1883.

NEW ZEALAND.

NATIVE LAND COURT

(CORRESPONDENCE RELATING TO THE CONSTITUTION AND PRACTICE OF THE).

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

The UNDER-SECRETARY, Native Department, to the CHIEF JUDGE, Native Land Court.

SIR,— Native Office, Wellington, 26th May, 1883.

In view of the attention which will no doubt be specially given during the coming session of the General Assembly to the Native Land Court, and the need which apparently exists for some improvement in its constitution and practice, I am directed by the Hon. the Native Minister to state that he will be glad to receive from you a report on the subject generally. You are also invited to offer any suggestions that may tend to remedy the state of things of which you have recently publicly complained.

Mr. Bryce considers that you will be able to suggest improvement in the way of lessening the cost of determining titles, which is at present, if rumour is to be believed, unreasonably large, arising not from the fees of the Court—which are sufficiently low—but from the cost of the lawyers and agents employed by the parties, and the heavy expenses consequent upon the prolonged sittings of the Court, owing to the duration of some of the cases.

It has been asserted that valuable Native estates have been entirely swallowed up in the expenses of determining the title, and that in all the cases under the present system the expenses attending the investigation of Native titles are a very heavy tax upon the Native claimants.

Mr. Bryce considers that the suggestions your knowledge and experience will enable you to offer, and, should you be able to favour him with it, an exhaustive report upon the working of the Court, would be most valuable at the present time. I have, &c.,

T. W. LEWIS,

His Honour the Chief Judge, Native Land Court, Auckland. Under-Secretary.

No. 2.

The CHIEF JUDGE, Native Land Court, to the Hon. the NATIVE MINISTER.

SIR,— Cambridge, 22nd June, 1883.

In reply to a letter of the 26th May, forwarded here, asking my views as to measures projected for improving the constitution and practice of the Native Land Court, and as to some kindred matter, I have the honour to submit:—

1. Unless the views of my brother Judges are being directly taken, I should, before expressing any opinions, have desired the advantage of conferring with them, but, as we are situated, that is out of the question.

2. The main business of the Court, *i.e.*, the investigation of Maori tribal titles to land, is of necessity a work of time and patience, owing not only to the vague origin and nature of such titles, but to the character of the evidence by which they are sought to be established, being assertion mostly legendary, and therefore equally the subject of manufacture and denial.

3. No doubt, at the end of a hearing, it may often be plain that much time has been unnecessarily occupied, but interference during the progress of a cause is in this Court difficult, and liable to be viewed with distrust by the party checked if he be a Maori conductor, and the more so if he does not get a judgment in his favour. To compare the duration of a hearing in the Native Land Court with one in any other is unfair, for, quite apart from the magnitude of the interests at stake—precluding anything like summary inquiry—and the vagueness of the subject, there is this material difference: In other Courts the issue is not only settled or well understood, but it is between plaintiff and defendant only, while here, besides the claimant, there may be a dozen counter-claimants, each fighting his own battle and each calling his own witnesses, and cross-examining those of each of the other parties.

4. A fruitful source of loss of time and money has consisted in this: that a Court has only been held in a district when a large accumulation of business has accrued, the entire mass of which it has been the custom to *Gazette* for the same Court for the first day of its sitting, with the result that the Natives congregated at the opening of the Court have to remain weeks or months even without a chance of their business being earlier reached. This has been the case at the Court here, where arrears of seven years I believe were gazetted at once.

5. But the great cause of evil result, to my mind, consists in the circumstance of lands being contracted to be bought from Natives before the ownership is ascertained. The Natives themselves have generally some idea in whom title really exists, and would not be inclined to institute or at least to prolong an inquiry wherein they had no fair show of right or chance of success. Not so with the European dealers. These are of different classes: (*a*) The man who really thinks he is dealing with the *bonâ fide* owners; (*b*) the man who thinks his vendors may prove to be entitled; (*c*) the man who thinks nothing of the sort, but that, by proper or rather improper efforts, "the worse may be made to appear the better cause," or at the worst the "cause" may be bought up by honester people desirous of saving themselves time and expense. However different these persons they have this common characteristic: each will fight his Maori vendor's title to the bitter end, or until as to the last class he is bought off. An amount of money has been sunk, and a loss is not to be submitted to without a struggle. A development of this feeling is found in the regularity wherewith application for a rehearing follows an adverse judgment, and the frequency with which such application will, for a consideration, be abandoned. To give, however, to these people their due, it has to be admitted that their enterprise has hastened the passage of lands through the Court to an extent that I do not think would have been approached by either Government action or Native effort.

