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

and friends were once more despoiled. To add to the cruelty of the proceeding, the Maoris were told by the Judges of the Native Land Court that no one of the ten could sell his individual share or interest, but that all must join in any disposition of the land so granted. This was consolatory to the former owners, as it seemed to afford some protection to the whole people who claimed an interest. But this was erroneous, as the Maoris soon found. Speedily Crown grants were issued to the favoured few, and as speedily—sometimes fairly, sometimes unfairly—tribal lands, in area by hundreds of thousands of acres and in value well-nigh beyond calculation, were obtained by speculators and eager investors from those in whose hands they had been so unfairly and unjustly placed. The records of Maori land transactions will make the cheeks of our children burn with shame for many generations.

What the fate of grants thus issued, and titles dependent on them, will be when brought before the final Court of Appeal in England, it is not for me to predict. But that these are facts no one will venture to deny. If they do, the records of the Native Land Court and the Crown Lands Office, together with subsequent legislation, will fully substantiate all that I have said.

So glaring were the wrongs perpetrated upon the Natives under the Act of 1865, that, in 1867, a new Act was passed which entirely reversed the mode of giving titles to Maori lands. Immense mischief, however, had been done and wrongs inflicted which it will be, even in part, difficult to redress.

By the 17th section of the Act of 1867, all the owners, according to Native custom, in any block were to be ascertained by the Court, and a certificate issued, which, upon its face, was to bear the names of not more than ten persons entitled, while upon its back was to be endorsed a list of all the remaining owners. The ten whose names appeared upon the face of the certificate had no power to deal with the estate, except by way of lease for a period not exceeding twenty-one years; and no sale or mortgage of any such land, or any part of it, could be effected until after the land itself had been subdivided among the different owners. This, indeed, prevented the property being sacrificed, but it also prevented the increase of settlement; and in most cases the land became let to European tenants at ridiculously low rentals. Moreover, these rentals, instead of being distributed among all the owners, were paid to, and appropriated by, the ten whose names appeared upon the face of the certificate, while in practice it was found well nigh impossible to subdivide these lands at all.

As I have said, Native lands are held tribally, and it is an impossibility to point out those portions which belong to individual owners, for the obvious reason that all the land belongs to the whole tribe, and not parts of it to individual members. The tribal ownership is exactly similar to the ownership of the property of a joint-stock company. The tribe is the company, its name is the corporate name of the body, its members are the shareholders in the company, and the land is no more owned by the individual members of it than the land of the joint-stock company is owned by the individual shareholders. The only powers required to turn a tribe into a joint-stock company for the ownership of its estate are two—(1.) The power to use the tribal name and a seal as the name and seal of a corporate body. (2.) The ascertainment by agreement or through the Native Land Court of the proportionate share which each family or individual should have in the proceeds.

The next great step in Native land legislation was in 1873, when another Act, containing an entirely new principle, was added to our Statute Book.

I have pointed out that the injuries inflicted under the Act of 1865 were but ill remedied by the cumbrous and unreasonable Act of 1867, and it soon became evident that the principle contained in the new Act of 1873 combined to some extent the evils of both the former Acts, with scarcely any of their advantages. For the framers of this new Act had the names of all the Maori owners in a block enrolled in the memorials of the Native Land Court, and all, by it, had equal power of joining in every lease or sale, but such restrictions were placed upon the exercise of this power as to render it practically useless. To make a valid lease of the whole block, or any portion of it, every individual owner must execute the deed of lease with all the extreme formalities demanded by the Native Land Court Acts. If one out of a possible three hundred owners were outstanding—and this by reason of death, infancy, absence, or dissent, was sure always to be the case—such a lease was incomplete and could not be registered in the Native Land Court, leaving the European lessee to bear the risk of spending money in clearing, fencing, improving, and stocking a station without a title to the land itself.

To this day not ten per cent. of the leases held by Europeans under the Act of 1873 are complete and enrolled in the Native Land Court.

