SESS. II.—1884.
NEW ZEALAND.

THE NATIVE LAND LAWS.

(MEMORANDUM ON, BY MR. W. L. REES.)

Laid on the Table, by leave of the House.

BEFORE the Native Land Act of 1865 was passed, it was asserted that, while the fast-increasing European population wanted land, the Maoris had determined to sell no more land to the Government, believing that they could do better for themselves if allowed to deal directly with the settlers. The General Assembly then decided to repeal the pre-emptive-right clauses in the Constitution Act, and to throw open to all the right to acquire the lands of the Natives. The Native Lands Act of 1865 was then passed, and since that time the history of legislation for and administration of Native lands has been a scandal to the colony. The principal cause conducing to the ridiculous and perplexing number and contradictory character of the Native Land Acts is found in the efforts always made by their framers to deal with Maori tribes owning land as if they were Englishmen, owning in severalty under a title of freehold. It ought to have been remembered that Maoris hold land not in severalty, but in common. The land is the heritage of the tribe or hapu. With land so held in past years none but the chiefs and heads of hapus could deal. In the purchases made by and for the Crown, while the right of pre-emption still existed, this fact was always recollected and acted upon. In many cases no doubt the tribe or hapu whose land was being sold knew of and consented to the transaction, and when the purchase-money was paid by the Government agents to the great rangatiras, the people received a part—not directly from the Crown, but as a gift made to them by their chiefs. Indeed, in olden days, none of the hundreds, who under our laws now claim an equal interest in the land and its price, ever dared to assert a claim or a right to participate in the price.

The Act of 1865 was the first attempt to assimilate the different systems of land tenure, and to build titles in severalty upon tribal holdings. That Act was carefully framed, but the Judges of the Native Land Court at once destroyed the only safeguard which it contained for the tribal rights of the Maoris.

The 23rd section of "The Native Land Act, 1865," provided two methods of ascertaining and declaring ownership in Native lands. The first duty of the Native Land Court was to ascertain the names of all the owners of a distinct block. That having been done, the land was—if over five thousand acres in extent, and the owners exceeded ten in number—to be given to the tribe by name; if it were less than five thousand acres, then no more than ten persons could be placed in the Crown grant. Blocks, therefore, under the prescribed area of five thousand acres, if owned by more than ten people, would have to be subdivided so as to leave no more than ten owners in each subdivision, and Crown grants could then be issued to such owners by name.

The gentlemen who were appointed Judges of the Native Land Court very likely knew enough of Maori customs to decide who were the rightful owners of any block brought before them; but they seem, as their successors have often since seemed, quite unable to understand the meaning of the English law which they had to apply.

Through some unaccountable misconception or carelessness, the Native Land Court Judges proceeded to issue certificates, upon which Crown grants were made, for all lands, whatever was the area, to ten or less than ten of the owners. Thus, two hundred people would be found to be tribally owners of a block of land, say, of twenty thousand acres. Instead of the Court issuing a certificate and grant to the tribe in the name of the tribe, the Judges, disregarding the wording and principle of the Act, would give a certificate to ten or less than ten, and shut out the one hundred and ninety other owners absolutely, although the same Court had already found the one hundred and ninety to be tribal owners in common with the ten. It was in vain that the great mass of tribal owners murmured at this summary confiscation of their ancestral lands. They were told it was the law, and they must submit. The ignorance displayed in the Native Land Court and the cruel injustice perpetrated there was indorsed and carried still further by the Crown Lands Department. As if to show how far ignorance and stupidity, in this matter, could be carried, Crown grants were issued to the ten, vesting the freehold title absolutely in them as joint tenants and equal holders in the property, excluding the great majority of tribal owners altogether. By this the Maoris were again in many instances robbed. Not only were the ten grantees thus made in their own right owners of other people's property, but if any grantee died without dealing with his share—as many did—then his interest in the land went absolutely to the surviving grantees, and his own children