

FURTHER PAPERS

RELATIVE TO THE

PURCHASE AND INHERITANCE

OF

NATIVE LANDS,

(IN CONTINUATION OF PAPERS PRESENTED ON THE 21ST AUGUST, 1860.)

Presented to the Honourable the House of Representatives by command of His Excellency.

NATIVE AFFAIRS.

COPY OF A DESPATCH FROM GOVERNOR GORE BROWNE TO HIS GRACE THE DUKE OF
NEWCASTLE.

Government House,
Auckland, New Zealand,
20th Sept., 1859.

MY LORD DUKE,—

I have the honor to acknowledge the receipt of Lord Carnarvon's Despatch No. 34 of 18th May last, and beg to express my gratitude for the clear exposition of the views of H.M.'s Government on the subject of Native Affairs generally.

No. 80.

LEIST

2. At the risk of wearying you, I will now enter at length on the subject of Waste Lands belonging to the Aboriginal Natives, as the time has arrived when it appears to me that some change must be adopted in the mode of acquiring them. The right of pre-emption over Native lands having been reserved to Her Majesty by the Treaty of Waitangi, it was reasonably assumed that the right would always be exercised when the Natives desired to sell on equitable terms. At that time and for some years after, however, the Governors had not at their disposal funds sufficient for the purpose.

3. It is true that the Middle Island was acquired for an almost nominal sum, and large tracts in the Northern Island have been purchased at prices varying between a farthing and sixpence an acre; but there still remain many millions of acres, which we now vainly desire to acquire, which might in those days have been bought at a cost too insignificant to be calculated by the acre.

4. With the increase of the European population, land has necessarily acquired additional value; the Natives have seen the lands they alienated for farthings resold for pounds; they feel that dominion and power or, as they term it, "substance" went from them with the territories they alienated, and they look with apprehension to the annihilation of their nationality as a race.

5. The consequence of this feeling has been the formation of a league to prevent the alienation of land, commenced by the tribes on the Waikato before my arrival in the Colony, and which has since been combined with the so-called King movement.

6. Assuming the whole of the Northern Island to contain twenty-six millions of acres, and that the Native title has been extinguished over seven millions, there remain nineteen millions of acres owned or occupied by about fifty-seven thousand Maories. A large portion of this consists of mountain and dense forest, but the remainder, which includes some valuable land, is greatly in excess of all their possible wants. The Europeans covet these lands and are determined to enter in and possess them—"recte si possint, si non, quocunque modo." This determination becomes daily more apparent. A member of the Auckland Provincial Council stated in the Council that the fault lay in the "present system of acquiring land from the Natives. We were called upon to leave them the best "land, and sacrifice ourselves to sympathy for the Natives, and all that kind of humbug," &c., &c. "The settlers had no room for their stock, and would be obliged to set Government at defiance. "Hitherto the settlers here had been a law-obeying community, but when once the Rubicon was passed, "it was impossible to say how far they might go. There was something higher than the law, viz., the "framers of the law, and the source of all law, the people. They had new arrivals landing here every "day, and they might say, 'What right (for instance) had a parcel of Natives at Coromandel—like "dogs in a manger—to keep everybody out of that rich district? People would soon begin to act on "the old principle of letting land belong to those who can keep it. It was impossible to prevent the "Anglo-Saxon overcoming the Natives; and the Europeans, if they could not get land with the "consent, must get it without the consent of the Government."

This speech was highly applauded in one of the local journals, while another (the *Southern Cross*) keeps up a continual agitation on the subject of enfranchising Native lands; reminding its readers that "one well-written Address placarded at every *kainga* in the country would raise a fever of "excitement" (among the Natives) "which all the anodynes and opiates of the Native Department, "would be incompetent to allay" (*Southern Cross*, 16th August, 1859).

Another journal (23rd July, 1859) says, "General Assembly vote for what are called 'Native "purposes,' was a gigantic fraud."