To effect a valid sale or purchase of Maori land under this Act, the whole of the owners without exception must join in the conveyance, which in nearly all cases was impossible by the same reasons of death, infancy, absence, or dissent. If, however, all would not consent, a clear majority of the owners might agree to sell and then apply to the Native Land Court for a subdivision of the whole into two aggregate portions, one of which should represent the part belonging to those who were willing to sell, the other representing the part of those who dissented.

So little did the Native Land Court understand the meaning of the Acts which it administered that this provision of the Act of 1873 has never been fully carried into effect; and it is only within the last few weeks, upon a case stated for the decision of the Supreme Court, that that Court has interpreted the law so that the Native Land Court Judges may be directed how to carry it out.

But even this sale by a majority is inimical to the real interests of the Maoris as well as prejudicial to their rights. In every list of names enrolled upon the records of the Native Land Court as owners of a block of Maori land there are always included not only the great hereditary chiefs and families, but also their dependents, as well as the families and descendants of slaves taken in war, and those who, by friendship, have been allowed to live upon the land. And, still further, in almost every instance some names are included not because their owners have any interest in the soil, but by way of friendship or esteem or favour. These last names are said to be

admitted by "aroha," or love. In cases not infrequent the family or hapu of one great chief would own more in a particular block of land than a majority of all the owners made up thus of slaves, dependents, and owners by "aroha."

In most purchases it is, as a matter of course, the people, who own little or nothing in the land, that first sell; but, notwithstanding this, the tendency of the Native Land Court has been, in cases of subdivision, to make all the owners equal, and this although Act after Act has been passed by the Assembly declaring that the owners of Native land shall not be held to be equal. Harsh as is the Act of 1873 by reason of this habit of treating owners as equal, yet another injury which it inflicts upon the Maori owners is still more harsh. Although there might be three hundred owners in a block, yet directly a European who desires to obtain it receives a few signatures to a lease, he enters and takes possession. This is often done in defiance of the wishes of an immense majority of the owners. These owners cannot turn the European off by force, because they would be prosecuted and punished by law; nor can any Court turn him off by legal process, inasmuch as he can plead the leave and license of some of the owners; indeed, for this purpose the permission of one out of five hundred would be sufficient. Once having possession of the land, the European, by various means and through the instrumentality of Maori agents and interpreters, would easily increase the number of signatures upon his lease, and by-and-by commence to purchase, for a few pounds or a small supply of stores or spirits, interest in the freehold itself. In this way, scarcely paying any rent for the use of the land, the European can, from the profits derived from its occupation, purchase the freehold from individual after individual until, having at length thus obtained a majority of owners to the deed of sale, the purchaser is able to apply to the Native Land Court and obtain a title in fee-simple to a great part of the block so occupied.

It must not, however, be thought that the evil effects of the law descended only upon the Maoris. The great principles on which a system of land transfer fitted to the genius and wants of a civilized people must rest, are: (1) Certainty of title; (2) facility of subdivision; (3) simplicity of transfer; (4) promptness of completion; (5) economy of cost. So far as these requisites are fulfilled and no farther is the public welfare secured. In the same ratio as these principles are contravened, the public welfare is neglected and injured.

It is not asserting too much to say that, under "The Native Lands Act, 1873," and other Acts now in force, everyone of these conditions is broken. If a system had been desired which should embody principles diametrically opposed to those here laid down, no human ingenuity could have devised a more successful scheme than that which has for so many years been the law of this colony upon the subject of Native lands.

