Native Courts.

11. In the first and lowest place, we shall have Native Magistrates, settling questions between Maori and Maori. It is necessary to uphold these Maori Courts, not only because we have in some sort ourselves set them up, but also because it is impossible in dealing with this people to create and keep in efficient working any system in which they do not take some practical part. Above all it is to be remembered that these Courts are absolutely necessary for the purpose of effectually carrying the operation of law into the remoter parts of the country and over the whole of the scattered population. If this object is to be effected, it must be by guiding and supervising Native efforts for that end, not by attempting to do the work ourselves. We have neither money nor men for so vast an undertaking.

But if it be necessary to sustain these Courts, not less necessary is it to restrain them; for there is no doubt that at this time they are, in many parts of the country, often greviously perverted, and made instruments of oppression and wrong. The smallest grievances are hunted up and arbitrarily treated as offences against the law; and even in the case of real offences, fines altogether unreasonable in amount are often imposed, out of which the administrators of the so-called law pay themselves for their trouble. Bad as this state of things is, no better could be reasonably expected from the history of the system, which I will briefly recount. We began some years back by appointing certain Chiefs to administer justice among their own people. We called them Assessors, though in the Maori forms of appointments they were called Kai-whakawa, or Magistrates. It was of course intended that they should learn something of law before they began to administer it. With that view, it was arranged that the Chief English Magistrate in each district should hold periodical circuits, and so both orally expound and practically exhibit to the Assessors the rules and methods of our laws. Unfortunately it came to pass that the proposed circuits were not holden and the desired instruction not given, though the need was growing every day. Accordingly the Native officers set themselves to do the work in their own way. The result has been such as strong wills acting ignorantly, with little instruction and less supervision or control, might be expected to produce. The new principle of law was taken up earnestly, and carried through the country by Native agents, just as the Gospel itself had been to a large degree carried through the country in former years. What was understood by law was this: that all grievances and causes of strife were to be removed for the future by peaceable means—by decisions formed and penalties imposed after public discussion; not as in old times, by intimidation or force. Each set of administrators set itself to carry out this general principle as best it could, and assumed at once the fullest powers for that purpose; that is to say, the power of determining both what matters should be treated as offences, and also the rule according to which they should be dealt with. In general, they followed so much of the English procedure as they happened to have learned by observing the practice of English Magistrates.

It is now essential to supply the omissions of past years, to try to complete these our own half-formed institutions, and to supply the instruction and supervision which are necessary to insure their usefulness. In effecting this reform, it is necessary to deal tenderly with all that exists and which has acquired a certain degree of acceptance, and to use and incorporate it rather than to destroy it; especially to accept and encourage the spirit of self-reliance and self-government, which, however untrained and undisciplined, is present in the Maori mind.

The first step, then, towards terminating this lawlessness under the name of law, is to establish and carry out thoroughly the fundamental distinction between the two separate businesses of making law and of administering law; between Councils to frame rules and Courts to enforce them. The distinction itself is apparent to every intelligent Maori when he is reminded of it; and is clearly expressed in his own speech. For the two functions can hardly be more aptly distinguished than by the two phrases, whakatakoto tikanga, literally to lay down a rule; and whakahaere tikanga, literally to set a rule agoing, that is, to put it in operation. For this end the jurisdiction of these Courts should be exactly defined, and a careful supervision kept up to prevent any transgression of the limits assigned to them from time to time. The magistrates must be tied down to written rules, and checked as English Magistrates are checked, whenever they act in any way in excess of their jurisdiction. In case of any such Court assuming to exercise a jurisdiction not so given, a reference should be open to the Court of the Commissioner, who should have power to award damages. The Commissioner would possess the means of enforcing his own decision, the salaries of the Native Magistrates being paid through his hands.

As to the constitution of these Courts, the first reform needed is to remove their tumultuary and irregular character, and to reduce them within proper limits as to number and order. Yet as the men who are now considered members of the village assembly, are equal or nearly so among themselves, and have been in possession of equal power, and are about equally informed or equally ignorant, it is not practicable or even reasonable to begin by disfranchising a portion of them. The simplest way appears to be to treat all these persons as jurymen, with no other limitation than that which is imposed by our own Colonial Jury Law, namely, that they be persons of full age and of good repute. The list should be subjected yearly to a public revision. The process of winnowing such bodies is one which the Maoris well understand, and has been brought into operation already in the North.

The experience of Sir Alexander Johnstone, when, many years ago, he introduced a similar jury system among the Natives of Ceylon, showed that great social benefits might flow from it. To be on the list was to be certified as a man of good character and trustworthy; so a place on the jury list became an object of village ambition.

On every trial the Maori Magistrate should act with a jury of four persons selected by ballot out of this list, after proper challenges. Without such support, his authority and coercive power will be small. A jury of four is already allowed by "The Jury Law Amendment Act, 1862." I think that such a Court might be so worked as to create confidence and obedience. The Court would be in fact much like the *panchayat*, which Governor Gore Browne recommended: the simple and effective institution which has from time immemorial, through a long series of conquests and revolutions, supplied the needs and secured the tranquility of the village communities of India.

The limitations on the jurisdiction of these Courts should have reference to the nature of the