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

usually recognised by the Native Land Court, and in other cases the only plan is to ascertain the Maori usage or custom relating to the ownership of the land before the Court, to respect all certain rights, and, where doubtful or not clearly ascertained, to allow justice, equity, a common-sense view, and the good conscience of the case to supply their place.

I have, &c.,
A. MACKAY.

The Hon. the Native Minister, Wellington.

D. MCLEAN, Chief Commissioner for the Purchase of Native Lands.

THE Governor was most anxious that some means should be devised by the chiefs of the Conference to define tribal boundaries, and make such a subdivision of property among tribes, families, and individuals as would secure to them their landed rights on a more certain foundation than now existed. The chiefs present were all aware that land was the main source of many of their difficulties, occasioning loss of life, and affecting the property of both races. No fixed law on the subject could be said to exist, except the "law of might." It was true various customs relating to Native tenure existed, but these were not in any way permanent, and the endless complications of such customs were eventually resolved into the law of might. Paora, one of the Ngatiwhatua chiefs present, had stated that one law did not exist with the Europeans and Natives about land. This was true, inasmuch as the Native has no fixed law to regulate the rights of property. How, therefore, could it be expected that one law should prevail? The European has a law to guide him on this subject; the Native has no well-defined law. The Governor had long thought of this subject, and availed himself of the present Conference of chiefs to place his own views before them, in the hope that they would co-operate with him to devise such a measure as would simplify Native tenure, and enable them to leave the land they inherit in the quiet and undisturbed possession of their children. . . . . Powerful tribes took possession of land by driving off or exterminating the original inhabitants. Those in their turn drove off other less-powerful tribes. The conqueror enjoyed the property while he had the power of keeping it. None were certain how long they could occupy the land in peace. It was true that Christianity introduced a different state of things. By its influences the conquered were permitted to re-establish themselves on the lands of their ancestors. In process of time, however, the conquered encroached too far on the formerly-recognised rights of the conqueror, occasioning up to the present day much bitterness of feeling between the two classes of claimants. Tribes vary in their customs about land; but, after all, their various customs are liable to be superseded by the law of might. He would not detain them longer, but wished them to consider this message well before they expressed an opinion on it.—[*Speech at the Conference of Native chiefs, July, 1860: in* Maori Messenger.]

You will remember being examined in writing by a Commission issued by His Excellency in 1856: one question put to you was, "Has a Native a strictly individual right to any particular portion of land, independent of the tribal right over it." I find among the answers in the negative "McLean." Is that you, and what was your report on the question?—I am the Mr. McLean, and that is the reply which I made.

What do you mean by tribal right?—I suppose it means the right of a tribe.

Will you describe the meaning of tribal right in regard to the transfer of land?—It varies so much in different parts of the country, I should wish to know what particular part of the country you refer to, as the custom which prevails in one place does not in another.

What is the general rule?—There are very wide exceptions.

Is the rule or exception wider?—The exception is the wider.

When a *hapu* alienates, who represents it, and is the consent of all its members necessary?—In some tribes the different *hapus* must be consulted, in others the chiefs; much depends upon the personal character of the latter. I did not say that *hapus* or subdivisions of tribes had not a right of transfer of property. The various *hapus* or families which compose a tribe most frequently have the right of disposal, but not always; the custom varies.

How do you discover what the rights of the parties are?—You must discover them by inquiry of the people in the district where the land is situated, and elsewhere.

If Patukakariki is the head of the Ngatihinga, could an individual sell without his consent?—A certain number of claimants could sell, but not invariably without his consent.

What proportion, a bare majority?—I cannot say. It would depend on the locality, the people, and the boundaries.

Then the sum of your evidence is this: That there are no settled rules or principles guiding alienation of land, and that in such matters the exception is wider than the rule?—The Natives have no fixed rule. The custom varies in different districts.—[*Evidence at the Bar of the House of Representatives, August, 1860, Sess. Paper E. No. 4.*]

BISHOP OF NEW ZEALAND.

THE Native-land title is simple enough in its origin, but from obvious causes extremely complicated in its actual state. In its theory it is this: A few leading chiefs, with a small body of children and retainers, arrive at different parts of the Island, and make a rough partition of the territory among themselves by natural boundaries of mountains and rivers. These families grow into tribes, each possessing the patrimony derived from its ancestors. To preserve this inheritance unimpaired was a primary object of their care. To this end two restrictions were necessary—(1) Upon the right of alienation; and (2) upon the liberty of marriage. The case of the daughters of Zelophehad is strictly analogous to Maori usage: "If they be married to any of the sons of the

other tribes of the children of Israel, then shall their inheritance be taken from the inheritance of our fathers, and shall be put to the inheritance of the tribe whereunto they are received. Let them marry whom they think best, only to the tribe of the family of their father shall they marry."

Other reasons may be assigned for these restrictions, such as the right of the tribe to require service from all its members, the necessity of keeping up their own numbers, and of preventing strangers from acquiring landed property to be used to the injury of the tribe.

There is reason to think that an independent right to alienate land without the consent of the tribe is unknown in New Zealand.

On the other hand, in the ample territory which each tribe at first possessed, there was probably much freedom of choice in the particular spot which each member might wish to cultivate. This spot became his own by right of occupation, and, in the absence of all forms of conveyance, descended to all his children and grandchildren, sons-in-law, and daughters-in-law, till the right which was at first personal became complicated by a multitude of claims. In the neighbourhood of fortified places these plots of ground, from the necessity of the case, were as minute as cottage-gardens near a populous town; and it may be taken for granted, as a general rule, that in such cases every acre of land will contain ten or twenty plots, and for every plot there will be ten or twenty claimants, as I have repeatedly found. In such cases, also, for the sake of mutual protection, the right of the tribe to control the alienation of land to foreigners would be most rigidly enforced.

Three points, then, seem to be clear on this subject—(1) That there was originally a distinct owner for every habitable spot in the Northern Island; (2) that these claims have become complicated by the obvious causes of inheritance and marriage, without forms of conveyance or bequest; (3) that these rights of ownership, whether in one or many joint proprietors, were not alienable without the consent of the tribe.—[*Memorandum to the Governor, May, 1860, in Sess. Paper E. No. 1.*]

Sir WILLIAM MARTIN, late Chief Justice of New Zealand.

So far as yet appears, the whole surface of these Islands, or as much of it as is of any value to man, has been appropriated by the Natives, and, with the exception of the part which they have sold, is held by them as property. Nowhere was any piece of land discovered or heard of [by the Commissioners] which was not owned by some person or set of persons. . . . . There might be several conflicting claimants of the same land; but, however the Natives might be divided amongst themselves as to the validity of any one of the several claims, still no man doubted that there was in every case a right of property subsisting in some one of the claimants. In this Northern Island, at least, it may now be regarded as absolutely certain that, with the exception of lands already purchased from the Natives, there is not an acre of land available for purposes of colonisation but has an owner amongst the Natives according to their own customs. . . . . .

For the most part the boundaries of property are well defined. In the immediate neighbourhood of such pas as are at present inhabited, land is often minutely subdivided, each separate piece belonging to some one person, who cultivates either alone or jointly with some member of his family. The same is the case in the neighbourhood of old pas, even though they may have been abandoned for many years. The titles of the former cultivations are remembered and maintained by their descendants.

Where the acts of appropriation in some past generation were of a less public nature, or took place a long time ago, the titles of the present claimants are, of course, much more difficult of proof. Out of cases of this kind the greater part of the existing disputes have arisen. Each of the claimants endeavours to prove some act of ownership exercised without opposition by one of his ancestors. Acts commonly alleged are cultivating, building a house or catching rats on the land, setting an eel-weir, cutting down a totara tree in the forest for a canoe, &c.

These claims in the ordinary course of things become sufficiently complicated, but are rendered much more so by the introduction of another set of claims which arise out of rights of conquest, enforced in very different degrees in different cases. Boundaries between different pieces of property have been often indicated by the Natives incidentally, without any question put or any previous reference to the subject, in spots now remote from any habitation of man—for example, on the edge of the forest between the Whanganui River and Tongariro; on the highest peak of the Aroha; at a stream in the heart of the wood between Tauranga and Rotorua. But between territories of different tribes there are often found tracts of land which are called *kainga tautohe* or (literally) debatable lands.

The lands of a tribe do not form one unbroken district, over which all members of the tribe may wander. On the contrary, they are divided into a number of districts appertaining to the several sub-tribes. Each sub-tribe consists of the descendants of a common ancestor (whose name it generally bears) who was, in former times, the conqueror, or in any other way the recognised owner of the district. These smaller districts are, in many cases, numerous; and for the most part are sufficiently well defined. Within each of them the families or members of the sub-tribe are free to range, both to take the natural products of the soil and to cultivate for themselves such portion of it as they may choose. There is no paramount or controlling power either in the tribe or in the sub-tribe to restrain or to direct the exercise of this right of appropriation. Each family or freeman may use and appropriate without leave of any. It is indeed a rude form of property—a natural stage in the progress towards the more complete appropriation of the earth's surface in the way familiar to ourselves. But, still, every right which exists, whether in one person or in more, is truly a right of property; and there does not, in this state of things, exist anything which can be correctly likened to a right of sovereignty as understood amongst us.

Mr. Spain says, in describing the Port Nicholson district: "There are seven divisions or families of a tribe, each claiming separate lands of their own, and certain rights and privileges which are sometimes wholly denied, and at others only partially admitted by the rest." Again, speaking of

the same district: "In a place so thickly populated as I have before described this to be, the boundaries of the parts of the district belonging to each tribe or family are generally pretty well ascertained and admitted between them. As a proof of this I may mention that in the case of Native reserves great difficulty has been found in getting Natives belonging to one family to go on a reserve made within the boundary of the land belonging to another family, although it has been fully explained to them that the reserves are made for the benefit of the Natives generally and not for any particular tribe or family. They cannot understand this; and in several instances that have fallen under my notice they have positively refused to cultivate a Native reserve so situated, although at the time in actual want of a spot to grow their potatoes upon."

. . . . The New Zealanders have been in the constant habit of resisting, even to blood, any encroachment upon their territorial rights. They are not less disposed to resist now. For their determination on this point there are two reasons. (1.) That these rights (whatever names our lawyers may give them) are of great value to the Natives, as has been shown. They, like other men, are naturally disposed to retain, by force if necessary, that which they know to be a benefit to themselves. (2.) That every tribe sees, in any successful encroachment upon its territory, a peril to its own independence, and even to its existence, as a distinct tribe. An extreme jealousy on this point appears to be the natural result of their condition, and may with truth be described as the "passion" of this people. This has been a main cause of desolating wars. There is a common proverb, "*He wahine he oneone i ngaro ai te tangata*" (women and land are the destroyers of man). The pride of each tribe centres in its power to maintain its own possessions against aggression. This spirit in the Native people is closely akin to one which, if we were speaking of ourselves, we should describe as patriotism.

. . . . In New Zealand the claims to land are numerous; the claimants often live far apart from each other; and the people are especially slow and deliberative in settling the terms of a bargain. To make a good bargain there are needed length of time, publicity, and knowledge of the Native language. When these requisites are found purchases of land in New Zealand may be, and in a large number of cases have been, made as safely, at least, as in England.—[*Pamphlet of 1846.*]

EXTRACT from a PAMPHLET by Sir WILLIAM MARTIN, in 1861.

1. THE land occupied by a Native community is the property of the whole community. Any member of the community may cultivate any portion of the waste land of the community. By so doing he acquires a right over that particular piece of land, and the right so acquired will pass to his children and to his descendants. If he have no descendants, the land may then be cultivated by others of the community, as agreed upon amongst themselves. Thus the whole community has a right like what we should call a reversionary right over every part of the land of the community. The word "community" is used here rather than the more common terms "tribe," "sub-tribe," or "family," for this reason: Each of the original tribes (*iwi*) of the Maoris has in course of time broken up into a great number of sub-tribes or families (*hapu*), which have from time to time planted themselves in separate villages on different parts of the common territory, each family retaining the name of its ancestor or founder. Such sub-tribes are exceedingly numerous. Sometimes it has happened that intermarriages for many generations between such sub-tribes have so blended them together as to render it impossible to draw any distinction between them for any practical purpose. Owing to this process of fusion and intermixture there may be a difficulty sometimes in determining the exact limits of the community. It may be the whole tribe (3); it may be less than the whole tribe, yet larger than any one sub-tribe or family. However that may be, every cultivator is a member of some community or society (4), and not free to deal with his land independently of that community or society.

2. The chief naturally represents and defends the rights of his people. He has his own personal interest like the rest. He is also especially charged with the protection of their honour and interests; and would lose all his influence if he did not assert their rights manfully. It is a common thing for the head man in a community to have but little claim upon a spot belonging to the community, and yet to claim great powers (5) in the disposal of it. In these matters the tribe generally support what he says. Still, as a general rule, he makes it his business to confer with the lesser chiefs and the whole tribe, and does not venture to act without them. In some very rare instances a chief has disposed of a piece of the land on his own authority without first consulting the people, and his act has been subsequently recognised. In cases of this kind much depends on the respect in which the chief is held by his people, and on a variety of circumstances affecting the internal politics of the community. To make a sale thoroughly regular and valid both chief and people should consent (6). In some cases the chiefship is divided—where, for example, a younger brother has by superior ability or bravery raised himself to the level of the elder, or even above him—so that in each particular purchase, there is a necessity for carefully ascertaining what is the community, and who the chief or chiefs whose consent is needed to make the sale thoroughly valid and unquestionable.