The Tamaki settlers, after using arguments refuted by my Despatch No. 52, of 14th July last, and by the returns from the Superintendent published with their own letter, state that they must "lease lands from the Natives, leave the Province, or be ruined."

7. I have shown in the Despatch above referred to, that it is not want of land, but the want of artificial grass, or, in plain terms, want of capital to replace the indigenous fern with grass (an exotic in nearly the whole of this Province) which is the real want of the complainants. The desire to possess lands which can be made remunerative at once without expense, will not however, be diminished by an exposition of the real state of the case, and there are lands in the South of this Province which the Natives are unwilling to alienate, where grass grows naturally, and these are the lands so eagerly coveted. But even there the natural grass is so sparse and inferior that 4 or 5 acres would be required to feed a sheep, instead of one acre being sufficient for 4 or 5 sheep, as is the case when artificial grass is cultivated. I will not stop to point out how few would be satisfied if I were to consent to the leasing of these lands, how completely they would be withdrawn from the market, and for how long they would necessarily continue unimproved.

8. A stream of immigration is pouring thousands of settlers into this Province every year, and, if it continues, the population will be doubled in a very short time. Soon, therefore, a want of available land will really be experienced, and it cannot be concealed that neither law nor equity will prevent the occupation of Native lands by Europeans when the latter are strong enough to defy both the Native owners and the Government, as will be the case ere long, and then it will be seen whether or not the Maories will prove an exception to the rule which seems universal, viz., that the Aboriginal savages must fade away before their civilized brethren.

9. The immediate consequence of any attempt to acquire Maori lands without previously extinguishing the Native title to the satisfaction of all having an interest in them, would be an universal outbreak in which many innocent Europeans would perish, and colonization would be indefinitely retarded, but the Native Race would be eventually extirpated.

10. The Imperial Government having, however, declared unequivocally its determination that even colonization must be a subordinate consideration to the duty of maintaining the substantial rights of the Aborigines, and that their full and intelligent consent to alienate must be an indispensable preliminary in the acquisition of Native lands, it remains to be considered in what manner these objects can be most effectually secured; apprehension for the future most carefully allayed; and provision made for the wants of European settlers and expected immigrants.

11. The interests of the two Races are really identical: but they are not so apparently; and whenever the pressure from without is sufficiently strong, it is evident that a Ministry responsible to a popular Assembly must and will yield. Add also the change of opinion necessarily consequent upon a change of Ministry, and it will be admitted that the Governor's Advisers in Maori Affairs should be responsible to the Crown and not to the Assembly.

12. Perhaps it may be urged that the Governor alone should be held responsible for the conduct of Native Affairs; but he, like other functionaries is liable to change; I recommend therefore that the Governor should be assisted by a permanent Council for Native Affairs, to be nominated by the Crown: that it should consist of say seven members, and in order to bring this Council into relation with the Government of the Settlers I propose* that the Responsible Ministry should have the power of recommending two persons to Her Majesty; that the Governor should recommend five, three of whom should be paid; that the members of the Council should be responsible to the Crown, and removeable only by an Order from the Secretary of State; that the relations of the Governor to this Council should be identical with those conveyed in the Royal Instructions of 1855,—preserving his entire responsibility.

13. It has been urged, and not without reason, that a nominated Council would be a target for abuse and misrepresentation from all sides; but in a Colony no one should quit the obscurity of private life, or seek to rise above insignificance in Office, who is unable or unwilling to encounter and disregard both the one and the other.

If such men as the Bishop of New Zealand, and Dr. Martin (the late Chief Justice) could be induced to occupy seats in a Council nominated by the Crown (unpaid), calumny would fall harmless and unheeded, while the presence of men so well known and so thoroughly trusted by the Maories, would secure to it an influence which no other European body could possibly acquire. Acting in accordance with such a Council, the Governor should prepare regulations based on the following data, and submit them for confirmation by Her Majesty's Government.

