour, according to the British code of law adopted as the law for both the Pakeha and the Maori under the provisions of, "and imparts to them all the rights and privileges of British subjects". British law as provided by the Queen did not prevent crimes. Crimes were committed; there were murders, there were thefts, there were libels and defamations and other crimes conceived by the human mind, however, very few escaped the strong arm of the law.

The second part of the article "and imparts to them (that is, to all the Maori people of New Zealand) all the rights and privileges of British subjects", is the most important part of the Treaty of Waitangi. This is the part that

impresses the Maori people most and a part overlooked by the advocates of the Maori people in their efforts to interpret the Treaty in years gone by.

This article represents the greatest benefit bestowed upon the Maori people by Her Majesty the Queen. It is in a great measure to balance up what the Maori people had given her under the provisions of article One of the Treaty. Here is a brief explanation. This article states that the Maori and Pakeha are equal before the Law, that is, they are to share the rights and privileges of British subjects. When the Supreme Court was established in New Zealand it declared it was the Treaty of Waitangi under the provisions of Article Three, under discussion, which provided the basis for the administration of British Justice as affecting New Zealand conditions of these times. Now, it is not only the laws made by Parliament that are effective. There are some laws that issue from decisions of Courts of Law. There are some which have originated from British Law and from the Treaty of Waitangi and have become law here in New Zealand. Yes, British Law has been the greatest benefit bestowed by the Queen on the Maori people.

My dear old lady, perhaps, you are not aware that during every hour of the day while you are awake and during every hour of the night while you are asleep there are one hundred laws looking after you. They refer to your way of life, your travels, your hours of

sleep, your hours awake, your occupation and what you say; of these one hundred laws, perhaps ninety-five of them apply, equally to your Pakeha friends and perhaps five differentiate. The law pertaining to crimes, the law pertaining to debts, law pertaining to property (except land) and law pertaining to slander are the same, there is one law for Maori and for Pakeha, the Treaty of Waitangi ordained it so.

The laws that differentiate the Maori from the Pakeha are the laws pertaining.

1. Maori representation in Parliament.
2. Maori Lands.
3. Liquor.

The Maori people have their own special representatives in Parliament elected only by the Maori people. The reasons for this special provision were twofold; Maori problems had their own peculiarities and the Maori people were ignorant of most things pertaining to the Pakeha way of life in those days. My own opinion, however, is that the reason for the four Maori Members was the fear on the part of the Pakeha that as Maori and Pakeha populations in these islands were very much on a parity and that if the Maori people were given the right to vote with the Europeans, there was a possibility many more Maori Members would be elected to Parliament. However, Maori representation in Parliament is one of the few remaining special provisions for the Maori people.

The laws pertaining to Maori lands are entirely different from the laws pertaining to European lands. Matters for decision are ownership of lands, and who should succeed to deceased owners. There were no wills, the nearest equivalent being a dying request. There were many restrictions pertaining to the sale, to the leasing and mortgaging of Maori land which do not pertain to European lands. The differences in regard to Crown purchases have already been explained.

In times past, rates were not levied on Maori lands. This was not because of the Treaty of Waitangi. Likewise in days gone by Maori lands were not affected by taxation and again it was not because of any provisions in the Treaty. The Treaty had provided for "all the rights and privileges of British subjects". If the law had adhered to the spirit of the Treaty, Maori land would have borne the burden of rates and taxation long ago. It was in the year 1894 that Maori lands were subjected to rates and then it was half of the rate and it was not until 1910 that full rates as for European lands, were levied:

1. It was only in the year 1893 that Maori lands were taxed, it was a light tax, half of the tax payable by the Pakeha. However, only leasehold Maori lands were taxable. It was in the year 1917 that a heavier tax was levied on leased Maori land equivalent to half the rate of taxation on European lands.

2. At present, if the levies on our lands were on accordance with all that the law provides these would not be anywhere near as heavy as what are levied on Pakeha lands. Maori lands not clothed with title cannot be charged with rates - County Councils have very devious procedures to follow to put a charge on Maori land for non-payment of rates. Only Maori lands under lease, were subject to taxes and these at half the amount charged against European lands. All other Maori lands that were not under lease, being farmed and occupied by the Maori owners, and Pa areas were not affected by taxation.

3. Various laws made it possible to sidestep many of the levies that should have affected our lands in accordance with the words of the Treaty "all the rights and privileges of British subjects". Could it be the laws were wrong and were contravening the Treaty? To all those who are agitating under the Treaty for remedies for our grievances, I say be careful lest you waken the legal experts of the Pakeha people who will say:

"Let them have what they are asking for; let the purport of the Treaty be exercised to the very end: Put the same levies on the Maori as are levied on the Pakeha".