3. In old times land was sometimes ceded by one tribe to another as a payment for assistance rendered in war. Also, land was occasionally transferred as payment for losses in war. Where a chief of superior rank had been slain on one side, land was yielded up by the other, in order to end the war on fair terms. This was the case at Kororareka in the year 1837, when the Ngapuhi from Whangaroa, Matauri, and the Bay of Islands, made an attack on Kawiti and Pomare, at Kororareka. Hongi, a superior chief, fell; and, though the assailants were repulsed, Kororareka, together with a large portion of land as far as Cape Brett, was ceded to them. Even in our times lands have changed owners on account of a murder, or life otherwise lost.

4. The holdings of individual cultivators are their own as against other individuals of the community. No other individual— not even the chief—can lawfully occupy or use any part of such hold-

ing without the permission of the owner; but they are not their own as against the community. If it is said of a piece of land, "the land belongs to Paora," these words are not understood by a Maori to mean that the person named is the absolute owner, exclusive of the general right of the society of which he is a member. So entirely does a Maori identify himself with his tribe that he speaks of their doings in past times as his own individually. We speak of our victories of Blenheim and Waterloo. A Maori, pointing to the spot where his tribe gained some great victory long ago, will say triumphantly "*Naku i patu*" (it was I that smote them).

5. It is established by a singular concurrence of the best evidence that the rules above stated (7) were generally accepted and acted upon by the Natives in respect of all the lands which a tribe inherited from its forefathers. Of course many cases must have existed in which might overcame right. Still, the true rule is known and understood—the Natives have no difficulty in distinguishing between the cases in which the land passed according to their custom and those in which it was taken by mere force. In the year 1856 a Board was appointed by the present Governor to inquire into and report upon the state of Native affairs. The Board "considered it necessary to avail itself of the best information which could be obtained from persons acquainted with the Natives," and with that view examined many witnesses. Amongst other subjects of inquiry they reported on "Claims of individual Natives to land" in the following words:—"Each Native has a right in common with the whole tribe over the disposal of the land of the tribe, and has an individual right to such portions as he, or his parents, may have regularly used for cultivations, for dwellings, for gathering edible berries, for snaring birds and rats, or as pig-runs. This individual claim does not amount to a right of disposal to Europeans as a general rule, but instances have occurred in the Ngatiwhatua Tribe, in the vicinity of Auckland, where Natives have sold land to Europeans under the waiver of the Crown's right of pre-emption, and since that time to the Government itself, in all of which cases no after-claims have been raised by other members of the tribe; but this being a matter of arrangement and mutual concession of the members of the tribe, called forth by the peculiar circumstances of the case, does not apply to other tribes not yet brought under its influence. Generally there is no such thing as an individual claim, clear and independent of the tribal right. The chiefs exercise an influence in the disposal of the land, but have only an individual claim like the rest of the people to particular portions." Among the questions put by the Board to the witnesses was the following: "Has a Native a strictly individual right to any particular portion of land, independent and clear of the tribal right over it?" This question was answered in the negative by twenty-seven witnesses, including Mr. Commissioner McLean; and by two only in the affirmative.

6. This state of things is the necessary consequence of the existence of clans or tribes. The clansmen are equally free and equally descended from the great ancestor—the first planter or the conqueror of the district. They all claim an interest and a voice in every matter which concerns the whole tribe, and especially in a matter which touches them all so nearly. As to the disposal of land, the Natives are fond of arguing thus: "A man's land is not like his cow or his pig; that he reared himself, but the land comes to all from one ancestor."

7. Englishmen seem often to find a difficulty in apprehending such a condition of things; yet it is, in fact, the natural and normal condition of a primitive society. It may be worth while to turn aside for a moment to show this. "However familiar the appropriation of land may appear, the history of mankind affords sufficient proof of the slow development of individual possession, and the difficulty of arriving at the principles upon which such an exclusive claim is founded. The first and most obvious right accrues to the people, or nation, as is the case with the aborigines of North America. In ancient Germany no one man was enabled to acquire any permanent property in any distinct portion or parcel of the soil."—(Sir F. Palgrave, "English Commonwealth," 1, 71.)

8. In Ireland, a few centuries ago, the tribal right was even more strongly recognised than it is now amongst the New Zealanders. "On the decease of a proprietor, instead of an equal portion among his children, as in the gavelkind of English law, the chief of the Sept made, or was entitled to make, a fresh division of all the lands within the district, allotting to the heirs of the deceased a portion of the integral territory along with the other members of the tribe. The policy of this custom doubtless sprang from the habit of looking on the tribe as one family of occupants, not wholly divested of its original right by the necessary allotment of lands to particular individuals."—(Hallam, "Constitut. Hist.," Chap. 18.)

9. Among our Anglo-Saxon fathers we notice the actual transition from the earlier to the more advanced state of things—from clanship to nationality. Their land was either folkland or bookland. "Folcland, as the word imports, was the land of the folk or people: it was the property of the community: it might be occupied in common, or possessed in severalty; and, in the latter case, it was probably parcelled out to individuals in the folcgemot, or Court of the district, and the grant attested by the freemen who were then present: but while it continued to be folcland it could not be alienated in perpetuity; and, therefore, on the expiration of the term for which it had been granted it reverted to the community, and was again distributed by the same authority. Bocland was held by book or charter: it was land that had been severed by an act of government from the folcland, and converted into an estate of perpetual inheritance: it might be alienable and devisable at the will of the proprietor: it might be limited in its descent, without any power of alienation in the possessor: it was forfeited for various delinquencies to the State."—(Hallam, "Middle Ages," Suppl. Note, 140.) Folkland then corresponded to the Native tenure; bookland to the tenure under a Crown grant.

10. The Treaty of Waitangi carefully reserved to the Natives all then existing rights of property. It recognised the existence of tribes and chiefs, and dealt with them as such. It assured to them "full, exclusive and undisturbed possession of their lands and other properties which they may collectively or individually possess, so long as it is their pleasure to retain the same." This tribal right is clearly a right of property, and it is expressly recognised and protected by the Treaty of Waitangi. That treaty neither enlarged nor restricted the then existing rights of property. It simply left them as they were. At that time, the alleged right of an individual member of a tribe to alienate a portion

of the land of a tribe was wholly unknown (8). The rights which the Natives recognised as belonging thenceforward to the Crown were such rights as were necessary for the government of the country, and for the establishment of the new system. We called them "sovereignty;" the Natives called them "*kawanatanga*" (governorship). This unknown thing, the "governorship," was in some degree defined by a reference to its object. The object was expressed to be "to avert the evil consequences which must result from the absence of law." To the new and unknown office they conceded such powers—to them unknown—as might be necessary for its due exercise. To themselves they retain what they understood full well—the "*tino Rangatiratanga*" (full chiefship), in respect of all their lands (9). These rights of the tribes collectively, and of the chiefs, have been since that time solemnly and repeatedly recognised by successive Governors (10), not merely by words but by acts; for, through the tribes, and through the exercise of the chief's power and influence over the tribes, all the cessions of land hitherto made by the Natives to the Crown have been procured (11).

ARCHDEACON MAUNSELL.

THE land does not, generally speaking, belong to one individual, but chiefly to the tribe. Often there will be only one main proprietor or *take* (root) as they denominate him; but if he be not a chief of rank the head man will take upon him to dispose of the spot. Often, and more frequently, there will be many *take*, and one of them will sell without consulting the others. There are other difficult points connected with this question—*e.g.*, a tribe will give a spot of land to another, either as a marriage portion or to induce them to reside, &c. The former are still *take*, but the latter may, if they like, sell, only they generally hand over the payment to the former, reserving to themselves the honour attendant on the transfer. The latter, again, if they be powerful, will sell without consulting the former, all being regulated by the relative power of the two parties. At the same time I consider that to a valid document both parties names should be attached. Neither is it a difficult matter to satisfy the others when the main *take* (if he be a man of rank) has given his consent.—[*Letter from Rev. R. Maunsell, quoted in evidence before the House of Commons, 1840; Parl. Papers, 3rd August, 1840.*]

BOARD OF INQUIRY.—Major NUGENT, late Native Secretary; Mr. LIGAR, late Surveyor-General; Mr. DALDY; and Mr. T. H. SMITH, Assistant Native Secretary.

IT appears that the title or claim to land by tribes arose from occupation, dating sometimes from remote periods and from more recent conquests, followed by occupation either by themselves personally or by remnants of the conquered people; that this title existed no longer than it could be defended from other tribes; that the boundaries were in some cases clearly defined and admitted by adjoining tribes, but that in many others they were quite the reverse, and were causes of constant quarrels; that narrow belts of land, as being claimed by two tribes, could not have been occupied by either without causing an appeal to arms; that there is no part of the country which is not claimed by some party or another; that as land is inherited in the female line the constant intermarriages between the tribes led to the descendants by such marriages having claims to land in more tribes than one; that it frequently happened that one tribe gave land within their own limits to the members of another tribe for assistance rendered in times of danger, which gifts were held most sacred; that claims to land were made by one tribe and admitted by another as compensation for the murder of a chief thereon or other injury; that an accidental death of a chief on the land of another tribe gave his family a claim to it.

It will therefore be seen that no tribe has, in all instances, a well-defined boundary to its land as against adjoining tribes, and that the members of several other tribes are likely to have claims within its limits. Each Native has a right, in common with the whole tribe, over the disposal of the land of the tribe, and has an individual right to such portions as he or his parents may have regularly used for cultivations, for dwellings, for gathering edible berries, for snaring birds and rats, or as pig-runs. This individual claim does not amount to a right of disposal to Europeans as a general rule, but instances have occurred in the Ngatiwhatua Tribe, in the vicinity of Auckland, where Natives have sold land to Europeans under the waiver of Crown's right of pre-emption, and since that time to the Government itself, in all of which cases no after claims have been raised by other members of the tribe; but this being a matter of arrangement and mutual concession of the members of the tribe, called forth by the peculiar circumstances of the case, does not apply to other tribes not yet brought under its influence. Generally there is no such thing as an individual claim, clear and independent of the tribal right. The chiefs exercise an influence in the disposal of the land, but have only an individual claim like the rest of the people to particular portions. Since the introduction of Christianity the Natives have gradually emancipated their slaves taken in war, and by their return to their former possessions they have become a new class of claimants.

When the Natives first came into contact with Europeans in the relative position of sellers and buyers of land, the evidence of which before the Board extends as far back as the year 1822, it has been shown that the Natives in disposing of their land intended only to convey a title similar to that which they as individuals hold themselves—the right of occupancy. They did not imagine that anything else could be wanted. Their desire for Europeans to settle among them was very great, and in selling a piece of land to one of these early adventurers they not only were prepared to hold his title, such as it was, inviolate, but considered his personal safety a matter of the deepest interest. He, in fact, was considered as one of the tribe among whom he had cast his lot. They soon, however, ascertained, when a knowledge of their language had been sufficiently acquired by the Europeans, that this sort of tenure was unsatisfactory, and in all subsequent transactions of the kind gave written titles in perpetuity, with the right of transfer.—[*Report to Governor Gore Brown, in Sess. Papers, 1856.*]

Rev. J. HAMLIN, Church of England Missionary.

IT would be difficult at this distant period to state precisely what gave the first Maori emigrants to this country a title to land on their landing on its shores. The following, however, appear the most reasonable, and are in accordance with what the Natives themselves affirm to be the fact. [Here instances follow of occupation, &c.]

Occupation gave a title to land in those early times, but occupation alone, without some other claim, subsequently did not. Mere occupation does not give a valid title. In cases of occupation without claim the occupant generally made some acknowledgment to the owner, in food or some other way, answering to our leases and rentals, but he had no right to sell.

Conquest alienates the land, but it has its quibbles. Conquest and occupation give a valid title to land. Conquest without occupation is doubtful. If the conquered party return, occupy, and hold the land from which they were driven the land is theirs. Hence the Tamaki land still remained in possession of the Thames Natives, though driven from it by Hongi; but they did not consider their occupation of it safe, and therefore sold it. If the conquered people return to their land by permission of the conqueror the land does not become theirs unless a transfer of the land is made to them by the conquerors. But all these acknowledged Native rights were by might often set aside, and arbitray power ruled.

"*Mana.*"—The term *mana*, in reference to land, I have occasionally heard, and have asked the question, "*He aha te mana o te whenua?*" and have received this answer: "*Aua hoki, ma te pakeha.*" The answer implies that the term as applied to land had its origin in a mistaken conception of the meaning of Native words by Europeans. The term as applied to land is scarcely heard of in some districts. In the few instances in which I have heard it used its meaning is synonymous with *tikanga*, which expresses ownership, or delegated authority by the owner to sell, to manage the business, or to be the spokesman, as we employ an auctioneer or solicitor.

