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SUGGESTIONS RESPECTING NATIVE LAND COURTS AND DEALINGS WITH NATIVE LANDS.

(LETTER FROM MR. J. H. EDWARDS.)

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

Mr. J. H. EDWARDS to the Hon. the NATIVE MINISTER.

SIR,— Kiokio, Otorohanga, 7th May, 1891.

I have the honour to forward herein a few remarks relative to Native-land laws. It was my intention to have given them in evidence before the Native-land Laws Commissioners when they visited Otorohanga, but, being requested by the Ngatimaniapoto to act as their mouthpiece before the Commission, and to confine the subject to the question of restriction only, I was unable to do so, and to give them. It was my intention then to have forwarded them to the Commission, but press of time has prevented me from sending them before, and, thinking that I may be too late for the Commission, I forward the same to you, as the Commissioners' report, at all events, will be submitted to you.

I have, &c.,

The Hon. the Native Minister, Wellington. J. H. EDWARDS.

P.S.—It is my intention shortly to discuss and advocate these views and others among the Ngatimaniapoto hapus, and if we are unanimous we will probably send down a delegate to Wellington if required.—J. H. E.

IN submitting the following suggestions on Native Land Courts and the after-dealing with Native lands, I wish at the outset to state that my remarks refer principally to lands embraced in the Rohe Potae, where my actual experience has been, in which, however, I have had a good deal to do in conducting and passing blocks of land through that Court, and, as there is a desire on the part of Government, of which you are a member, to remodel land-laws for the purpose of simplifying and making them effective, I have felt encouraged to make the following suggestions, feeling convinced of your personal desire to bring about a more satisfactory state of things.

In the first place, I recognise the great principle that the country should progress. In this, my primitive friends of the soil do not agree, no doubt, or such a doctrine is contra to their inherited ideas, not so much, perhaps, from mere obtstructiveness only, as from an insufficiency of educated power to grasp the natural evolution and progress of events. This aversion, however, is not a little untinged with a natural suspicion, inherent in a primitive race, as to the motives of the pakeha, unhappily, as in the past sometimes, not altogether without foundation. However this may be, I hold we, the Natives, should not hinder, or be made the instruments to hinder, the progress of the country, however the greed and subsequent selfishness of the speculator may conspire to do so.

Naturally, to me, this subject presents itself under two main headings—First, the ascertainment of titles to Native lands; second, subsequent to ascertainment of titles, the proper method of dealing with those lands.

As to the first subject, I cannot conceive of any other mode for the extinguishment of the Native title than that supplied by the present Acts, eliminating objectionable features therefrom to insure the just, harmonious, and speedy working of the Court. I, as one who has brought blocks of land before the Court, have been painfully impressed with the unnecessary delay—the shilly-shally and waste of time indulged in, which a little firmness would have averted. This leads me to commend the action you have taken to dispense with the old fossilised type of Judges, who, it appears to me, the more they are Maori scholars the more they are imbued with the Maori notion of *taihoa*. I say unhesitatingly, and without reservation, that Judges without a knowledge of the Maori language itself, except just sufficient knowledge of Maori customs and usuages only, which is all that is requisite, are the fairest, most impartial, and most progressive Judges. They compel the litigants to keep close to the points touching the case under question only, and exclude all extraneous matters not relevant to the case, which I have personally seen and felt as a great waste of time and money both to the litigants and the country also. In my experience before this Court, there seemed to have reigned the most utter apathy—the "Government stroke" style, as proved by five years' result of incomplete disjointed work.

To return to the subject. I think that for some time the Rohe Potae will in itself be sufficiently important to constitute such a district as to require the attention of a permanent staff of the Court to deal with it solely until disposed of, which Court should be centrally situated, as Otorohanga is. That, when application for investigation of title is made to the Court, and where there are several applications, they should be taken in rotation, without favour to one applicant more than another. That, when an application is taken by the Court, and such application embraces an area in which there may be several ancestors with divided interests, or said to have ancestral boundaries, the Court shall, if practicable, settle these internal boundaries at the same time as the external boundary; but should it for good reasons be inexpedient for the Court to go into the internal boundaries at the same time, then the external boundary should be first settled, and immediately afterwards the internal boundaries. After these are fixed, with its ancestors, then only should the list of names be taken, indicating the individual interests at the same time. This, of course, applies where the individual interests are intimated as being unequal, which should be done at the outset; and where no such intimation is given, the shares shall be deemed to be equal, and the Court shall allot them as such. In any case, no block shall be disposed of till the individual interests are allotted—I mean indicated as one share, half-share, &c. And in a month thereafter, if no rehearing has been applied for, and a correct survey has been made, then the block should be considered negotiable for sale or purchase, and not before.