I. That in the settlement of Waste Lands, over which Native Title has not been extinguished, the real interests of the Aboriginal owners should be matter for primary consideration.

II. That such a portion of their own land as is necessary for their use and support should be secured to them and made inalienable under Crown title.

III. That ample reserves should be made in each district for education and other purposes, exclusively for the use of the Maori race.

IV. That (the provisions of the two preceding sections having been first secured) in districts chiefly occupied by Europeans, well ascertained Native title to land, limited in extent by fixed rules, should be clothed with a Crown title, and be alienable in the usual manner.

V. That in districts specially proclaimed for the purpose, the Governor should be enabled to accept land, and cause it to be sold by auction for the benefit of the Aboriginal owners.

VI. That the Governor in Council should be empowered to borrow money for the foregoing purposes, and for the laying out and preparing settlements; the same to be a lien upon the land acquired from the Natives; that these objects should be secured in such a manner that no pressure on the local Government should prevent their being attained and maintained.

14. Having settled these points, every exertion should be made to acquire all remaining lands which are at present not only useless but harmful to the Aborigines, and which will soon be much required for colonization by the Europeans.

No. 1.

15. To enable Your Grace to form a correct opinion on the subject, I enclose a map shewing the lands acquired from the Natives, and those over which Native Title has not yet been extinguished. A reference to this map will shew you that the Europeans have acquired but little land in the central part of the Northern Island. Over these districts a large portion of the Maori population is thinly scattered; and a little to the north of the Taupo Lake dwell the Waikato tribes who have set up a King among themselves, and have succeeded in establishing a league against selling land, which extends over a large part of that territory.

16. I need not say, therefore, that there is great difficulty in acquiring such an extent of land in these districts as would be sufficient for a settlement of Europeans strong enough to support itself, and though individuals are quite ready to incur the risks, yet as soon as they believed themselves injured, they would not fail to appeal to the Government for redress.

* The valuable opinions in the enclosures induce me to consider the expediency of this proposition somewhat doubtful.

17. I propose, therefore, to adopt a system which would ensure such advantages to the Natives as might induce them to sell their lands more freely to the Crown, and not to permit the settlement of Europeans in isolated spots, nor until a block of land had been acquired sufficient in extent for a plantation strong enough to support itself.

18. For this purpose I suggest that the Governor in Council (nominated by the Crown) should take steps to explain to the Maories that whenever they choose to dispose of their lands to the Crown, provision will be made for them upon a regular system, viz., that after survey, a fixed portion, say two-tenths, of the land should be set apart and re-conveyed to the owners under Crown Grant, (for the details of which see enclosure No. 2), and another portion, say one-tenth, should be retained as a reserve for public purposes exclusively for the use of the Maories; that when a sufficient extent of land suitable for the purpose had been acquired (not less than 30,000 acres) and all the conditions of purchase fulfilled) including any works the performance of which may have formed part of the conditions, the remainder should be transferred to the local Government for settlement in the usual manner as at present.

The receipts arising from the sale of these lands to be appropriated, first, towards defraying all loans and expenses incident to the acquisition of the land and its preparation for settlement, the remainder to be divided into fixed portions, one of which should be applied for the use of Schools and other matters affecting the moral and social improvement of the Maori Race in the locality from whence it is derived.

19. I now turn to another part of the subject. By reference to the map your Grace will perceive that certain portions of the Northern Island are so spotted by Europeans, that it would be very difficult to introduce any plan of settlement applicable to all parts of the Island. In certain districts, therefore, the main object should be—

First, to secure to individuals of the Native race, under Crown Title, a sufficient extent of land, and to render it inalienable except by consent of the Governor in Council, and, where such a course appears necessary, to clothe well ascertained Native Title with a Crown Title, which shall be alienable in the usual manner.

Second, To set apart such general reserves as are necessary for religion, education, and public purposes.

Third, To provide for the settlement of disputes arising from the devolution of intestate estates on descendants or collateral heirs.