In the Bay of Islands, where land-purchases were first made, the Native of every degree of rank sold his land without reference to any other authority. It sometimes happens that the Natives will advise that the signature of a person of rank be added to a deed who has little or no claim to the land purchased; but this, I think, is done with a view to conciliate the person, knowing that such persons can and often do create disturbances if their names are left out, as they would consider they had been slighted. As a closing remark, I may say that I have not been able to discover that any such thing as "manorial right," distinct from ownership in a greater or less degree, has been lodged in the chief of a district, in the chief of a tribe, or in the chief of a *hapu*, or in any other person of the aborigines. And if there is such a thing as *mana o te whenua* it is a certain invisible, indescribable something to which the pakeha may attach a meaning wholly at variance with that which a Native may affix to it. Manorial rights, as Englishmen understand them, are foreign to the Natives, and if they have any such ideas they must have acquired them from Europeans.

It may be observed that scarcely any of the land of the aborigines of this country can be said to be the exclusive property of one individual, though the descent through which the party can trace their claim to the land they hold is by a single person. This person can sell if he likes without the consent of his party; the party selling without his consent would be a *hoko tahae*. This absence of the individualisation of property seems rather attributable to the state of the country than to any defect in the line of descent. Circumstanced as the Natives have been, they say one individual cannot hold his land against the attacks of enemies; therefore, for security, peace, and safety, it was necessary to give all the branches of a family a participation in the possession, though the individualisation of the descent is clearly recognised.

Tribal rights, or any uniform course of action, or general plan for their guidance in the management of their lands, or other affairs, I have not found to exist amongst the Natives of this country; nor do I believe they have any such plan or general rule. Each party or tribe seems to have been guided by existing circumstances in the management of their affairs.—[*Paper on Native Tenure, not before published.*]

Mr. SPAIN, formerly Her Majesty's Commissioner for determining Titles to Land in New Zealand.

ALTHOUGH a tribe might have marched through a country, conquering all the Natives and occupying the ground over which they passed, yet if they failed to retain the lands so conquered in their possession, and allowed the former owners still to occupy it, or to return immediately afterwards and cultivate it without interruption for a period of years, in that case the consent of the conquerors to a sale to the Europeans without that of such resident Natives could not be admitted by me as a valid purchase. And I know of no rule laid down as binding upon or generally adopted by the nations of Europe in colonising a new country peopled by aboriginal inhabitants which would justify the taking of land from the actual ocupiers and cultivators of the soil without their consent. On the contrary, I had the honour to quote in my last despatch the very opposite doctrine, as laid down by De Vattel. . . .

I have set it down as a principle in sales of land in this country by the aborigines that the rights of the actual occupants must be acknowledged and extinguished before any title can be fairly maintained upon the strength of mere satisfaction of the claims of self-styled conquerors, who do not reside on nor cultivate the soil. In short, that possession confers upon the Natives of one tribe the only and real title to land as against any of their own countrymen; and that the residents, whether they be the original unsubdued proprietors, the conquerors who have retained their possession acquired in war, or captives who have been permitted to reoccupy their land on sufferance, in all cases the residents, and they alone, have the power of alienating any land. . . .

It appears to me that those Ngatiawa who, having left [Taranaki] after the fight, sought for and obtained another location, where they lived and cultivated the soil, and from fear of their enemies did not return, cannot now show any equitable claim according to Native customs or otherwise to the land they thus abandoned. Had they returned before the sale, and with the consent of the resident Natives again cultivated the soil without interruption, I should have held that they were necessary parties to the sale.

During my residence in this country in the execution of my commission—for a period of between three and four years—I have taken every opportunity of ascertaining by every means in my power all Native customs respecting the tenure of land; and in my decisions I have endeavoured in every instance to respect them where certain, and where doubtful or not clearly ascertained I have allowed justice, equity, a common-sense view, and the good conscience of each case to supply their place.

Bearing all these points in mind, I am of opinion that the adoption of a contrary doctrine to that which I have just laid down would lead to very serious consequences, not only as regards titles to land between the aborigines themselves, but also as between them and the Europeans. . . .

The question, then, which your Excellency has raised turns upon whether slaves taken in war and Natives driven away and prevented by fear of their conquerors from returning forfeit their claims to land owned by them previously to such conquest. And I most unhesitatingly affirm that all the information that I have been able to collect as to Native customs throughout the length and breadth of this land has led me to believe and declare the forfeiture of such right by aborigines so situated. In fact, I have always understood that this was a Native custom fully established and recognised, and I never recollect to have heard it questioned until your Excellency was pleased in the present instance to put forward a contrary doctrine. Since that time I have made every further inquiry in my power amongst competent and disinterested persons, whose testimony has fully confirmed my original opinion.

I am fully of opinion that the admission of the right of slaves who had been absent for a long period of years to return at any time and claim their right to land that had belonged to them previously to their being taken prisoners of war, and which before their return and when they were in slavery had been sold by the conquerors and resident Natives to third parties, would establish a most dangerous doctrine, calculated to throw doubts upon almost every European title to land in this country, not even excepting some of the purchases made by the Crown; would constantly expose every title to be questioned by any returned slave who might assert a former right to the land, let the period be ever so remote; and would prove a source of endless litigation and disagreement between the two races—a result which must soon stop the progress of civilisation amongst the Natives, so essential to their amelioration.—[*Reports to Governor Fitzroy: in Parl. Paper, 8th April, 1846.*]

Mr. George Clarke, formerly Chief Protector of Aborigines.

If, as is the general impression of all who have given their attention to this subject, the Natives emigrated at different periods we have at once a clue to the origin of titles. Each migration landed, subdued, and laid claim to a certain district now claimed by their posterity. Each party would most probably acknowledge a leader, either nominated or assuming such character by virtue of superior prowess, who would actually be considered as the first chief of the *iwi* or tribe. His children, with a portion of the *iwi* or tribe who might attach themselves to each particular child, may be considered as giving rise to the different *hapu* or lesser tribes. His children and those who attached themselves to them formed separate *hapus*, who, although a part of the original family, would form a separate and distinct community, uniting, however, in times of war to repel the common enemy, but claiming and exercising independent interests in the soil in times of peace. . . .

Bravery in war, and consequent power and rank as a chief, will not determine the individual to be a great landowner. A man may be a great general and a small landowner; hence numberless mistakes have arisen among Europeans who thought themselves especially safe in purchasing land from a powerful chief. . . .

The chiefs of every tribe or *hapu*, as well as the head of every family belonging to the tribe or *hapu*, have distinct claims and titles to lands within their respective districts. At the same time it must be remembered that they have a joint interest in many of the lands. The particular claims of the chiefs, *hapu*, or families are to lands either subdued or brought into cultivation, or upon which they have exercised some acts of ownership: as lands where they have been accustomed to procure flax, or erect weirs for eels, or where they have built a substantial house. In such cases they claim a particular property: none but the person so claiming can give a title to the land, nor can he be dispossessed thereof. He may forfeit his right by killing, adultery, or migration to a different tribe and district. . . . In this way families hold and cultivate their ground, enlarging their individual cultivations from time to time, thus establishing an indisputable title to such lands as their special and particular property. In other respects their title is more general, the *hapu* and families claiming in common with the principal chiefs what may be termed their waste lands. But even here they must be able to substantiate some sort of title, such as having been the first discoverers, kindled ovens, built canoes, or exercised some other act of ownership which gives them the preference over such lands. The families have in common with the chiefs the right of keeping pigs, gathering flax, snaring pigeons, catching rats, ducks, digging fern-root, &c. Every individual of the tribe having these privileges in common, but still acknowledging the right of some particular family or individual member of a family to dispose of such property—that is, as president, head of the family, or chief of the tribe or *hapu* to make the first proposal of alienation—yet they could not consider the purchase valid without the consent of the majority of the principal men of the tribe.

Lands that are thus possessed in common, involving the interests of so many claimants, are exceedingly difficult to purchase, and may be reckoned as among the most fruitful sources of their

quarrels and disturbances. It frequently happens that two Natives equally interested in the same lands disagree on the question of its disposal. Numberless animosities originate from this source. . . . To obtain a specific title to lands held in common there must be some additional circumstances to support the pretensions—first discovery of trees, shooting pigeons, constructing eel-weirs, digging fern-root, making a road, receiving a wound, losing a friend, recovering from sickness; all or any of these acts give an undeniable right to special property in land heretofore considered common. . . .

Conquest unless followed by possession gives no title. Were the Ngapuhis to claim the right of selling or exercising the sovereignty over the districts of the Thames, Kaipara, or Waikato in virtue of their former conquests their pretensions would be treated as contemptible and absurd, and so distinctly is this principle recognised that I have no doubt that any attempt to support and maintain the validity of titles derived from conquest only would be met by a most determined resistance, even if attempted by Her Majesty's Government. I have known slaves tenaciously maintaining their territorial rights while in a state of captivity; but I never knew a master to claim by virtue of his slave, or attempt to advance any pretensions founded on the capture of a landed proprietor. I have had large offers of land for sale by Natives still in captivity, and have been warmly reproved by these men for doubting the validity of their title.

Great changes have taken place in the internal regulation and division of districts, and lands have completely changed owners; but in every case possession has followed immediately on conquest. The claim to Taranaki preferred by the Waikatos is good so far as they have taken possession, but they did not wholly succeed in driving the Natives out of that district, who maintained their independence by resorting to different pas on the coast. I should therefore consider the principal right to land in the Taranaki District still vested in the original inhabitants. Again, the title of the tribes about Port Nicholson to land in the Taranaki District cannot be wholly extinct if they have kept up a friendly intercourse with the residents. Rauparaha, who conquered and took possession of parts of this country, would, in connection with his followers in the vicinity of Cook Strait, have large claims, but his title would no doubt be disputed by the original proprietors so soon as they were in a position to maintain their claims. A tribe never ceases to maintain their title to the lands of their fathers, nor could a purchase be considered complete and valid without the concurrence of the original proprietors. If a conqueror spares the lives of the conquered, and they thenceforth become amalgamated with his own tribe, he infallibly secures his own title by uniting the claims of the original possessors with his own. Possession of land, even for a number of years, does not give a right to alienate such property to Europeans without the consent of the original donor of the land, but it may be continued in the possession of descendants of the grantee to the latest generation.—[*Report to Governor Fitzroy: in Parl. Paper, 29th July, 1844.*]

ARCHDEACON HADFIELD.

ARE you acquainted with the nature of the Native tenure of land?—I ought to express some diffidence in replying to that question, but I may observe (in reference to the tenure acknowledged by Natives of the southern half of this Island, with which I am acquainted) that there is little or no difficulty on the subject.

What opportunities have you had of becoming acquainted with the subject?—The opportunities I have had of becoming acquainted with the subject arose from the fact of my having resided for four years in a Maori pa in which there were from five to six hundred men. My attention was particularly called to the subject at that time by the constant disputes about the purchases of land made by the New Zealand Company in Cook Strait. I was frequently applied to by Mr. Commissioner Spain to assist him in elucidating Maori customs about land. I may further state that after the collision at Wairau I made it part of my business to inquire into the subject, and after careful inquiry I came, in 1845, to a conclusion on the subject, which the experience of the last fifteen years has not tended in the slightest degree to alter.

State what you think to be the rights of the tribe in respect to land belonging to it?—I think that the right of each tribe to lands extends over the whole of the tribal territory, and entirely precludes the right of any other tribes over it. Such absolute tribal right may be classed under two heads—(1) The territory which has been in possession of the tribe for several generations, and to which no other claim had been previously known; (2) the territory acquired by conquest, occupation, or possession.

State what you understand to be the rights of individual members of the tribes in respect to land?—I believe that the rights of the individual members of the tribes are limited to those portions of the lands of the tribe which they have either cultivated or occupied, or on which they have exercised some act of ownership which is acknowledged as such by the tribe. I must be understood to mean that their title to such lands was simply that of holding for their own use and benefit. Their right was a good holding title as against every other member of the tribe. They might exchange land among themselves, but no one could alienate without the consent of the tribe. In the year 1845 I drew up a paper on the tenure of Native lands, which I gave to Sir George Grey, who promised to return it. He told me he sent a copy of it to the Colonial Office. He did not return the original to me; I understand that it was burnt with other papers at Auckland.