In dealing with lists of names, no person not having an ancestral right, or occupation, or those desired to be admitted by Maori *aroha*, shall be admitted. Such persons have swelled out lists to an abnormal extent, which can now be seen in Rohe Potae lists (in their perfection). Such names often become subsequently the most troublesome of all, and multiply difficulties in subsequent dealings with the land, and takes up a considerable amount of the time of the Court. My experience has been that too ready a compliance has been manifested by the Court in such cases.

There is also a very important question of children. I hold that minors should have the right legally to be admitted with the same legal privileges as adults. The law as at present on this point is unjust. Greed commends it, and children are subject to be made paupers. It is not according to Maori custom, though readily taken advantage of by persons without children. I have known instances where minors have been excluded and their parents alone admitted, and I have known those parents to be so unnatural as to have disposed of their interests, leaving to their children only the miserable pittance they could not dispose of, and practically landless. Children's interests also should be protected until they attain their majority; and I think it also the duty of the State to erect safeguards, that their estate is not misconducted and squandered. When Natives lived as Natives under their customs and usages children were never said to have no interest in the land; in fact, paternal instincts were so strong in respect to their children, that they pampered them with the idea that they were the possessors of the soil, and which they often helped to hold against aggression, long before they were twenty-one years of age. This trait was characteristic of the ancient Maori, and was a prevailing custom in their commonwealth—the parents sinking into the position of guardians.

In voluntary arrangements made by Natives themselves out of Court, and which may appear to be all but settled among themselves, but for some well-defined points, and which may, perhaps, be the only difference between them, provision should be made for the submitting of such points to the Court, the stating of case, and the taking of evidence on the disputed points alone, without bringing in a whole mass of unnecessary evidence, the Court to confine the evidence and decide upon those points, and in judgment incorporating the same with the arrangement voluntarily agreed upon. This course will give facilities for shortening cases which would otherwise have stretched out to indefinite lengths. In fact, in all cases and all arguments before the Court, the Court should confine the party or parties to the points bearing on the subject.

As to rehearings, one month is quite enough time in which to apply for a rehearing, appellant stating clearly grounds of application, and, if it appears to the Chief Judge that those grounds are frivolous and without good reasons, in such case the Chief Judge should have power to dismiss the same without a hearing. In any case rehearings should be confined to points of appeal, and judgments on rehearing should be confined to the question at issue, and, where the grounds of appeal are limited, the original order should also be only affected in a limited degree.

In the foregoing remarks you will no doubt have noticed that I have offered very little new which is in the form of legislation, and what has been written so far has related principally to procedure before the Court. I have always consistently held the opinion, and I expressed it, I think, to you when you were in Otorohanga, that the present Land Court laws remodelled, condensed, and with some additions, is all that is required for investigation of title—that any new Act will necessarily be built upon the present ones, rejecting such sections as are bad and mischievous. You will see when I am writing under the second heading (the dealing with Native lands) such clauses which of necessity should be struck out. They will suggest themselves and appear self-apparent. Such sections as section 12, "Land Court Act, 1888;" in the Frauds Prevention Acts, and other kindred sections.

In short, a carefully-framed Act, with necessary additions, administered by a competent and energetic staff properly constituted, is all that is required for investigation of title. Indeed, in my experience, so important has the question of procedure appeared to me, that, however admirable the superstructure may be, it will be useless without a proper and vigorous administration.