It would be tiresome to wade through examples and illustrations of the statement here made. It is sufficient to say that the endless expense and anxiety borne by would-be purchasers; the records of every sitting of the Native Land Court; the petitions to and debates in every Parliament; the cause lists of every Supreme Court in the North Island; the columns of every newspaper; the long catalogues of crime and debauchery and shame, which are matters of history, show all too plainly that the whole course of legislation and procedure upon this subject has been a gigantic failure. And the results have been commensurate with their causes. The Natives have been degraded. The chiefs and leaders, who had both power and will to guard their people, have been tied hand and foot by our laws, and with bitter hearts have stood hopelessly by, seeing their tribes debauched and plundered under the protection of the law. Nor has the dominant race escaped. Nothing has done so much to lower the tone of public and private life in New Zealand as the trafficking in Native lands. The public generally have suffered. It has been impossible for the great mass of the people to obtain any share in the scramble for the lands of the Maori. All dealing in that line has been a close monopoly. A few great fortunes have been made, and a few great estates obtained, but at a cost to the Natives and to the community as a whole which can never be known. Trade has languished, the progress of districts has been delayed, and in a thousand ways the public have been made to suffer. In vain has Parliament year after year passed laws to protect the Natives. At this day the same things are being repeated boldly in the open day. And so until the Natives are enabled by law to deal tribally with their lands will it continue to be. The only effort ever made to reduce the settlement of Native lands to a fair and just system has been attacked almost throughout the colony as a monstrous scheme of robbery, and those who, in common with myself, have attempted by it to obtain justice for the Natives, have been accused, often by those who ought to have known better, of evil and selfish designs.

I will take one actual case in illustration: A block of land of 4,500 acres is passed through the Native Land Court. There are found in it 106 owners. This block, we will say, is within a stone's throw of the Gisborne Post Office. How is it possible to deal with this land, or parts of it? No one man, nor any number less than all, can sell or lease a single acre of it, for no one piece belongs to one more than to another. But let us suppose an impossibility, and say that all consent to cut it up into lots of from one acre to fifty or a hundred acres, which would, in truth, be greatly beneficial to the district. It would be found that practically they could not do it. Then after surveys and wranglings innumerable, each deed must be signed by every Native, must be interpreted, taken before the Trust Commissioner, and then before the Native Land Court. Before all these processes were complete, the expenses of the conveyances would far more than equal the value of the land to be dealt with. But no such case has ever occurred; nor can the Natives use the land themselves; for here again all would have to consent and to be bound, which, in reality, could never happen. The only way left open is to lease or sell the land as a whole. Here, again, difficulties, delays, vexations, expense, and perpetual annoyances are met at every step, until, in nine cases out of ten, the lessee or purchaser, like Job, curses the day which gave him birth. How easily might all this be remedied. If the tribal owners were made a quasi-corporate body, with a committee and a seal, all the difficulties would at once vanish. The land could, by the decision of a certain majority, be cut up by the committee, and all sales or leases, made in private or public, could be effectuated by the committee, and the seal under the cognizance of the Native Land

Court or Trust Commissioner. All reserves wanted by the people or individual Natives could be made, and the worst system that ever existed could, by a dozen clauses in an Act, be made the best. The only successful business transaction ever accomplished by the Government for the Natives was the leasing of the Rotorua Township; yet that was only successful because the Government had treated the tribal owners as a corporate body. Let Parliament change the law, and enable them to act, as they always used to act, tribally. If not, then let Parliament, if it desires to deal consistently with all, say that all shareholders in every joint-stock company shall hold the corporate lands in severalty in undivided interests—let it declare that the corporate property of our towns shall be the property not of the legal entity, the corporation, but of the individual burgesses; and lastly, let it enact that henceforth all the public lands of New Zealand shall not belong to the Crown in trust for the people, but that every man, woman, and child shall be an owner, and no lease, no sale, no contract about one foot of land, owned by companies, or corporations, or Government shall be valid, until all have joined in the transaction, or the land has been subdivided.