What do you understand to be the rights of the chief of the tribe in respect to land belonging to the tribe?—While looking over some papers a few weeks ago I accidentally discovered my original pencil notes which formed the rough draft of the paper on this subject to which I have just alluded, which I now produce, and with the permission of the Committee will read, as they must be conclusive as to what my opinion as to individual title was in 1845: "The chief of the tribe, since he has no absolute right over the territory of the various *hapu*, nor over the lands of individual freemen of his own *hapu*, cannot sell any lands but his own, or those belonging to the tribe

which are undoubtedly waste lands; nor can he do this in opposition to the opinion of the chiefs of the *hapu* of the tribe if they consider the territory, and thus the independence of the tribe, impaired by so doing. Allowing this very questionable right of the chief to alienate any part of the territory of a tribe, it can scarcely be allowed to any chief of a *hapu*, even should he act in accordance with the various individuals of the *hapu*. It must be remembered that a tribe, however subdivided into *hapū*, is one, and cannot allow its integrity and strength to be impaired by the independent act of one *hapu*, which it is bound to identify with itself in all things, and to protect if involved in any quarrels or difficulties. These remarks are more decidedly applicable in the case of ordinary freemen—*tutua*, who cannot alienate that land which is absolutely their own for all practical purposes, but is not to be disposed of in a manner contrary to the supposed interest of the tribe. There can be no doubt on this subject." The notes which I have now read to the Committee imply that the chiefs have power over some portions of the land. Fifteen years ago I set it down as a questionable right or power; I view it in the same light now. I limit such right of chiefs to deal with lands obtained by conquest only, and do not consider that it extends to any land which has become vested in the tribe by long possession. I wish to guard myself, in reference to what I am saying on this subject, by premising that I am speaking of tenure to land as it existed prior to the establishment of the British Government in the colony, and not since that event. The chief of a tribe must be regarded as holding his position by a double title. His first title must arise from his undoubted descent through a long line of well-known ancestors from the original head of the tribe. His second title depends on a more democratic principle—that is, he must be the acknowledged and the elected head of the tribe. The chief is the representative of the territorial right of the tribe, not because he is descended from numerous ancestors of noble blood, but because he has been acknowledged as such on account of his personal qualifications and influence, and has, in fact, been recognised as the guardian as well as the mouthpiece of the rights of the tribe. I have no doubt whatever on this subject. I understand that whatever rights to land existed previous to the Treaty of Waitangi among the Natives are still rights with them, being guaranteed by that treaty. I investigated Maori title to land irrespective of the influence which may have been exercised by the Government, and eight or ten years previous to the establishment of British sovereignty.—[*Evidence at the Bar of the House of Representatives, August, 1860, in Sess. Paper E. No. 4.*]

Mr. Swainson, late Attorney-General of New Zealand.

From time immemorial land has been the principal cause of quarrel among them; and, with their independent spirit and sensitive jealousy as to their territorial rights, they soon began to regard with mistrust the introduction of British rule. Their territorial claims are not confined to the land they may have brought into cultivation: they claim and exercise ownership over the whole surface of the country, and there is no part of it, however lonely, of which they do not know the owners. Forests in the wildest parts of the country have their claimants. Land apparently waste is highly valued by them. Forests are preserved for birds, swamps and streams for eel-weirs and fisheries. Trees, rocks, and stones are used to define the well-known boundaries. Land is held by them either by the whole tribe or by some family of it, or sometimes by an individual member of a tribe. Over the uncultivated portions of territory held by a tribe in common every individual member has the right of fishing and shooting. When any member of a tribe cultivates a portion of the common waste he acquires an individual right to what he has subdued by his labour, and in case of a sale he is recognised by the tribe as the sole proprietor. If undisposed of by sale it generally descends from father to son. And even the power of disposing of land by will, orally expressed at the point of death, is recognised among them.

"A certain man had a male child born to him, then another male child, and then a third male child; he also had daughters. At last, being at the point of death, his sons and daughters and all his relations assembled to hear his last words and to see him die; and the sons said to their father, 'Let thy mouth speak, oh father, that we may hear your will, for you have not long to live.' Then the old man turned towards his younger brothers and spake thus: 'Hereafter, oh my brothers, be kind to my children. My cultivations are for my sons. Such or such a piece of land is for such or such a nephew. My eel-weirs, my potato-garden, my potatoes, my pigs, and my male and female slaves are all for my sons only. My wives are for my younger brother.' Such is the disposition of a man's property; it relates only to the male children. The custom as to the female children is not to give them any land, for their father bears in mind that they will not abide on the land. They may marry husbands belonging to another tribe, not at all connected with their parents' family; therefore no portion of land is given to them. Not so the male children: they stand fast always on the land." Such is the account given by an intelligent New-Zealander of the customs among them as to the disposal of landed property.—[*Swainson's New Zealand, 1859, page 150.*]

Mr. Busby, formerly British Resident at New Zealand.

I have read much of "manorial" and "seignorial right," of "tribal right," and even of "feudal right," in relation to the Maori tenure of land. Persons use these expressions with ideas more or less distinct attached to them, taking it for granted that corresponding ideas exist in the minds of the Maoris. The Rev. Mr. Hobbs lately showed that the words "*mana*" and "*rangatira*," which are the words in the Maori language supposed to represent the ideas of right and of authority, represent no such ideas in the minds of the Maoris; in fact, the ideas must exist before words to represent them are called into existence. I question whether many of the Maoris are better informed on such points now than they were at the time of the Treaty of Waitangi, but it is very certain that at that time no Maori entertained the idea of a "right" existing in one party which

implied an obligation upon all other parties to respect it; no one conceived the idea of authority carrying with it the corresponding obligation of obedience. Such rights and obligations are the creation of law, and cannot subsist without it. The Maoris had no law but the law of the strongest.

It is certain that the Maoris had no fixed rule to guide them in the disposal of their land. It was a commodity to which no exchangeable value had even been attached—a transaction for which no precedent existed; and, as in other things, the weak were overborn by the strong and impudent. Those who, according to our rules of lineal descent from the common progenitor, ought to have had most to say in the matter had often the least. This shocks our ideas of right, but it came as a matter of course to them. Nevertheless, there are ideas attached to the possession of land which may well be called instinctive. When a man has felled the forest and fenced-in and cultivated a portion of land he has established a right against all other persons, which is at once felt to be as natural as that of a man to his own children, and is precedent of all law; and great injustice may be done to individuals who hold such a possession if they are prevented from selling it by a supposition that what we call a superior right exists in some other person, that right being nothing more, in the minds of the Maoris, than the exercise of an arbitrary power by those who have strength and arrogance enough to assume it.—[*Letter in* "Southern Cross" *newspaper, July, 1860.*]

Rev. Mr. BUDDLE, Superintendent of the Wesleyan Mission.

MANA of the chiefs.—This word means authority, power, influence. It was originally applied to persons and their words or acts, not to land. A chief whose authority or influence enabled him to gather together an army for war was *he tangata whai mana* (a man possessing *mana*). Commands readily obeyed are a *kupu whai mana* (words having influence). A promise faithfully kept and duly performed was *mana* (*Kua mana te kupu a te Kawana*) the Governor's word has been fulfilled. This word has of late been used in reference to land, and now we hear of the *Mana o te whenua* (the *mana* of the land); what distinct idea is attached to it is difficult to say. The disputed land at Waitara is claimed by the Maori King party because the King's *mana* has reached it—*Kua tae te mana o to matou kingi ki reira* (the *mana* of our king has gone there). And wherever this *mana* is gone the land is held as inalienable without the King's consent. *Kia mau te mana o te whenua* is another expression now in frequent use—*i.e.*, hold fast the *mana* of the land. What does it mean? This is altogether a new application of the term; perhaps it has been adopted in consequence of the Queen's sovereignty over the Island having been translated as the Queen's *mana*. But it certainly did not originally mean that which is now claimed for it—viz., a chief's "manorial right." This use of the word was not heard until this Maori King movement originated it.

It is by no means clear that any such custom as manorial right ever obtained among the Native tribes—was either claimed by the chiefs, or ceded by the people originally. A man took possession of territory by the strength of his arm, and rested his claim on his conquests. "*Na tenei*," he would say, stretching out his arm—"by this I obtained it." Or he claimed it in consequence of having cultivated it. What reason could exist originally for such rights? Land sales were things unknown. If land exchanged hands it was not by sale but by conquest—by might disregarding right. *À propos* to this subject: A Waikato chief who was adducing reasons for the King movement remarked, "*Hoko tahae*" (dishonest sales of land) was one reason. A chief offered land to Government, and because he was a chief it was taken for granted the land was his own; "but," he added, "you must not suppose that every chief, because he is a great man with a great name, is a great landowner; there are many great chiefs who have no land, and therefore have no right to sell." How does this accord with manorial rights? Take another fact: One man at the great meeting at Ngaruawahia drew a circle around him and said, "This is mine; let no man interfere with me. I am on my own land, and shall do what I like with my own." Another asserted the same right, and declared his intention to sell what he pleased when he returned from the meeting. Did these men acknowledge the chief's manorial rights? Take another fact: Potatau himself sold a block of land to the Government a few years ago, and received a deposit of £50; but the sale has never been completed, because the men who had cultivated the block deny his right to sell, though he is principal chief of the tribe, and refuse to allow him to do so. Manorial rights are imaginary rights when claimed for New Zealand chiefs.—[*Pamphlet, "Origin of the King Movement," 1860.*]

Mr. SHORTLAND, formerly Protector of Aborigines.

THE spot where each canoe [of the migration] was finally drawn to land was taken possession of by the crew, who spread themselves from that centre over the more fertile districts till they became a numerous tribe. Each of the grand divisions under which the Natives of the Northern Island may be classed has its own characteristic dialect, and it seems probable that the term *waka* (canoe), which is also used to denote these primary divisions, has reference to that origin of the tribes. At the present day these *wakas* are divided into many distinct *iwi*, each of which is subdivided again into *hapu* or smaller communities. The territory claimed by a *waka* is subdivided into districts, each of which is claimed by an *iwi;* these again are variously apportioned among the different *hapus* and families of chiefs.

In the immediate vicinity of a pa the land is more minutely subdivided between its inmates, nearly every person having his own small cultivation-ground, or holding some spot in common with other members of his family. This circumstance renders it difficult to purchase lands once so occupied, even though the pa may have been deserted for many years, as every man whose ancestors cultivated there will expect his claim to be satisfied.

*The chiefs are the principal landholders. Every individual, however (as far as I have been able to learn), has his own estate, which he has inherited from his branch of the family, and which

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* That is not in accordance with facts.

he cultivates as he pleases. The sons of a chief may during his lifetime select *kaingas* or farms from their father's estate, but the larger portions are cultivated in common by the different members of the family. On the death of the father the eldest son chooses some part of the lands for himself; the others do the same, the daughters obtaining only so much as their father or brothers choose to leave them. This order of things is sometimes changed in case the elder brother is of a quiet disposition and the younger brother happens to be a *toa*, or turbulent fellow.

A chief, when speaking of the title by which he holds his lands, never fails to make a distinction between those which he has inherited and those which he or his ancestors have obtained by conquest; over the former his right is universally recognised, the latter appear to be tenable only so long as the party in possession are the most powerful. The claim which he advances is, however, quite characteristic—viz., that the lands are the *utu* or compensation for the death of his relations who perished in the fight. It is from purchasing lands the right to which is thus contested by two hostile parties, either of whom will gladly avail himself of an opportunity to sell independently of the other, that Europeans have unwarily fallen into so many difficulties.

Besides the lands thus held there are large districts on the borders of different tribes which remain uncultivated. These *kainga tautohe* (debatable lands) are a never-failing cause of war till one party has lost its principal men. When a dispute arises between members of the same tribe as to who is the rightful owner of a piece of land the principal persons on both sides meet together to discuss the affair. Their pedigrees are traced, and the ancestor from whom either party claims is declared; and proof that any act of ownership (such as cultivating, building a house, setting pit-falls for rats, or making eel-weirs) was once exercised without opposition by one of their ancestors is considered sufficient evidence of the right of his descendants to the land. I have been present during such discussions, but have never known them terminated in an orderly manner, nor have since learnt that any advance has been made thereby towards settling the question.—[*Report to Chief Protector: in Parl. Paper, 29th July, 1844.*]

Mr. White, Interpreter in the Native Office.

In order to be better understood, before speaking of the tenure, a glance may be given at the manner in which the migrations took possession of and portioned out their newly-discovered country. It is generally admitted among the Natives of New Zealand that the Chief Kupe, who came in the canoe Matahourua, was the first; he took possession of the country from Whanganui to Patea. Turi, in the canoe Aotea, came next; he took from Patea to Aotea. Next were the canoes Te Arawa and Tainui; they took the land from East Cape to Cape Colville, where Tamatekapua, chief of the Arawa canoe, died. The chiefs Ruauru and Toroa came next, in the canoe Matatua, and took Rotorua Lakes. The Tainui canoe, commanded by Hoturoa, came on from Cape Colville to Tamaki, and took all the country east from Cape Colville to Mangawhai, west from Manukau to Whaingaroa. The Ngapuhi canoes were next—Mamari, Riukakara, and Mahuhu. The first went to Hokianga River, and took the land from Maunganui to Ahipara. The Ruikakara went to Whangaroa, and took the land from Mangonui to the Bay of Islands. Mahuhu (Ngatiwhatua) took the country from Mangonui round the North Cape to Ahipara. The Wakatuwhenua canoe came next and took Cape Rodney. The Chief Manaia, in the Tokomaru canoe, took Taranaki; the ancestor of the Ngatiawa came in this canoe. The canoe Kurahaupo, commanded by Ruatea, landed near East Cape, and took all the land from the point taken by Arawa, round the East Coast to Port Nicholson. The canoe Takitumu or Horouta (fast sailer), commanded by Tata, first landed at Turanga, but proceeded southwards, crossed Cook Strait, and took possession of the whole of the Middle Island.

Thus all the lands in the North and Middle Island were taken possession of on the arrival of the canoes. The boundaries claimed by this right of discovery did not long remain. Some time after the Arawa and the Tainui migrations had settled, a chief of the Tainui went overland to the Bay of Plenty and burnt the canoe Te Arawa. This was the cause of the first Maori war.

Most of the tribal boundaries lay along the highest ridges, and as these were the resort of the rat, every chief became acquainted with the exact boundary of his lands. Where a creek was the dividing boundary this was occupied with eel-dams, not made of wickerwork that might be carried away by a flood, but of such construction that generations might pass, and each put the eel-baskets down by the carved and red-ochred totara post which its ancestors had placed there. Where the dividing boundary between two tribes ran along a valley landmarks were erected, generally of cairns, to which names were given.

