

Earlier Cessions by the Natives.

Great Britain and Portugal and Delagoa Bay. To show that the principle of cession by the natives is no new one, it may be mentioned that early cessions were appealed to (with what justification in the facts of the case we need not now inquire) by both of the Parties to the Delagoa Bay arbitration. Great Britain contended

C.-1361 (1875) p. 3. That the whole country south of the Dundas or Lorenzo Marques River and English River, and to seaward, was free and independent: the native inhabitants under their chiefs, retaining absolute dominion over, and possession of, these territories, over which the Portuguese exercised no jurisdiction.

That these chiefs, with the consent of the natives, and in exercise of their independent rights ceded by Treaty, in 1823, the sovereignty over these territories to the Crown of Great Britain.

ib. 85. Portugal on her part urged that

Si le Portugal n'avait pas déjà acquis la souveraineté de la baie de Lourenço Marques, elle se trouverait comprise dans la cession faite en 1629 par le Roi du Monomotapa à la Couronne Portugaise.

Italy and Assab Bay. 73 S.P. 1242 et. Again, Italy (in 1880) based her claims to sovereignty over Assab Bay upon cession obtained from the local sultans in 1869; and France (in 1882) claimed a protectorate over parts of North-west Madagascar in virtue of treaties made with native chiefs during the period 1840 to 1848.

France and Madagascar. 75 S.P. 155.

Great Britain in Oceania.

Turning now to another part of the world, we will inquire how far the definition of *territorium nullius* that we arrived at in the preceding Chapter accords with practice in Oceania.

Australia.

Australia has usually been considered to have been properly *territorium nullius* upon its acquisition. Thus in the case of *Cooper v. Stuart*, an appeal from the Supreme Court of New South Wales which came before the Privy Council in 1889, Lord Watson, delivering the judgment of the Court, said:

14 A. C. 291.

There is a great difference between the case of a Colony acquired by conquest or cession, in which there is an established system of law, and that of a Colony which consisted of a tract of territory

practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominions. The Colony of New South Wales belongs to the latter class.

To the same effect, the Select Committee of the House of Commons on 'Aborigines' reported in 1837 that the British settlements in what was then called New Holland were 'brought into contact with Aboriginal tribes, forming probably the least-instructed portion of the human race in all the arts of social life. Such, indeed, is the barbarous state of these people, the Report continued, 'and so entirely destitute are they even of the rudest forms of civil polity, that their claims, whether as sovereigns or proprietors of the soil, have been utterly disregarded.'

Parly.
Papers,
1837, Vol.
VII. (425)
p. 82.
See also
1845,
XXXIII. (1).

As the facts presented themselves at the time, there appeared to be no political society to be dealt with; and in such conditions, whatever 'rudiments of a regular government' subsequent research may have revealed among the Australian tribes, Occupation was the appropriate method of acquisition.

See p.
above.
Wheeler,
46 etc.
Thomas,
Chs. VIII.
& IX.
Turner,
Ch. X.

New Zealand.

In annexing New Zealand, the British Government gave full effect to the sovereignty of the native chiefs and tribes. Their attitude was clearly set out in a dispatch which was written by the Secretary for War and Colonies in August 1839, shortly before the annexation. 'I have already stated,' runs the dispatch,

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 to 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 immediate predecessor, disclaims, for herself and for 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 and intelligent consent of the natives, expressed according to their established usages, shall be first obtained.

Parly.
Papers,
1840, Vol.
XXXIII.
(233).

In consonance with these principles, the rights of the British Crown were acquired by Cession, the treaty by which the North Island was ceded being made with the Maori Chiefs at Waitangi,

Treaty of
Waitangi.