A very gross act of cruelty and bad faith as well as folly was perpetrated by us when we compelled theNatives to hold their lands as individuals. The Treaty of Waitangi assured them of "all their rights in their lands." The chief right of all was the right of tribal ownership—but a tribe of five hundred persons is totally different from five hundred distinct and opposlng claimants. It is the tribe which owns the land, and it is the tribe which, in justice, ought to have sole power to use it or to deal with it. If we restore this right the Native mind will be at once satisfied. The natural law which guides this subject is as strong as any other law of nature. And just as when we break through the laws of health or the laws of commerce, or the statute law, or the law of public opinion, we encounter difficulty and suffering, so, having broken through the law which nature has made in this matter, we have suffered and we have made others suffer also who had done no wrong. Were the Maoris permitted to pursue their natural system we should soon perceive a great change in their character and *status*. They would make great endowments for schools and compel all their children to be educated; they would encourage settlement and commerce; they would, in all probability, take upon their lands a portion of the cost and burden of the great public works necessary to make those lands of value; they would become profitable customers, large producers and taxpayers of no inconsiderable amount. Rising in self-respect and conscious of responsibility, they would no longer be a cause of anxiety to the State; but, on the contrary, a source of wealth and credit. They would be bound to us by the strongest ties which can bind humanity together.

Nearly all the Native litigation which has burdened the Courts of law and sickened the mind of the public for the last fifteen years has arisen from the dealing of individual Natives with the tribal lands under the Acts of 1865 and 1873. So confused, uncertain, and scandalous were many of the transactions between Europeans and Maoris in the acquisition of lands from the Natives, that the Bill proposed by the late Government for the resumption of the pre-emptive right by the Crown, or for the compulsory agency of the Government in all such dealings has drawn forth a strong expression of approval from most parts of the colony outside those districts whose prosperity depends upon the settlement and disposal of the waste lands of the Natives. But with all deference to the opinions of those who see in the passage of this Bill the only method of healing this particular sickness of the body politic, I venture to urge that the remedy will be well nigh as disastrous as the disease itself. The Government cannot purchase without injuring the Maori as well as the European, and no Maori tribes will consent to hand over the disposal of their lands to bodies, such as Waste Land Boards, over which they would have no control, and with whom they could hold no communication. As to giving their land to the Government for disposal, all their experience in the South Island as well as the North, on the East Coast as well as the West, has turned their minds against that course with a determination that nothing can shake.

There yet, however, as we have seen, remains one plan entirely consistent with Maori ideas, in accordance also with the method of procedure adopted in the earlier dealings between the Government and the Maoris, and one in which we are ourselves accustomed—as members of corporate bodies and joint-stock companies—to deal with property of all descriptions every day. And this, too, I think, is a method which, in the various Acts of the Assembly, the Parliament of New Zealand seems to have been groping for, although without success. This, shortly, is the method of tribal dealing through the instrumentality of committees chosen by the owners of the different blocks of land, around all which dealings such restrictions and safeguards shall be placed as will satisfy justice and prudence.

Under the present system, as well as under the system proposed by the late Government, another grievous wrong is, and would be, done to the Native owners of land. As an adjunct to the possession and ownership of land, the profitable occupation and enjoyment of that land ought to be essential; but, by the laws we have forced upon the Maoris, this, so far as they and their lands are concerned, is impossible. Without organization such as in this paper is recommended, it is vain for the Maoris to hope to utilize their lands: all they can do is to sell or lease them. What other portion of Her Majesty's subjects would be content with laws which impose such manifest burdens and such improper disabilities?

Why should not the Maoris, by committees appointed by themselves, have the power to manage their own estates, just as the properties of companies are managed by directors? Why should not they, as well as all other of the Queen's subjects, be permitted to have sheep stations or cattle stations, or erect stores, or make reserves for schools or charitable or other purposes? What right have we as free men to make laws without their concurrence, which place them at a tremendous disadvantage as compared with ourselves, and deprive them, by an iniquitous and tyrannical series of enactments, of the power to manage their own property for their own happiness, in a manner at once consistent with the genius of their customs and the public good? If the law enabled them to deal with their lands after the ownership has been determined, regarding the tribe as one person; if they were assured by law that no dealings with individual Natives would be henceforward allowed; if they were, also, assured that full power to deal with their

lands would be given to the whole people, speaking and acting by their chosen representatives, and that full power would be granted to them thus to do what they chose with their own as long as they injured no other persons, the Maori question and the Maori difficulty would be at once a thing of the past.