There is not an inch of land in the Islands which is not claimed, nor a hill, nor valley, stream, nor forest, which has not a name. The boundary was liable to be altered, as when land was taken by conquest, or was given by a chief for assistance rendered by another tribe in war, or when land given to the female branch of the family reverted to the male branch, or where land was ceded to a tribe for a specific purpose and with certain restrictions, the tenure being conditional on the terms being fulfilled.

Hereditary tenure was thus: The claim was grounded on the right of the grandfather or grandmother, not of the father, mother, brother, or other immediate kindred. There have been cases where a chief, on his deathbed, portioned out his land to each of his children. The sons' claim is, in all instances, derived from the grandfather. The eldest son of the senior branch in the male line is chief of the tribe, and exercises sole authority as guardian for his people against the encroachments of other tribes; but all the offspring descendants from the male branch have an equal right in the lands of their progenitors. No matter how distant the relationship, they all, so long as they can trace their origin up to the same ancestor (provided a family war has not occurred and thereby divided the tribe), claim an equal right to the lands owned by that ancestor. The title in the female line does not expand to the same extent; the granddaughter of a chief has an equal claim to the lands of her grandfather with that of her male cousins, and the claim continues good to her

grandchild, but on the death of that grandchild the land reverts to the male line. This custom holds good for the following reason, which is assigned as its origin—namely, that were it not upheld the intermarriage of chiefs' daughters with members of other tribes would soon so complicate and curtail the tribal claims that an invitation would be held out to adjoining tribes to attempt by conquest to despoil them of their territory.

If a family war takes place in which a tribe becomes divided (which has frequently occurred), a division of the tribal lands takes place. The lands of a tribe were portioned out according to the number of families of which it consisted, and were claimed by each family as its own; nor did any one meddle with it or occupy the land of another family unless by express permission. Still, those portions were not the exclusive property of each family. But this only applies to the lands originally settled by the first migrations, not to lands which have been acquired by conquest, gift, or *utu*, for curses, or other injuries. Land is claimed by families, and the object of the chiefs in pointing them out was to prevent tribal disputes, and to allow each part of the tribe to have a portion of land over which it could exercise the exclusive right of cultivation, fishing, snaring birds, catching rats, or obtaining fern-root. Moreover, this portioning out of the tribal lands caused emulation in the different families as to the produce gained by each for the use of the tribe. The individual claim to land, therefore, does not exist among the New Zealanders, according to our acceptation of that term.

The right to land taken by conquest rests solely on the conquering party actually occupying the taken district, to the utter exclusion of its original owners or other tribes. If a portion of the conquered tribe escaped the claim held good to as great an extent as they had courage to occupy; and if they could manage to keep within their own tribal boundary, and elude the enemy, their right to the whole of the land held good; hence the meaning of a sentence so often used by old chiefs in their land disputes, "*I ka tonu taku ahi i runga i toku whenua*" (my fire has ever been kept alight upon my land). Again, if a tribe was conquered, and became extinct with the exception of slaves taken by the conquerors, these slaves might by purchase recover their tribal lands, or they could (if liberated) return to them on condition of allegiance to the conquerors, rendering them assistance in war, and paying a tribute for a time of their produce. [Here follow numerous instances of other complicated claims.] When land was given by one tribe to the leader of another tribe for assistance in war it did not vest in that leader; the relatives of chiefs killed in the war had a claim. It was also necessary that the land should be occupied, and possession retained.

The war in the Bay of Plenty, which has been continued to the present time between certain chiefs, also originated in a like cause—disputes of title. The contending parties are all of one tribe and spring from one ancestor, but by intermarriage some have a more direct claim than others; the descendants who by intermarriage are related to other tribes have made an equal claim to lands over which they have but a partial claim, and resistance to this has been the cause of the war. Disputes of this kind are not easily unravelled. I believe that were it possible to teach the Maoris the English language and then bring them into some Court, allowing each contending party to plead his cause in such a dispute as I have mentioned, not according to English law but Maori customs, both sides would, according to Native genealogy and laws, make out their respective cases so clearly that it would take a Judge and jury possessed of more than human attainments to decide the ownership of the land.—[*Lecture at the Mechanics' Institute: written in August, 1859.*]

Rev. J. A. Wilson, Church Missionary.

As much controversy has arisen since the commencement of the present war concerning the right by which land is held among the aborigines, I beg to offer a few remarks, illustrated by facts which at an early period in this country fell under my personal observation, when acting as an agent of the Church Missionary Society. I refer to the purchase of land in four different localities, in order to form missionary establishments.

The Natives of New Zealand assert their claims to land on the following grounds: (1) Hereditary claims, which are the best; (2) lands obtained by conquest; (3) lands the titles to which are disputed or doubtful. These last claims are chiefly owing to marriage and intermarriage with other tribes. These various claims are either individual or tribal.

It is not within my reach to refer to the exact dates attached to the transactions I shall notice, the original deeds being in possession of the Government; yet, I may mention that the first of these purchases was made at the Thames, at a place named the Puriri, about 1835. I was myself one of a small band of missionaries (four in number), who in the latter end of 1833 made the first attempt to christianize the Natives in this part of the Island, the Church Missionary Society having hitherto confined their efforts to the Bay of Islands and its neighbourhood. The land on which the station at the Thames was formed was obtained from a woman named Tini. We found it was at her entire disposal either to retain or to sell it at pleasure, and no chief attempted to use the slightest control over her. The payment, which at that period consisted chiefly of clothing and ironware, &c., was arranged by herself, assisted by others. Part she took for herself; the rest was distributed among the tribe to which she belonged, or sent as presents to other tribes. The Puriri having proved both unhealthy and inconvenient, about two years afterwards a second place was bought nearer to the sea. This also was sold by the same person. In this second purchase the following difficulty occurred, which will throw some light upon native usage in the transfer of land amongst themselves: It was known that a chief named Koinaki and his clan were living by sufferance on the place she wished to part with, and according to Native custom there was no right existing that could eject them. It was at the option of these people to remain there for generations, or even till the tribe became extinct. On the other hand, those in possession had no power over the land, either to alienate or to dispose of it in any way. If they left it voluntarily or were driven away in war and the place lay desolate for any length of time, it was not in the power of the tribe who

had left it to put any second party in possession, but it at once reverted to the hereditary heir. To get over the present embarrassment, Tini made presents to Koinaki and his people, in consideration of which they withdrew from the land.

The next instance I shall observe on was the purchase of land for a missionary residence, &c., in the interior. In 1835 the Rev. Mr. Brown and myself formed a missionary establishment at Matamāta, and we were desirous of securing land for a village, &c. Our houses were built, and part of the ground cleared and fenced before we made any direct application to Waharoa, the chief of all the Matamata Tribes. This person had no compeer in the surrounding districts, and was feared by all, from the banks of the Waikato to the lakes of Rotorua. As the missionaries had been invited by this chief to Matamata, and were now living under his protection, they supposed it merely necessary to apply to him in order to be put in possession of the land they occupied. He told them, however, that the land was not his, and that he could not sell it. But, he added, he had land of his own opposite the pa (native fortification), and that they should have that. This the missionaries declined, for, though only a mile distant, yet, as the pa might at any time be attacked and endanger the station, they preferred remaining on the site already chosen. The old chief, pressed by their importunity, consented at last to speak to the proprietor, Paringaringa, and shortly afterwards brought him to the settlement. He was a young man, and owned land in the vicinity of Matamata. He readily agreed to sell the place, and having arranged the price, he afterwards returned with his mother and one or two others, who at once removed the property to their own dwelling without making any distribution to others. Waharoa, who was present, took two spades from amongst the different articles, more as an article of friendship than a right, and the purchase was concluded.

Other instances might be cited, but these appear sufficient to prove that according to the primitive usages originally existing in this country such a law as positive personal right to land was acknowledged.

But before quitting this subject to noticing tribal ownership I shall take the liberty to insert a remark made by a Taranaki Native, who a short time since accompanied me down the Waikato. I had observed to him that a number of the people in a tribe we had just passed were saved from instant death through the interposition of two Europeans about twenty-five years since, but that they had forgotten their benefactors. My companion for some time pulled on in silence: at last he said, "The Maori does not forget an obligation of this kind any more than the pakeha. The Europeans you speak of could not have been recognised or they would not have been allowed to pass on without a welcome." Then, in order to illustrate the gratitude of his countrymen, he continued, "If in former times a *rangatira* (freeman or gentleman) was dangerously wounded in battle, and was on the point of falling into the hands of the enemy—if at such a moment he was rescued by the valour of others, who afterwards carried him to his home, his first thought after his recovery was, "What can I give to my friends? I have no riches, but I have land. I will give them land." And he acts accordingly.

The two next cases I shall refer to relate to tribal claims. The first purchase was made by the missionaries at Tauranga, in the Bay of Plenty, during my residence among them. The land on which the station is situated was bought from the whole tribe of Ngaiterangi, the chiefs receiving the payment before the people, which was by them divided according to the right of claim.

The last I shall speak of was at Opotiki, eighty miles to the eastward of Tauranga, and situated in the same bay. This station was formed and conducted by myself alone for the first twelve years. The land at Opotiki was tribal, and belonged to a number of small clans who were jealous of each other, and always at variance. As it was not easy to adjust and divide the property given in exchange to the satisfaction of a thousand such claimants, I gave the stipulated equivalent, which consisted of clothing, cattle, horses, ironware, money, &c. (£300), to six or seven chiefs, and they arranged the distribution.

Thus, though in widely different parts of this country, we find the observation of the same rights; and I believe it will be found that the above precedents form the basis of the tenure by which lands are held amongst the aborigines.—[*Letter to Governor Gore Browne, 1860.*]

EXTRACT from MANING'S "OLD NEW ZEALAND," Chapter XV.

"MANA."—This word has been bandied about a good deal of late years, and meanings often attached to it by Europeans which are incorrect, but which the Natives sometimes accept because it suits their purposes. This same word *mana* has several different meanings, and the difference between these diverse meanings is sometimes very great, and sometimes only a mere shade of meaning, though one very necessary to observe; and it is therefore quite impossible to find any one single word in English, or in any other language that I have any acquaintance with, which will give the meaning of *mana;* and, moreover, though I myself do know all the meanings and different shades of meaning properly belonging to the word, I find a great difficulty in explaining them; but, as I have begun, the thing must be done.

Now, then, for *mana: Virtus,* prestige, authority, good-fortune, influence, sanctity, luck, are all words which, under certain conditions, give something near the meaning of *mana,* though not one of them gives it exactly.

Mana sometimes means a more than natural virtue or power attaching to some person or thing different from and independent of the ordinary natural conditions of either, and capable of either increase or diminution, both from known and unknown causes.

The *mana* of a priest or *tohunga* is proved by the strength of his predictions as well as the success of his incantations, which same incantations performed by another person of inferior *mana* would have no effect; consequently, this description of *mana* is a virtue, or more than natural or ordinary conditions attaching to the priest himself, and which he may become possessed of and also lose without any volition of his own.

Then there is the doctor's *mana*. The Maori doctors in the old times did not deal much in simples, but they administered large doses of *mana*. If the most of the doctor's patients recovered his *mana* was supposed to be in full feather; but if a number of patients slipped through his fingers seriatim, then his *mana* was suspected to be getting weak.

Mana, in another sense, is the accompaniment of power, but not power itself; nor is it, even in this sense, exactly authority, according to the strict meaning of that word, though it comes very near it. This is the chief's *mana:* Let him lose the power and the *mana* is gone; but mind you do not translate *mana* as power; that will not do; they are two different things entirely. Of this nature also is the *mana* of a tribe; but this is not considered to be the supernatural kind of *mana*.

Then comes the *mana* of a warrior—uninterrupted success in war proves it. It has a slight touch of the supernatural, but not much. Good-fortune comes near the meaning, but it is just a little too weak. The warrior's *mana* is just a little something more than bare good-fortune—a severe defeat would shake it terribly, two or three in succession would show that it was gone. . . . .

A fortress often assailed but never taken has a *mana*, and one of a high description too. . . . .

A spear, a club, or a *mere* may have a *mana*, which in most cases means that it is a lucky weapon, which good-fortune attends if the bearer minds what he is about. . . . .

"Mana."—Opinion by F. D. Fenton, Esq., late Chief Judge of the Native Land Court.

There is no such thing as *mana* of land. *Mana* is personal. A chief may—or might have had, I should say, for the day is past—sufficient *mana* to greatly influence his power of managing or directing the disposal or withholding from sale of land, but this power is derived from his position as *pater populi*, enabling him to protect what he thinks to be the interests of his tribe. He may have no interest in a piece of land, yet be able to retain it from sale. I never recognised or believed in the existence of such an intangible thing as *mana*, as unrecognisable as the consequential damages were by the Alabama Commission. None of the old Judges recognised such a thing as land *mana* as conferring a title to land recognisable by the Courts.

Extract from Shortland's "Mythology," pages 89 to 91.

The chief of any family who discovered and took possession of any unoccupied land obtained what was called the *mana* of the land. This word *mana*, in its ordinary use, signifies power, but in its application to land corresponds somewhat with the power of a trustee.

