1890.

NEW ZEALAND.

OPINIONS OF VARIOUS AUTHORITIES ON NATIVE TENURE.

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

Mr. Alexander Mackay to the Hon. the Native Minister.

Sir,— Native Land Court Office, Greytown, 17th March, 1890.

In conformity with the request contained in the letter addressed to me by the Under-Secretary, Native Department, relative to a collection of papers on Native tenure I forwarded some time ago for publication, I have the honour to transmit herewith the aforesaid papers, for your consideration as to the advisability of having them printed and circulated for the information of persons desirous of becoming acquainted with the subject.

A large number of the opinions on "Native tenure" contained in these papers have already appeared in print in Appendix A. to Parliamentary Paper E.–No. 1, 1860. The additional papers collected by me commence at page 13 with an extract from Maning's "Old New Zealand," Chapter XV., and continue from that page to the end.

The papers printed in Parliamentary Paper E.–No. 1, 1860, were collected by Mr. (now Sir Dillon) Bell for Governor Browne in 1860, at the time the Waitara question was agitating the public mind, and were forwarded, with other papers of a similar character, to the Secretary of State for the Colonies, in conformity with a request that a report should be transmitted by His Excellency on the territorial rights of the Native chiefs.

Although the opinions expressed in the aforesaid papers are very conflicting on many points, the general consensus of opinion warrants the conclusion that the condition of "Native tenure" in the olden times, before the advent of the European, was as follows: (1.) That the Native title was communal. (2.) That tribal rights may be classed under two heads—first, the territory which had been in possession of the tribe for several generations, and to which no other claimants had been previously known; second, the territory acquired by conquest, occupation, or gift, but that conquest without occupation did not confer a title. (3.) That no fixed law existed in regard to Native tenure except the law of might, and that various customs existed in different localities. (4.) That the chief of the tribe must be regarded as holding his position by a double title—first, from his undoubted descent through a long line of well-known ancestors; second, as the elected head of the tribe: in that position he was the representative of the territorial rights of the tribe, on account of his personal qualifications and influence, and was recognised as the guardian as well as the mouthpiece of the rights of the tribe. In that position he had the right of veto over the disposal of the land, but had only an individual right to it like the rest of the people. (5.) That the possession of land, even for a number of years, did not confer a right unless the occupation was founded on some previous *take* of which the occupation could be regarded as a consequence, and this *take* must be consistent with the ordinary rules governing and defining Maori customs. (6.) That each Native had a right in common with the whole tribe over the disposal of the land of the tribe, and an individual right, subject to the tribal rights, to land used for cultivation or for bird-, rat-, or pig-hunting. But to obtain a specific title to land held in common there must be some additional circumstance to support the pretension, and the claimants must be able to substantiate some sort of title to give them the preference over such land. (7.) That neither manorial nor seignorial rights obtained among the Natives, and that the chief of the tribe had no absolute right over the territory of the various *hapus*, nor could he dispose of any land but his own without the concurrence of those to whom it belonged.

It is almost impossible to lay down any fixed rules for fully defining the law of Maori land-tenure, as the customs vary in different localities; but the general principles quoted above are