20. Having made these provisions for the well-being of the Aborigines, I think it would be desirable to facilitate the acquisition of lands by Europeans in every way which can be safely adopted. Whenever an European indicates a portion of land which the Natives are willing to sell to him, the Governor should, at his instance, endeavour to extinguish the Native Title on the following conditions:—That all land so acquired shall be sold by public auction at an upset price to be fixed by the Governor, being at not less than five shillings per acre, *plus* the cost of survey, the purchaser to pay, say 10 per cent. to the Government on receiving a Crown Grant; that the applicant shall give security that he will pay all expenses of surveys. &c., &c., and purchase the quantity agreed on upon the terms specified, provided no higher price is offered for it at auction; that for the better performance of these acts, the Governor in Council (nominated by the Crown) should draw up a code of regulations, to be submitted from time to time for the approval of Her Majesty's Government.

21. In both these plans it will be absolutely necessary that some fixed portion of the revenue raised from the sale of Native lands, and also a portion (say one-tenth) of the land ceded should be reserved for the moral, social, and religious improvement of the Maories; for it is not to be supposed that the Assembly will always continue to make grants for Native purposes; nor even now are the grants (though very liberal when considered as grants) nearly sufficient for the proper administration of justice, the maintenance of hospitals, education, and other matters which must not be neglected if the civilization of the Maori youth is to be really advanced.

22. At present you will perceive that the Government has no power to issue Crown Grants, or to provide for the future welfare of the Natives, except by making general reserves, which necessarily come under the operation of "The Native Reserves Act," and this Act has failed to give satisfaction to the Natives for whose benefit it was specially intended.

23. These are the outlines of the two schemes which I venture to submit to your Grace's consideration—not as a panacea for all evils, or as what will entirely satisfy the discontented, but as being in themselves systematic, and an improvement upon the system now in operation.

24. In order to enable you to form a more correct judgment on the subject, I have collected the various and opposite opinion of influential persons best acquainted with Native Affairs.

A. contains the opinion of my able predecessor on the necessity of Crown Grants; a letter from the Native Secretary showing particular cases in which they are required; and a Report of a Committee (assembled in 1856) and printed by Order of the House of Representatives, referring especially to this subject.

B. contains the draft of a Bill prepared by Mr. Sewell, who retired from the Executive Council before he had completed it, and which I consequently submitted for the consideration of my Responsible Advisers.

C. is the opinion of my Advisers on that plan.

No. 2.

T. H. Smith, Assistant
Native Secretary
29th September, 1859

A—No. 1.

Sir G. Grey to Earl G

A—No. 2.

D. McLean,
18th July, 1859.

A—No. 3.

Report—9th July, 1859

B.

Draft of Bill by
Sewell.

C.

Remarks by Ministe
19th August, 1859

6 FURTHER PAPERS RELATIVE TO NATIVE AFFAIRS.

D.

ative Crown Grants Bill.

D., E., and F. are drafts of three Bills, prepared by my Responsible Advisers, with some observations on them which I have made in preference to attempting to embody my own views in a similar form.

E.

ive Districts Colonization Bill.

G. consists of letters from the Bishop of New Zealand, Dr. Martin (the late Chief Justice) and Mr. Swainson (the late Attorney-General), from Mr. Daldy, Member of the House of Representatives (one of the gentlemen who has taken an active part in agitating for what is called the direct purchase, or enfranchisement of Native lands), together with letters from some others whose opinions you will desire to be acquainted with.

F.

ive Lands Partition Bill.

G—No. 1.

ishop of New Zealand, 25th August, 1859.