This *mana* gave a power to appropriate the land among his own tribe according to a well-recognised rule which was considered *tika*, or straight. Such appropriation, however, once made remained in force and gave a good title to the children and descendants of the person to whom it has been thus appropriated. The *mana* of the acknowledged representative of the tribe had then only power over the lands remaining unappropriated, which power was more especially termed the *mana rahi*, or great *mana*, the *mana* over appropriated land being with the head of the family in rightful possession. In course of time quarrels and wars arose between different tribes, so that tribes nearly allied to each other united for mutual defence and protection, and all the Maoris of New Zealand came to be divided for this purpose into a few large tribes, each representing generally the crew of one of the various canoes composing the migration from Hawaiki. These being frequently at war with each other, it came to pass that every man who did not belong to a particular tribe was considered in respect to it as a *tangata ke*, or stranger.

It has been affirmed by many, on presumed good authority, that no member of a tribe has an individual right in any portion of the land included within the boundary of his tribe. Such, however, is not the case, for individuals do sometimes possess exclusive rights to land, though more generally members of families more or less numerous have rights in common, to the exclusion of the rest of the tribe, over those portions of land which have been appropriated to their ancestors. Their proverbs touching those who wrongfully remove boundary-marks show this if other evidence were wanting.

The lands of a tribe in respect to the title by which they are held may be conveniently distinguished under two comprehensive divisions—(1) Those portions which have been appropriated from time to time to individuals and families; (2) the tribal land remaining unappropriated.

Whenever land is appropriated formally by Native usage it descends in the family of its first owners, according to well-recognised rules, and the *mana* of the representative of the tribe ceases to have any control over it.

Their laws as to succession naturally tended to render the greater part of such lands the property of several of the same family as tenants in common, but an individual might and did frequently become a sole owner. The tribal lands never specially appropriated belonged to all under the *mana* or trusteeship of the tribal representative.

The Effect of "Mana" on Native Tenure.

We, the persons whose names are hereto attached, are aboriginal natives of New Zealand, who have been instructed in the Maori usages of our ancestors. We have also travelled through various places in the Islands of New Zealand, and know that the Maori usages observed by other tribes in no way differ from those of our districts.

Now, this example is written by us for the consideration of the Judges of the Native Land Court, in order that they may know what the Maori custom is in relation to the *mana* of the chiefs of the Maori.

That is to say, there are many degrees of chieftainship, such as the superior chief of a district and the lesser ones of a *hapu* having its own chief.

(1.) The superior chief of the large district is the principal chief by descent, and has great *mana* over the other chiefs and tribes within the boundaries of the district under his control (chieftainship). His *mana* is over the people only, and does not affect the lands of those people; but he has a claim to his own particular portion through his right to the land if his occupation was derived from his ancestors or his parents.

(2.) The lesser chiefs of the *hapus*—there are *hapus* whose chief occupies the land belonging to him and his *hapu*. Such chiefs have a form of *mana* that is over their own *hapu*, but that *mana* does not confer (on him) the right to take the land of such *hapu* for himself. But that chief has a claim to the portion of land he has a right to through ancestry, conquest, gift, or occupation from the time of his ancestors down to himself, whether large or small.

3. As for *mana* itself, unaccompanied with a right to the land, a chief would not have a right to the land through *mana* alone.

These are the Maori customs observed in the Islands of New Zealand in connection with *mana*.

Now, understanding as we do the customs of the Maoris, we have correctly set them forth herein, and we ask this exemplification of ours be superadded to those examples already supplied by the elders in the documents which are used as precedents for the work of the Native Land Court of New Zealand.

That this statement also be left as a guiding principle whereby the administration of the Judges of the Native Land Court for the future in dealing with the usages of the Maori in relation to *mana* may be clear.

Signed—

TAMATI TAUTUHI, Native Assessor, of Ngatiporou, Aku Aku, Gisborne.
HAMUERA MAHUPUKU, Native Assessor of Ngatikahungunu, Kehemane, Wairarapa.
HOANI PARAONE TUNUIARANGI, Native Assessor of Ngatikahungunu Hinana, Wairarapa.
HEMI MATENGA, of Whakapuaka, Nelson.
WI PARATA KAKAKURA, of Ngatitoa, Waikanae.
RANIERA ERIHANA, of Ngatiawa, Waikanae.
HONE OMIPI, Tiamana Komiti Maori Takiwa o Kawhia, of Ngatimaniapoto, Otorohanga, Waikato.
PEPENE EKETONE, Ateha o te Kooti Whenua Maori, of Ngatimaniapoto, Karakariki, Waikato.
HAMIORA MANGAKAHIA, Ateha Kooti Whenua Maori, Whangapoua, Hauraki.
PARATENE NGATA, Native Assessor, of Ngatiporou, Waio-matatini, Waiapu, Gisborne.

[*Evening Post* Supplement, 12th May, 1888.]

THE POWER OF THE OLD NEW ZEALAND CHIEFS; OR, MAORI LAW.

THERE is no doubt that the chiefs—the *arikis* (lords) as they were termed, and sometimes powerful chiefs would be called *atuas* (gods) even in their lifetime—had considerable sway over the land belonging to the tribe, but the lesser chiefs had their right of say also in all tribal-land matters. Nothing, however, could be settled in a satisfactory way until it had been fully discussed by the tribe, when the principal chief would give his veto. Still, every *hapu* of a tribe would form its own opinion, and was by no means bound to accept this as final. If a *hapu* family disagreed with the majority of the tribe its spokesman would say plainly, "*Ko te puta matou ki waho o tenei korero*" (we will keep outside, away from this finding or decision). Every chief was not a landowner, and the chief not owning land would not preside or occupy any important position at the tribal-land meeting, though out of courtesy his opinion might be asked, but, if given, would be qualified by his adding, "*Kahore he tikanga i au kei a koutou, kei nga tangata whai whenua*" (I have no say in the matter; it rests with you, the landowners).

A chief's *mana* power did not give him a better right to the land than any one else in the tribe. The tribe, without any demonstration, but as a natural matter of course, held that the land was vested in the chief to hold in trust for the tribe. The chief had no power, according to old Maori custom, to part with the land; but he had great power to prevent the tribe parting with it. It would often be said of a chief that So-and-so was "*He tangata whai whakaaro, he tangata whai mana*," &c.—viz., a man of understanding and power—but this did not mean he had individual power over the land to part with it, or in later days to sell it or claim it as his own, unless power had been conferred on him to do so by the tribe. The *mana*, or power, of a chief depended very much on his own strength of character and force of will, and the outside means he had to enforce his wishes. Hongi Hika was a powerful chief, so was Te Waharoa. Their words were law, which they enforced with the muskets they had bought. But neither the Ngapuhi or the Waikato warrior ever tried to bring their *mana* to bear over the land to dispose of it. In those days the other chiefs would very soon have objected, and have plainly reminded those terrible warriors that their power had been given to them by those who would take it away if they used it for their own benefit, and not for the benefit and aggrandisement of the tribe. The people gave *mana* to their chiefs, but they expected it to be reflected back on them again threefold; if not, the *mana* dwindled and died out in the hands of the chief to reappear elsewhere. "*Kua kore te mana inaianei o mea*." (So-and-so has no *mana* now). The term "head chief of a tribe" conveys a different meaning to a true Maori to what it does to an ordinary European. There is no such thing as a real head chief, and there never was A Maori warrior and a Maori statesman seldom if ever were combined in one man to direct the tribe. If the tribe was at war the warrior had most say, if at peace the statesman had the

most. The reason is plain. A true Maori warrior to effectively lead in war had to be cruel, bloodthirsty, revengeful, and incapable of peacemaking. Not altogether so was the Maori statesman; but the one could not do without the other; so seldom, if ever, could one chief stand alone as the chief. Often a warrior chief had no other land but an equal portion, or tribal share in any country conquered and afterwards occupied; but he would not have a greater claim over it than any other man of rank, because the tribe would hold that, though by his skill and cleverness the enemy had been defeated, still he could not have taken his country unless he had had the tribe at his back to give effect to his ideas, and to fight. Land was held in common; but one man would not interfere with another man's cultivation or ground he had built upon or cleared.

I have known chiefs give away blocks of land in two instances in payment for tribal debts. Tamati Waaka Nene was one of these chiefs, Patuone was the other; but in both cases the chief was empowered by the tribe to act, the latter intimating that such-and-such a block might be taken for the purpose. I am aware of the facts, having been present both times, and each were *bonâ fide* transactions, fair and honourable. The Governments, however, of that day refused to recognise the transfers, as they said one man had no right to dispose of the land belonging to the tribe, as his chieftainship did not extend to ownership or parting with tribal land—*mana* was not heard of in those days as applied to land—but when Government became land-buyers this principle was abandoned, and encouragement was given to chiefs to rob their tribes, and so great wrongs were committed, till, maddened with injustice, the Maori rose and fought.

The power of life and death vested in a chief extended to his own property only. He certainly had the power to kill his own slave with impunity, but not the slave of any other man unless he had outraged him or mocked his sacredness, intentionally or unintentionally. I never heard an instance of this happening; but the matter would have been discussed, no doubt, over the cooked remains of the slave, whose owner would probably have exclaimed, as he munched him up, that it had served him right, but he eats very well after all. No chief, however, as a rule, would kill his slaves, any more than an Englishman would shoot his horse or dog for nothing.

The Maori was, and is, very jealous of his land-rights. If a chief, a landless one, took for a wife one who had extensive lands he was made none the richer, and unless she chose to give him a piece he could not claim a square foot. The wife, however, as a rule, kept her land for her children or her tribal relations. I have known of chiefs selling land on their *mana* to Europeans and Governments, but when the purchaser came to take possession he invariably found out he had been swindled.

"Have you any land?" is asked of a big chief. The answer invariably is, "Yes," and then follows a description, and names of hills, valleys, and streams. "Is all this yours?" "Yes," is the reply. "Will you sell me a piece of it?" "*Taihoa me korero ahau ki taku iwi*" (wait till I speak to my tribe), is the reply if the chief is an honest man; but if you say, "I will give you £100 as an advance," the probability is the chief would take it; but in the event of the tribe refusing to sell there is a greater probability that the £100 would be missing for his exertions in speaking to the tribe. Now, when the chief said the land was his he did not mean the simple European or missionary who asked the question to understand that he claimed it as his own private property, but that it was the land of his tribe, over which he had a tribal claim. Hence great mistakes have been made in days gone by, and errors, I might add, committed in more modern times.

THOMAS MCDONNELL.

Extract from TAYLOR'S "NEW ZEALAND," Chapter vii., King Movement, page 120.

THE chiefs, seeing that their position was lost, and that in proportion to the alienation of the land their *mana* (power) went with it, also the rapid increase of the European, which threatened the national existence of the Maori race in a few years, began to bestir themselves. It is singular that the greatest chiefs are not always the greatest landholders; their followers are frequently possessed of far more than they themselves. They are called blood-chiefs, in virtue of their descent, but not land-chiefs: still, they have a general *mana* (authority) over the whole, and so long as its integrity is preserved their influence is proportionately great. To stop, therefore, the alienation of land was to arrest the loss of their power and the encroachment of the pakeha. . . . .

THE NATURE OF TITLE TO LAND ACCORDING TO NATIVE CUSTOM.—(Extract from a Letter from Judge Maning to the Chief Judge, Native Land Court.)

SIR,— Hokianga, 26th November, 1877.

I have to acknowledge the receipt of your letter of the 8th instant. . . . The requirement made of the Judges of the Native Land Court is one much more easy to make than to fulfil, not that the questions put are unanswerable, but that they, in effect, contain a requisition that the Judges, or each of them, do enunciate and fix in writing a hitherto unwritten law, parts of which are still doubtful and subjects of debate—a law which has altered much since the arrival of the Europeans in this country, and which is still changing, in consequence of the necessity of adapting itself to the new circumstances by which the Natives are surrounded—the law of Native usage and custom.

The Judges of the Native Land Court are no doubt equal to the task which has been assigned them, but the difficulty of accomplishing it arises from the impossibility of doing what is really the reduction of an unwritten, and in some degree still disputed, law to writing, and a fixed code in any concise form in a short space of time.

A mere series of dicta by a Judge affirming the nature of Maori title, the customs affecting land held under it, and the modes by which it may be acquired, ceded, or forfeited, would be, unless accompanied by quotation of precedents established in the Courts, or by the acts and proceedings of the Natives themselves for some considerable time back, entirely without authority, and

subject to contradiction. Nor would I, speaking for myself individually, be willing to leave myself open to flat contradiction by every interested party by omitting the precedents and authorities on which my conclusions were founded; but to fully set forth the law of Maori-land tenure as far as I know it—to show how it arose and the changes or modifications it has undergone; to collate and produce my authorities and do justice to the subject—would take me not less than two years, and is a task which my present occupations do not allow me time for.

Under these circumstances I, being both willing and desirous to as far as possible comply with your request, shall proceed to reply, though in a brief and necessarily imperfect manner, to the inquiries made—namely, as to (1) the nature of title to land according to Native custom; (2) the customs affecting it; (3) the modes by which it may be acquired, and by which it may be ceded or forfeited between aboriginal native and Native; (4) any established principles by which the Native Land Court is guided in determining the rights of claimants and counter-claimants.