Why the vacillation of Parliament, the maker of the

laws? Why have not rates and taxes been levied on Maori land over the fifty years since the Treaty, namely up to the year 1893? And why after that only half the burden carried by the Pakeha was levied on the Maori land? The Pakeha authorities could see the Maori back could not carry the burden because of inexperience and general confusion in his own affairs and for this reason the impact of this part of Pakeha law was to be made gradual. "A bird cannot fly without the feathers". This is a saying of the Maori. The Pakeha could similarly say to us "Rating is the life line of the roads which you and your descendents use; it is the life line of our country - there are the railways, schools, hospitals and post offices."

We cannot grasp the Treaty as a shield to use against rating and taxation. It is the leniency of the law which has spared us.

We are conversant with the law pertaining to liquor. Liquor and the Bible came to this country together, if anything, liquor arrived here slightly ahead of the Bible. There would have been no special liquor laws for Maori if only the Maori had consumed liquor wisely. However, because of the abuse, its use as a lubricant to facilitate land sales, its use to mentally incapacitate the Chiefs so that they wasted their substance and its use for bragging on the maraes, the wise law makers were able to decide for themselves and to say:

"Dear Sirs our beverage is not elevating these people, they are strangers to it, they are still in their infancy, let us put a barrier against the consumption of liquor, let us prohibit some Maori areas, let us prohibit the consumption by the womenfolk, let us prohibit everywhere except on licensed premises and prohibit the consumption on the maraes".

The day may come when these restrictions can be lifted, when the Maori has become accustomed to liquor, when his blood stream can counter the fiery effect of liquor. The Pakeha may on the other hand say, let us prohibit altogether the consumption of liquor in New Zealand.

Let me end here my general explanations of this article of the Treaty. Let me issue a word of warning to those who are in the habit of bandying the name of the Treaty around, to be very careful of this portion of the Treaty lest it be made the means of incurring certain liabilities under the law which we do not know now and which today are being borne only by the Pakeha. If we suffer through being europeanised too quickly and if we can gain some respite by a gradual acceptance of Pakeha ideas, then let those parts of the Treaty sleep on peacefully.

THE CONFLICTING PARTS

In my explanation about article two of the Treaty I did say that there was one part of that article which was still not quite clear, the part about the fishing grounds together with the fresh water lakes, the mud flats, pipi beds and oyster rocks. The reason I am making special mention of these specific matters is that, there seems to be some difficulty or conflict between Articles two and three of the Treaty. Article two states that "The Treaty guarantees to the Maori people their rights and possessions to their lands, their forests and their fisheries." There is no doubt about the lands and forest. But the part in doubt is that which concerns the lakes situated amidst all the land, the mudflats, that is, the lands which become submerged by sea water at high tide. To the Maori these lands belong to him and that is why he considers his rights to these should be established under Article Two of the Treaty. However, I have already explained above that Article Three of the Treaty gave to New Zealand British laws which became effective on the signing of the Treaty and conform with "all the rights and privileges of British Subjects".

British law states that the sea from high water mark to a point three miles out belongs to the Crown. The mudflats, the pipi beds, the oyster rocks and the fishing grounds are all below high water mark. These

are conflicting points that have been left in doubt. The voice of Parliament has in no way indicated any legislation which would establish in us ownership of these possessions of our ancestors.

The Arawa case concerning its fresh water lakes is still before the Courts and whether it will be decided there remains to be seen; the case might very well be settled out of Court between the people and the Government. I will not say much about that here. The Supreme Court has however given its decision that the Awara people proceed with their claim through the Maori land Court.



CONFISCATED LANDS

In conclusion I would just like to say a word about the lands that were confiscated by past Governments. Some have said that these confiscations were wrong and that they contravened the articles of the Treaty of Waitangi.

The Government placed in the hands of the Queen of England, the sovereignty and the authority to make laws. Some sections of the Maori people violated that authority. War arose from this and blood was spilled. The law came into operation and land was taken in payment. This itself is a Maori custom - revenge, plunder to avenge a wrong. It was their own chiefs who ceded that right to the Queen. The confiscations cannot therefore be objected to in the light of the Treaty.

The objections should be made in the light of the suffering of some of the tribes by reason of the confiscation of their lands. The wrongs were done by others while lands belonging to others were confiscated. Consequently many tribes suffered through having no lands. Some tribes were too severely punished. It was from these objections that earnest supplications were made to Ministers or by way of petitions to Parliament. While the Government could not defend itself under the provisions of the



Treaty, Governments have used the Treaty as a shield against these supplications and claims.

So my friend Bennett, will you please pass on to the dear old lady the answer to her short questions. I am afraid the explanations have been somewhat lengthy. It could have been quite short if I had just stated, the Treaty of Waitangi created Parliament to make laws. The Treaty has given us the Maori Land Court with all of its activities. The Treaty confirmed Government purchases of lands which is still being done and it also confirmed past confiscations. The Treaty sanctioned the levying of rates and taxes on Maori lands, it made the one law for the Maori and the Pakeha. If you think these things are wrong and bad then blame our ancestors who gave away their rights in the days when they were powerful.

- END -

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