25. In the foregoing details I have not alluded to one of many difficulties attending the management of a Race in a lower state of civilization than the dominant one which is in a certain sense associated with it. I refer to the constant abuse and misrepresentation heaped upon the meritorious Department by which Native Affairs are conducted; in speaking of it, the *post hoc* is too often replaced by the *propter hoc*, and it is not seldom looked upon as an obstacle to be destroyed by fair means or by foul. Among Europeans this sort of language is so prevalent that it has no other effect than that of rendering those most subject to it callous and indifferent to public opinion; but it has a very injurious effect upon the Natives. Ignorant of what the press really is, they lose confidence in those whom it is the undisputed interest of all they should trust and respect, and believe every idle and malicious report circulated among them by disaffected persons. Articles headed "Extinction of the Native Race," coupled with attacks on Sir George Grey and the Native Department, have a most insidious effect. I am well aware that there is no remedy for such an abuse of the freedom of the press, but I allude to it as proving the necessity for a Council formed of men thoroughly known and respected by the Natives, who would be personally indifferent to calumny, and above its influence.

G—No. 2.

Dr. Martin, 14th September, 1859.

G—No. 3.

Mr. Swainson, 14th September, 1859.

G—No. 4.

Mr. Daldy, 14th September, 1859.

G—No. 5.

Archdeacon Kissing, 14th September, 1859.

G—No. 6.

Rev. R. Burrows, 4th September, 1859.

G—No. 7.

Rev. Thos. Buddle, 4th September, 1859.

26. Finally I have endeavoured to submit the case to Your Grace in all its aspects, as seen by those who differ from me, as well as by those with whom I agree.

The views and opinions contained both in this Despatch and its enclosures, are those of individuals; but coming events are already casting shadows before them, which it will not be safe to disregard.

In the Northern Island two Races divide the land unequally between them; they will soon be equal in number; the inferior possess millions of acres they cannot use—the superior covet the superfluous waste; and unless means are devised for reconciling the interests of the one with the other, collision attended with calamity to one Race, and annihilation to the other, is inevitable. To prevent this—the controlling power—whether in the hands of a Governor or of a Governor and Council—must be strengthened. One power, viz., that of securing absolutely to the Aboriginal Natives the possession of so much of their property as is necessary for their present and future support, and to prevent their becoming pauperized, must be entrusted to some authority in this country.

27. Assuming that Your Grace will consider further Legislation indispensable, it remains to be determined whether the settlement of the Waste lands of the Aboriginal Natives of New Zealand and the preservation of their rights, are subjects for Imperial or for Colonial Legislation. An Act of the Imperial Parliament would of course be attended with many advantages. It would secure permanence, give confidence, and prevent annual discussion in the local Legislature, which, in Native affairs, is much to be deprecated. This course is strongly recommended by Dr. Martin and Mr. Swainson, and others whose knowledge and experience entitle their opinions to every consideration. If, on the other hand, (after considering the views and opinions of my Responsible Advisers, as contained in their draft Bills and Memoranda) you think it advisable that the subject should be submitted to the General Assembly of New Zealand, I beg you will do me the favor to cause the draft of a Bill containing the points you consider essential to be prepared by the legal advisers of the Crown, and direct me to transmit it to the Assembly by Message, as provided for by the 55th Clause of the Constitution Act.

28. I trust that the data I have supplied will be sufficient to enable Your Grace to judge what ought to be done to prevent the consequences apprehended, and to secure this remarkable Race from the fate which has hitherto befallen all who have obstructed the path of those who, possessing the superiority of high civilization, are hurried on by the desire of aggrandisement and the eager pursuit of wealth.

29. The case is one that presses, and I regret much that it has not been in my power to submit it for the consideration of Her Majesty's Government at an earlier period, but I only received Lord Carnarvon's Despatch No. 34 on July 16th, and it has been impossible to collect the materials which form the enclosures in time for an earlier Mail.

The Assembly will meet for its next session at Wellington on 31st March, 1860, and I ought to be in possession of Your Grace's views as soon after that time as may be possible. I therefore beg the favour of an early answer.

I have, &c.,

(Signed) T. GORE BROWNE.

P.S.—I need scarcely observe that the security of the Imperial Loan must be preserved by the insertion of a Clause in any Bill which may be presented either to the Imperial Parliament or the Colonial Legislature.

(Signed) T. G. B.