1. The Nature of Title to Land according to Native Custom.

The Natives found their title in the first instance on discovery and subsequent colonisation, and the nature of their title or tenure seems to have grown out of (1) the ideas they brought with them to this country of the value of land; (2) of the necessity or advisability of making, as their numbers increased, some sort of division of the tribal lands amongst themselves; (3) the necessity which arose of every able-bodied member of a tribe assisting as a soldier in the defence of the whole tribal estate; and (4) the exigencies and vicissitudes of war.

We have good reason for believing that this Island was discovered by a great Maori navigator, who after having named it "Aotea Roa" (Aotea being the name of his own country, the word Roa being added as descriptive of the shape of the discovered land, the two words meaning Long Aotea) returned and announced his discovery, and that the subsequent settlement made by the ancestors of the present Maori inhabitants was a deliberately-planned emigration—a perilous adventure no doubt, but undertaken with much precaution and foresight. The islands of the South Pacific, from one of which the first Maori settlers came, though fertile and endowed with a tropical luxuriance of vegetation, were many of them at the time of the Maori emigration to this country, and till long afterwards, overpopulated. The land had been all appropriated; the slightest encroachment on boundaries caused war and bloodshed, and numbers of the inhabitants were from time to time literally driven into the sea, being obliged, after defeat, to take to their canoes and hoist sail in search of some other spot of land in the ocean whereon to establish new habitations. The value of land, therefore, not only for its produce, but also for dignity and rank that was attached to its ownership, was very great, and its possession was coveted beyond all other things; and we therefore need not be surprised to find that almost the first act of each Maori party on their arrival was to take possession of a vast tract of country, the boundaries of which there is reason to believe they to a considerable extent actually perambulated and marked off.

The formal appropriation of such large tracts of land by such small numbers of people as the first settlers consisted of was not, however, without another practical motive besides the great value attached to land for its own sake by them. They were well aware that for some years, and until the *kumara* and other plants which they had brought with them for seed had been propagated sufficiently to be used in ordinary as food, their lives would be a struggle for mere existence. They perceived that the spontaneous productions of the soil such as men could subsist on were in this climate but trifling, and that in consequence they should require a very large area of country from which to procure in any sufficient quantity the game, birds, rats, fish, eels, and other things which were to be found. They were aware, also, that other settlements were being made, or likely to be made, by other parties, and were therefore anxious to secure by formal appropriation a title to as great an area of land as possible.

Besides these first acts of appropriation subsequent explorations were made by various parties, until at length the whole lands of the Northern Island were with little, if any, exception taken up. The boundaries laid down were generally respected until the breaking out of most fierce and continuous wars, which upset and confused all metes and bounds, changed the ownership of land, and brought in new conditions and modifications of Native tenure or title which I shall attempt to describe, but must first take notice of what the original tenure of the lands of a tribe seems to have been in respect of the different individuals and families of the same tribe.

For some years after their arrival the great object of the first settlers was to propagate the plants they brought with them to such an extent as would allow of them to be used freely for food and leave a surplus as seed for future crops. It would also appear from Native tradition, as well as from the probabilities of the case, that the first settlers, the nucleus of the future tribe, kept together for this purpose, uniting their efforts in the cultivation of a single piece of land, each person labouring for the common good, and in the course of time receiving his share of the produce in a common participation of the food produced. From this state of things, and from the necessity which afterwards arose that every man should fight to preserve or hold possession of the tribal estate, must have arisen the theory that the whole land of the tribe was the property of the whole tribe, and that every free man was an owner in the same undefined sense that every or any other man was. What the actual nature of this common ownership was is scarce worth inquiry, as it is with its modified form that we have to do at the present day. We know that soon after the Natives as settlers had a prospect of a secure and plentiful subsistence the subdivision of the tribal lands commenced—parties of one or more families began to remove from the original head-quarters of the tribe and settle on rich spots, often at a very considerable distance from the settlement of the main tribe. These offshoots often increased in numbers and became practically independent tribes, bearing separate distinctive names as sectional tribes. They appropriated to themselves large blocks of the tribal lands and began to give up claim to the other portions; but they still considered themselves to be belonging to the original tribe—acknowledged the superior rank of the chief

of that tribe, held to the theory which they had themselves in a certain degree already practically contradicted, that the whole lands of the tribe belonged to all the tribe, and acknowledged themselves bound to join the other sections in defending all or any part of the tribal estate from encroachment by strangers.

The tribe having now been broken up and divided into sections, living at a distance from each other, claiming separate portions of the tribal lands, and virtually relinquishing any right over the other parts, and each section forming practically a separate and independent tribe, the next action which they took having any effect on the nature of Maori title or tenure was to commence making war against each other. War, also, with alien tribes broke out—war of the most inhuman and merciless description raged from that time out with very little cessation. Massacre and cannibalism became the order of the day and night; no man's life was safe; all old metes, and bounds, and titles were overthrown and a new Native title to land arose—the title by conquest, or *te rau o te patu*. And amongst the established principles by which the Native Land Court is guided in determining the rights of claimants and counter-claimants is that of scrupulously respecting the rights of a successful murder and treachery.

Other new titles to land besides that mentioned above arose from the state of warfare. Sections of an alien people who felt themselves too weak to maintain themselves in their own country, who had been worsted in battle, would be admitted into a tribe willingly as an accession of strength, and lands allotted to them on the well-understood condition of their assistance in war, offensive or defensive, and to be generally aiding and assisting their protectors. By the fulfilment of these conditions and a continued residence on the land these incomers would in time acquire an undoubted title; but if in the rapid vicissitudes in power and population, which we know did in those times take place amongst the tribes the incomers became the strongest, as has sometimes happened, and that they then massacred and devoured their protectors, they would have then acquired a title of the first order, which the Native Land Court would be bound to recognise.

Another but inferior sort of title arose from the state of warfare in this way: A certain tribe had been utterly conquered and exterminated with the exception of some twenty or thirty persons, who for some unusual freak the conquerors allowed to live, and to whom they allotted a small portion of the land which had formerly been their own as a *mahinga* or place to cultivate for their subsistence. They were not reduced to the condition of menial servants or slaves of the lowest class, but to that of *tutua*, or persons who might be knocked about *ad libitum*, and all sorts of odd services required of them as occasion arose. Now, it so happened that in the course of some generations these remnants from the *tutua* grew up to be a respectable little *hapu*—by respectable is of course understood a little tribe able to turn out a company of fighting men sufficiently numerous and valiant to be able to give appreciable assistance to their masters in their wars. After these people had attained to this position of respectability the Europeans arrived in the country, and after several years the conquered lands began to bring high prices in cash, and were sold by the conquerors, and the money, as a matter of course, soon spent. The conquerors then, to raise further supplies, bethought them of the bit of land which they had allotted as a residence and cultivation to the remnant of the original inhabitants who they had conquered, and claimed it in the Native Land Court, with the purpose of getting a title which would enable them to sell; but, to their great surprise and indignation, they found themselves opposed by the occupants of the land, who pleaded—(1) That their ancestors should by rights have all been killed, in which case they (the opponents) would not have appeared in Court; (2) that their ancestors having been allowed to live, and having been allotted lands from which to gain a subsistence, and their descendants having also for several generations subsisted upon them, they (the opponents) had the same rights; (3) that their ancestors and they (the opponents) themselves had on several occasions done their devoir valiantly in assisting their masters in their wars, and in holding possession of all their conquered lands, the piece in dispute included; (4) they declared that they did not claim any right to sell the land without permission of their masters, but protested that under the circumstances their masters had no right to sell the land under their feet and turn them adrift without a spot of land on which to maintain themselves.

These objections were met by mere insult and abuse by the claimants, and their head man commenced to kick the principal opponent out of Court, a proceeding which he had to be informed was considered irregular, and notwithstanding this and other forcible arguments disinterested Maori jurists considered that the opponents had a right to a subsistence because they had not been knocked on the head.

The Court coinciding in opinion the case was dismissed, and the opponents left in possession; but, nevertheless, I am inclined to think that the mistake made by leaving the opponents' ancestors alive would have soon been rectified upon themselves if their residence had not been near Auckland, and the principal claimant had not been rather under a cloud, having been lately in rebellion, and just then on his good behaviour, lest more of his land should be confiscated than had been already.

Gifts of land unconditional were sometimes made by one tribe to another in acknowledgment of services as allies in war. Such a gift would, of course, constitute a good ground of title. Long occupation of land unopposed—or, if opposed, opposed unsuccessfully—gave or proved a good title. Land would sometimes, at the conclusion of a war wherein neither party had conquered the other, be given by one tribe to the other, who, on the whole, seemed to have had the best of it, as a condition of peace, or price for the cessation of hostilities. But through all these descriptions of title ran a thread of the old indestructible idea that all the land belonged to all the people in some undefined way. The land of the tribe at first belonged to all the people to use, but not to alienate. When the sections or *hapu* became independent, then their part of the land of the tribal estate belonged to the whole people of the *hapu* in the same way. After this land began to be alienated on special occasions, but only by consent of the whole tribe or *hapu*. When the subdivision of land got as far as holdings for single families, then the land belonged to the whole family in an undefined way as to each person's interest, and the cultivation of spots by single individuals were *mahingas* merely,

and not estates. And now when a man comes into Court to claim land as an inheritance from his ancestors, handed down from father to son, from generation to generation, it generally turns out that there are other persons interested, and that he is, in fact, making a claim for the family. And when a Native does make out a claim to a piece of land as his own individual property it is either in consequence of his whole family having died out or of some private arrangement with the other owners.

Such arrangements, though not altogether in accordance with the ancient notions, have been so frequent since the arrival of the Europeans in this country, in consequence of the desire of the Natives to sell their lands, that they may now be considered as a part of Native usage and custom, and I think should be strongly encouraged for many reasons. The Native Land Act of 1873 very properly recognises them.

There are many other grounds of title put forth by Natives, some of which I shall have to mention further on, under a different head.

The original idea of common ownership in land amongst the Maori people seems to have arisen from the common exertions, risk, labour, and hardships undergone by the first settlers in obtaining it; and, secondly, from the long-existent necessity, which continued from age to age, that every man should fight for the protection of the whole tribal estate.

The question as to the nature of title to land according to Native custom I am unable to answer in any way except by giving examples, as I have done, of some of the principal grounds of the manner in which lands are held; but, though these grounds of title appear at first sight obvious enough, yet the constant state of war in which the Natives lived for a long period of time having confused all titles, both ancient and modern, the conquests, reconquests, and alleged and doubtful conquests set up as grounds of title, the obliteration and alteration of boundaries, the unreliability of evidence, and through all the ancient claim of discovery and first occupation sometimes feebly struggling to the front, makes often confusion more confounded to appear broad daylight in comparison with the wilderness a Judge has to wade through in the endeavour to ascertain what the rights of parties really are; and I am obliged to acknowledge that I do not at all know what the nature of Maori title is if it be not of the same nature as the good old plan of "Let them take who have the power, and let them keep who can."

2. Customs affecting Land under Native Title.

One of the most important customs or rights affecting Native lands was the right of veto on all alienations possessed by the head chief of the tribe, the lineal descendant of the leader of the first expedition. This right was formerly more exercised than is generally supposed, sometimes from good motives but with very bad consequences, and at others merely with the selfish purpose of extracting a payment from the sellers or purchasers, or both. Whether this right belonged to the chief in his character as guardian of the general interests of the tribe or was a prerogative of chieftainship derived from the customs of the Pacific Islands I cannot say; but that the absolute right did exist there is no doubt. It is now, however, from the general desire of the Natives to sell their lands, all but extinguished, and where recognised at all is merely acknowledged by a small payment or present to the chief out of the proceeds of a sale. This right has often been usurped by chiefs who had no right to it, but who had force on their side; but this is a different thing entirely. There are some chiefs still alive whose pedigrees—whether true or fabulous is of no consequence, as it is universally acknowledged—prove them to be of the standing I have described. Another right or custom exercised by a chief, probably after consultation with the principal men of the tribe, was that of blocking all public roads leading through the tribal lands, and preventing all traffic, no matter how long those roads might have been used in time of peace by outside tribes in passing through the country. This interdict would be laid on in time of peace, and would continue as long as the chief or tribe thought fit.

Game and fish as well as the wild edible productions of the forest were preserved by an interdict on any particular locality. This would be notified by the erection of a *rahui*, the purpose of which would, from its shape, position, or material, be understood by any Native.

Parties of strangers would sometimes be invited or allowed to reside with a tribe, and would be permitted to cultivate as much land as they had occasion for, as well at to use the fisheries, &c., as freely as if they were members of the tribe, though no rights of ownership were accorded to them. Persons in this position, when they took an unusually large quantity of fish or game, were expected to make a present or donation to the principal owners of the land, and these donations have been sometimes brought forward in Court as secondary proofs of ownership by the persons who received them. Lands held by Native title were subject to forfeiture for failure in performance of the military duties due to the tribe. I know of two instances since the arrival of the Europeans in the country—one instance in a Native war, and the other in a war against the Europeans.

Lands were subject to be taken as a penalty or as damages for an offence committed by one member of a tribe against another. I have known very marked instances of this. It would be, in such case, necessary that the person claiming and receiving the damages should be supported by the general opinion of the tribe.