There can be no doubt that, during all the years in which legislation has been attempted on this subject, the aim of successive Parliaments has always and invariably been to act with justice and kindness towards the Maoris; yet, as the result of all the efforts made honestly and in good faith, we see a failure so great and complete as to dispose the public mind to retract all the steps taken during the last twenty years.

What are the causes which have conduced to a result so lamentable? Let me catalogue a few of them—(1) Ignorance of the subject on which legislation was brought to bear; (2) the changing of Ministers and political plans; (3) fear and doubt which existed in the Maori mind perpetually, breeding mistrust and want of confidence; (4) our determination to enforce our system of land tenure—*i.e.*, individual freehold titles in lieu of tribal holdings; (5) the evil influences which have always surrounded the Maori question and the Native Department—the greed, the selfishness, the earth-hunger which have ever sacrificed the public good upon the altar of private gain; (6) and last, but certainly not least, our treatment of the Maoris, which has ever been to dragoon them by lead and steel, treating them as a conquered people, or to cajole them by flour and sugar, as if they were children. These we have, ever since the year 1865, done; but we have, since that time, never tried to obtain their advice and co-operation in efforts at legislation at once to deal justly with them and to advance the settlement of this colony.

In June of last year, together with Wi Pere, the present member for the Eastern Maori District, I was invited by the great chiefs of the Ngatimaniapoto to visit them in the Waikato and advise them as to the methods to be adopted by which their isolation from the Europeans should be removed, while at the same time their lands might be preserved from the disastrous consequences which had befallen the lands of all other tribes. Prior to this or since that time, I have seen and conversed with almost every leading chief in New Zealand upon these subjects. I spent between a fortnight and three weeks in the King country canvassing these matters with Wahanui and other leading chiefs in the presence of large numbers of the people, and I am convinced that if the system in this paper advocated becomes law, that the whole Maori lands of New Zealand will be thrown open for settlement, and a final and complete end be placed to that iniquitous system of dealing with the Natives which is the darkest blot upon the history of this young colony. Prior to my visiting the Ngatimaniapoto, I spent some time with Sir George Grey, who had been urgently implored to visit them and advise with them on this subject, and I enjoyed during many days the privilege of discussing with him all possible plans by which just dealing between the Natives and Europeans could be secured, by which intending settlers could be enabled to obtain land on fair terms at the least expense, and with a perfect title, by which the Natives themselves should bear a portion of the responsibility and labour of settling this great question and participating in the benefits of civilized settlement, and by which the whole community should be enriched and benefited; and the result generally was that, so long as the Maoris were permitted to exercise the power of selling or leasing direct to Europeans, that power should only be exercised by the tribes as such, acting through committees chosen by themselves.

The one Maori of all others who has made a study of these questions, and has considered them in every way for years, is Wi Pere. No man in New Zealand has so great a personal influence over his fellow Natives as he. No man, whether European or Maori, has clearer views as to what is necessary or advantageous upon this question.

From all my interviews and conversations with the chiefs of every tribe I am convinced that they would gladly work with us throughout the length and breadth of the colony if they were permitted to manage their lands by committees chosen by themselves, but subject to the public decisions and orders of the tribes, and to the supervision of the Native Land Court or Trust Commissioners. I leave it to the understanding of all intelligent men to say what an influx of population, what a growth of production, what increase of national wealth, and what a measure of national credit would accrue to us if this rational plan were to become the law of New Zealand.

I venture to suggest that this plan be submitted to the whole Maori people; that a meeting of the great chiefs be called, to be held on the borders of or in the King country, the expenses of which shall be borne by the Government; that the resolutions of that meeting be submitted to the tribes, and, if approved, be embodied in a law. If such be done I do not hesitate to predict a condition of great prosperity through these means to the colony.

Since writing the above, I have been informed by Sir George Grey that in 1861 the principle of tribal dealing with Native lands through committees or runangas was agreed upon between the Governor and his Executive. The correspondence is contained in the Appendix to the Journals of the House of Representatives, 1862, E.–2, pages 10 to 13. If this had then been done the colony would have saved itself much trouble, expense, and discredit. W. L. Rees.

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