6. As to the evil referred to in paragraph 4, that I propose when I appoint a Court to abate by gazetting only such amount of business as may be transacted in a reasonable time; and, as to the limited cases so set down, the presiding Judge could, if thought necessary, readily arrange, as I have done here, that certain of the causes should not be taken before a fixed future day, thereby temporarily releasing many of those in attendance. Another Court could speedily follow, and so on, until the business of the locality as concerned investigation of tribal title became exhausted.

7. As to the evil referred to in paragraph 5, that is more difficult of abatement. Already, by law, contracts for purchase of Native land made before title ascertained are void, and the money invested becomes a debt of honour, or a debt to be worked out by conduct known as "black-mailing." Still, such dealings do go on; and, indeed, any one biding a time when he could lawfully contract would find himself forestalled by more adventurous, if less scrupulous, persons. Preventive law can, so far as I see, only advance by making it *penal* to in any way deal in Native land that has not an ascertained title, and equally penal to pay or receive money or goods on account of any such dealing. While thinking that this is all that remains to the law to prescribe, I am clear that, even if such an enactment were allowed to pass—which is more than doubtful—it would be evaded right and left to the detriment of the more respectable class of buyers. Were it not a purely political question, I might make reference to the Government applying the obvious remedy of resuming a pre-emptive right of purchase; and perhaps I ought not to mention the Government without calling attention to the fact that Government purchases, or rather contracts to purchase, from persons without any ascertained title are by no means unknown or unquoted by private persons, who follow what they call Government example.

8. Turning to other branches, could any, and what, procedure for settling Native titles be beneficially substituted for the present Native Land Court? Several have been suggested as being free of the evils surrounding the present system. In the first place it is to be noticed that the evils complained of are not inherent in the Court, but are indeed of comparatively recent growth, particularly developed in this district by reason of the extent and value of the lands the subject of inquiry, and also by the increased competition. Large areas are not only bought by associations, but, as I am informed, sold over to other companies, while the title is yet in every sense the subject of speculation, the issue of which is fought by agents with the associations' capital. Whatever procedure may be resorted to, and whatever name may be given to such procedure, it would still be a Native Land Court, and subject to the evils not of but surrounding the present one, unless remedial measures were provided, and which, if applied to the existing Court, would equally serve for its protection. It has also to be remembered that the present tribunal has the advantage of its status as a Court of justice, and of its business being conducted under the glare of publicity: and before introducing any new course it is for consideration that, according to many opinions, the important business of ascertaining tribal titles should be completed within the next two years or so, leaving for the future only succession and subdivision business, which could be disposed of by one or two judicial officers for the whole colony.

9. As to the complaints against agents employed in the conduct of cases: They are charged with taking exorbitant fees and with spinning out cases with a view to daily "refreshers." Dealing with the latter charge first, I have, as to agents who happen to be solicitors, and against whom alone the accusation is pointed, removed the ground for suspecting the scandal by arranging for a fixed fee, the parties taking their chance of the hearing being long or short. This measure was discussed and approved of by the Natives in open Court.

10. As to the "amount" of the fees charged by lawyers, they have now to be disclosed to the Court on statutory declaration, and I hope I am not actuated by professional prejudice in saying that, so far as they have come under my notice, they do not appear to be unreasonable. The labour, besides being a "specialty," is irksome to a degree, and being entered on tends to preclude the practice of other branches of the profession. Beyond this I believe it to be true in the main that the money paid as fees is not a loss to the Native nominal client, but to the European real client, *i.e.*, the purchaser; and I do not think it true that in any case the Natives have paid fees approaching in amount the value of the property acquired. There is one matter which, however outside the

jurisdiction of my Court, may be noticed as being open to objection, viz., the practice of gentlemen while acting as solicitors or counsel to or for Native claimants to land acting also under contract for reward with would-be purchasers to promote the sale to them of land the title whereto they are employed by their Native clients to establish. Though it be replied that the Natives are cognizant of the arrangement, I should still think the transaction would be viewed unfavourably by a Court of equity, and I certainly do not think it tends to shorten litigation.

11. As to excluding lawyers from the Court: This was some time ago done by the Legislature, but, after experience, the prohibition was rightly removed, because the hold which the law has upon the conduct of a lawyer should favour his employment as against a less responsible agent.

12. As to some remarks lately made by me from the bench here, they do not show any ground of complaint against the Court, but against the feelings engendered by the avidity of the parties surrounding it.

I have, &c.,

J. E. MACDONALD,

Chief Judge, N.L.C.

The Hon. the Native Minister, Wellington.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1883.