I do not recollect just now any other customs affecting land held under Native title of sufficient importance to be worth mention.

3. Modes by which Land under Maori Title may be acquired, and by which it may be ceded or forfeited between Aboriginal Native and Native.

Previously to the establishment of the British Government in this country land was chiefly acquired by war and violence, or in some way connected with violence, or the apprehension of violence, or the precautions taken against violence, as I have partly shown; but I suppose that at the present time none of these modes of acquisition can take place, nor do I think land is likely to be acquired by Natives as damages or penalties for small offences, as formerly they did. Maori penalties, as they are for the most part exacted by the strong from the weak, are always extravagantly

disproportioned to the offence, and the oppressed party would claim to be tried by the European Magistrate; at least, in this part of the country no Native would now submit to lose two thousand acres of first-rate level alluvial soil, having the advantage also of water carriage, because he happened to wish (aloud) that the devil had a lot of fellows who were always stealing his pigs. In these days he would fly to the Magistrate. For the reasons, therefore, that I have mentioned, I do not see how an aboriginal native can acquire any land held by Native title by another except in the same way that a European may acquire land from another European—that is to say, by purchase, gift, or inheritance—with this difference only, that a legal title would not be acquired until the transaction had been ratified in the Native Land Court.

Acquisition cannot be supposed to be made under the "voluntary arrangement" authorised by the Native Land Act, as it only provides for a division of the lands already owned by the parties on an exchange of equivalents between them.

4. Any Established Principles by which the Native Land Court is guided in determining the Rights of Claimants and Counter-claimants.

The Native Land Court determines claims strictly by Native usage and custom, of which the Judge must be a master; and in the course of my practice in the Native Land Court I have never been able to fix upon any established principle for my guidance except that of ascertaining in each particular case in the best manner I could what really was the Maori usage and custom as relating to the ownership, and if any very minute link was missing to fill up the gap with natural equity, because, although natural equity is seldom practised by the strong, it has been ever invoked by the weak, and may therefore, in a petty or subsidiary way, be admitted as a factor in Maori usage and custom. . . . .

Extract from a Letter from Judge Monro to the Chief Judge, Native Land Court, dated 12th May, 1871.

. . . The advent of the English colonists found the Maori tribes and families in possession of certain tracts of territory the boundaries of which were approximately settled, if not with the accuracy of survey, yet with sufficient distinctness to render any considerable encroachment upon them cognisable within such limits. It does not appear that there was any generally admitted individual and personal tenure further than that of mere occupancy and cultivation, and certainly no indefeasible hereditary right limited to any one member of a family at all answering to our ideas of inheritance by promogeniture. A man enclosed and cultivated a portion of the common land of his tribe, and no other man had a right to disturb either him or his family, sons or daughters, while he continued to do so. The land was theirs in occupancy, and its produce was theirs in property, but neither the original occupant nor his family had any estate in fee in the land.

The communal right so existing was recognised by the Crown in the Treaty of Waitangi; but, inasmuch as it was one too much at variance with the habits of a civilised community to be adopted by the colonists, provision was made by the same treaty for its gradual extinction in the pre-emptive right given to the Crown, which was then made an instrument for the gradual exchange of the vague and imperfect occupancy tenure of the Maori tribes into the more definite and fuller proprietary tenure of individual citizens, whether Maori or European, which alone could be recognised by the law of a settled civil Government. . . . . Although the entire lands of any tribe were owned by the whole body of it in its widest extent, yet sections of that tribe had their several portions of territory restricted to them by the same condition of occupancy by which the larger tribe held the larger area.

Extract from a Letter from Theophilus Heale, Esquire, to the Chief Judge, Native Land Court, 7th March, 1871.

The first and fifth head on which I am desired in your letter of the 17th ultimo to report justify me in going beyond my own proper province of survey. I am induced, therefore, to make a very succinct sketch of the whole question of Native-land titles and the means adopted to convert them into legal freehold before considering the improvements which appear to me to be required in the existing mode of dealing with them, both in its general conduct and especially in that branch of the system in which I am more particularly concerned.

Omitting altogether, for the sake of brevity, the historical facts which sustain these views, I take for granted (1) that the Native title to the land is communal, all the free families of the tribe which acquired land being its proprietors, the chiefs* having no greater rights in it than the other members of the tribe, except in so far as at the present time they generally represent a greater number of families; (2) that this title was founded entirely on ancient and uninterrupted occupation, or on conquest followed by such acts as in Native eyes implied continued occupation, or, at least, dominion; (3) that this title vested in the community, and maintained only by its physical force, was such as could not possibly be recognised by Courts bound in matters of real estate by the rules of the English common law; (4) that these rights were in the largest and most general terms confirmed and guaranteed by the Treaty of Waitangi, and that some machinery became absolutely necessary for ascertaining the individuals in whom the right to the land lay according to

* Note.—Perhaps this was not always so. Before the greater numbers of *hapus* split off from the original tribes the authority and recognised rights of the chiefs may have been greater, since it is very common to hear adverse claimants representing different *hapus* all admit that the land originally belonged to one common ancestor, who is said to have made a division of it.

Native views, and for converting those vague and unavailable rights into such titles vested in individuals as would enable transfer to be made to which the rules of English jurisprudence would apply. . . . .

MEMORANDUM by the Rev. JAMES W. STACK on the Nature of Title to Land according to Maori Custom.

THE value attached by the Maoris to land is evident from the fact that every part of the country was owned and named. Not only were the larger mountains, rivers, and plains named, but every hillock, streamlet, and valley.

Land was acquired by—

1. *Discovery and Original Occupation.*—Tradition relates that immediately on the arrival of the canoes from Hawaiki the crews dispersed themselves over the surrounding country for the purpose of taking possession, and that on several occasions parties coming from opposite directions met, when disputes arose about their respective claims to the land around them. Ngatoroirangi, the celebrated sorcerer, who arrived in the Arawa, nearly lost his life in attempting to reach the summit of Tongariro—his intention being to claim all the land he could see from that lofty peak.

2. *Conquest.*—When one tribe succeeded in destroying or driving away another tribe they took possession of their land. In 1873 a dispute arose between two old chiefs at Kaiapoi about the proportion of their respective claims to a reserve at Tawera (Oxford). Both rested their claims upon their descent from certain chiefs who took possession of the country many generations back. Arapata Koti claimed a larger share than Hakopa because his ancestor, Moki, was the first to claim the principal mountains of the range on the slopes of which the reserve was situated. He stated that after the defeat of Ngatimamoe at Pakihi, Ngaitahu took possession of the country as far south as Kaiapoi. Some years afterwards a party of young chiefs, consisting of Moki, Tanetiki, Maka, and Hikatutae, known as the Wharaunga-purahonui, went from mountain to mountain saying, "This for me," and "This for me." On seeing Whatarama (Mount Torlesse) Moki cried out, "This is mine, that my daughter, Te Aotukia, may possess a kilt of kakapo skins, to render her fragrant and beautiful." "Mine," cried Tanetiki, "that the kakapo may form a kilt for my daughter, Hini Mihi." "Mine," cried Hikatutae, "that the kakapo skins may form a *maro* for my daughter, Kaiata." "Stay," said Moki's slave, in a whisper, "do not be in a hurry to claim what you see;" whereupon he climbed up into a tree. "What are you doing there," asked his master? "Only breaking twigs to light a fire with," he replied. Presently he espied the peak of Kuratawhiti, which Turatawhiti had told them, before setting out on their expedition, was the best kakapo reserve. "My mountain Kuratawhiti," cried the slave. "Ours," rejoined his master. From that date Moki and his descendants claimed the exclusive right to hunt kakapo on the Kuratawhiti; and, as that claim was always respected, Arapata required that it should be recognised, when subdividing the reserve, by larger shares being given to the descendants of Moki.

3. *Inheritance.*—The example just cited illustrates succession, and a note (A) appended shows the mode of bequest.

4. *Purchase.*—Land was sometimes acquired in this way (by one *hapu* of the same tribe from another), garments, canoes, weapons, &c., being given in exchange. Wiremu te Hau, after the subdivision of the Kaiapoi reserve by Mr. Buller in 1860, when, in common with others, he received a section of fourteen acres in extent, continued to claim a part of the reserve called Tuahiwi, which had been unanimously made over to the Church of England as a site for a church and a school. He claimed it as having been bought by his ancestor under the following circumstances: One of the family died while on a visit to Kaiapoi, and was buried there. As the land belonged to a different *hapu*, there was a risk of the survivors being twitted with allowing their dead to be in other people's ground; consequently it was thought necessary for the honour of the family that the land around the grave should be bought. Accordingly negotiations were entered into with the owners, and Tane, the chief of Tuahiwi, received four *parawai* and ten other garments, and a *rakau paraoa*; for which he gave not only the grave but sufficient land about it for the cultivations of those who came to take care of it. While no one denied that Te Hau had a claim before the reserve was made, they said he forfeited his peculiar rights when he consented to the sale of the country to the Crown and accepted a share of the money paid for the lands situated elsewhere which were specially claimed by others. At Omihi Pakipaki gave the canoe Toroa for land for himself and his family.

5. *Gift.*—Land was sometimes given as a place of residence by one *hapu* to another, and sometimes to persons of different tribes; but it seems doubtful whether it was so given in perpetuity.

6. *Dowry.*—Land seems seldom if ever to have been given to a female marrying out of the tribe. Where a woman married a man of her own tribe who did not possess any land, the family would give them land for their cultivations, which would descend to her children; but, in the event of her dying without issue, the land reverted to her family.

Land was forfeited when the owners were driven off and the land occupied by their conquerors. But *occupation* was necessary to prove the conquest.

It is one of the complaints of Ngaitahu that Ngatitoa were paid by the Government for the land between Kaiapoi and Cook Strait; for, although they admit that they were driven far to the south of Kaiapoi, they say Ngatitoa did not occupy the country, and therefore could not claim to be paid for it. The territories of each tribe were divided amongst the *hapus*, and these again amongst the individuals of which they were composed, the superior chiefs being entitled to the largest shares. The land owned by any one individual was not situated in one block, but consisted of a number of small patches scattered over a considerable area. In order to retain possession of these it was necessary that the rights of ownership should be exercised within a reasonable time; when this was not done the particular portion neglected reverted to those through whom the title to it was derived

Note A.

Extract from a Work written by Dr. Edward Shortland, and published by Longman, 1856.
[The author's name is sufficient guarantee for the value of the information.]

The following paragraphs are literally translated from a letter written by a chief in reply to some inquiries as to the nature of titles to land in his country. Being a chief of rank, and very intelligent, his authority is as good as any that could be referred to; and, from its agreeing with information collected among other tribes in different and distant places, it may be inferred that the ideas on this subject prevalent throughout New Zealand were similar. It is observable that the head of a family has a recognised right to dispose of his property among his male offspring and kinsmen, and that his will, expressed shortly before his death in the presence of his family assembled for the purpose, possesses all the solemnity of a legal document.

* * * * * * * *

Hear the custom in regard to lands which are held by right of conquest: Suppose some very large tribe is defeated; suppose that tribe is defeated once, is defeated again a second and a third time, till at last the tribe becomes small, and is reduced to a mean condition: it is then made to do work of dependants—to cultivate the land for food, to catch eels, and to carry wood. In short, its men are treated as slaves. In such a case their land passes to the possession of the tribe whose valour conquered them. They will never think of striving against their masters, because their power to fight has gone from them. They were not brave enough to hold possession of their land; and, although they should grow numerous afterwards, they will not seek a payment for their former losses, for they are fearful, and say among themselves, "Don't let us strive with this tribe, lest we perish altogether, for it is a brave tribe."

Note B.

Extract from a Letter by Dr. Edward Shortland to the Chief Protector of Aborigines, dated Akaroa, 15th August, 1843.

When a dispute arises between members of the same tribe, who is the lawful owner of a piece of land, the principal persons on both sides meet together to discuss the affair. Their pedigrees are traced, and the ancestor from whom either party claims is declared. Any proof that an act of ownership (such as cultivating, building a house, setting pitfalls for rats, or erecting eel-weirs) was once exercised without opposition by one of these ancestors is considered sufficient evidence of the right of his descendants to the land.

Extract from a Letter by Dr. Edward Shortland to B. Hawes, Esq., M.P., one of Her Majesty's Secretaries of State for the Colonies, dated London, 25th February, 1847.

In considering the modes by which land becomes distributed amongst the different members of a tribe, it must not be imagined that an individual is at liberty to cultivate at his pleasure any unappropriated spot within the limits of the district claimed by his tribe. He must confine himself to those parts of that district to which he and other members of his family have a joint right, and then his selection should be made with the consent of those interested. The non-compliance with this usage by turbulent fellows is a frequent cause of dispute.

In cases of adultery, &c., where the injured party is willing to receive compensation, a piece of land generally forms a most important part of the payment, being considered the only kind of property of equal value with a woman. They reason thus: All other property is perishable, but a woman or land, they are imperishable, inasmuch as the one produces children, and the other produces food necessary to their support. Also, in making peace after a long war during which many lives have been lost, land has often been given up by one party to compensate for the greater number killed on the other side. From this, it appears that the New-Zealanders had an idea of the value of land as an exchangeable property before the arrival of Europeans among them.

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