Before quitting this part of the subject, I cannot help but reiterate that Judges other than Maori scholars and adepts, if possessing legal training, will interpret the law best of all. They are more critical and literal in examining evidence, not so partial to parties, and certainly not so indolent as the old order. They should be conversant with just sufficient of Maori customs as to administer the law in accordance with recognised customs and usages. This leads me to remark that great judgment should be exercised in the choice of competent interpreters, as it is of the greatest importance

that translations and records of Court evidence should be strictly correct. I think, indeed, that all Land Court interpreters should pass a certain grade before they are permitted to act as Court interpreters. I am led to make these remarks not only because a non-Maori speaking Judge requires correct literal translation, but from the fact also of having seen most miserable examples of interpretations and interpreters. And in the same manner also Native Assessors should be chosen with discrimination, and none but men of ability should sit in Court. The fact of an Assessor being a chief only, with no other qualification, is not sufficient to entitle him to sit in Court. The Assessor should be the means of assisting the Judge in questions of Maori custom and usage. Just and competent Judges and Assessors will curtail the fearful number of rehearings, which have hitherto been too common.

Now, as to the second subject—the proper method of dealing with Native lands—this to me is the most difficult subject by far. If we recognise the apparent equality of Natives with Europeans the solution is easy—viz., remove restriction and permit free trade, placing the Maori on the same footing as the European in every respect. But if the welfare of the Maori is to be admitted linked together with the welfare of the country, the question becomes very grave and difficult indeed. It has indeed been so much handled, and with such baffling results, that I may be excused at feeling a certain amount of hesitation and misgiving regarding the question, and with some delicacy in advancing ideas not entirely original, crude, and handled by a "'prenticed hand."

In the first place, then, I will base my suggestions on the assumption that the State shall not permit direct private dealings with Native lands, but will reserve that right to itself. This principle pure and simple, as exercised towards the Natives, has endeavoured to inflict a great wrong; but, applied with certain rights, it becomes sound in principle, and in that form only I uphold it. And before we (the Native owners) can do so willingly I ask, Let there be equitable measures passed for the dealing with Native lands. I hold that the Native has a right (all things being equal) to the full ownership and enjoyment of his ancestral inheritance, and a measure that will grant him such privileges is just to him and a benefit to the State. He would be protected and yet not be a hindrance but a help towards the prosperity of the country. Therefore I think this can be brought about in the following manner—that is, as to sales, the State shall be the sole purchaser.

When the ownership to a block of land has been determined and become negotiable, as I have shown in this communication, if a sale of the block is desired by any number of owners, not limited as to number, or a purchase is desired of the owners by Government, such owners shall, through a Commissioner appointed, notify all the owners through some local public medium, expressing such desire and appointing a certain time and place where owners shall meet and discuss the desirability of, or terms of sale (or, in case of leases, the terms and conditions of lease), or what area should be set apart by those willing for a reserve for the use of owners. But special provision must be made for any one or more owners who may desire to be exempted, whose interests may then be partitioned off. Majority in any case shall not coerce a minority. Then the balance of the block can be sold to the State as may be agreed upon. In case of disagreement value to be assessed by two valuators, one to be chosen by the Natives, either voluntarily or, if a difficulty arises, by election, who may or may not be an owner, and another valuator selected by Government; and, in the event of their disagreeing, a third independent valuator shall be mutually agreed upon, who shall decide between the other valuators, and, if desired by the other valuators, by evidence as to real value. Price to be so finally fixed. After an agreement has been arrived at, notes stating the exact terms and nature of transaction shall be taken by or supplied to the Commissioner, together with a schedule of owners purporting to have consented. It shall then be the duty of the Commissioner to fix a day on which the arrangement will be submitted for confirmation of same before him, as I have already indicated. Any one owner can be taken to sign the deed. Proceeds of sale or lease to be paid by a responsible Government Commissioner to each owner individually, according to their relative interests.

As to leases, the same method as for sale applies, only with this difference: that leases should be negotiable with private individuals, if desired.

The foregoing scheme, of course, is intended where the whole or a bulk of the owners desire a sale or lease of a block, but should not exist to bar the right of any single owner wishing at any time to sell or lease independent of the other owners. This method as outlined is simplicity itself; starts itself in a simple manner; gives notice to absent owners to meet and discuss the matter in a body, to which no unfair dealing can be imputed, and, in the event of disagreement, valuators give finality. Objectors can claim exemption and be partitioned off. The one owner to give effect to the deed being a formality, as all the terms have been settled by the owners in a body, or alternatively by their valuators, tribunal giving effect to the transaction being simple and unimpeachable.

As to costs, all original surveys, or surveys desired by owners themselves—all legitimate costs which may come under agents' commission only—should be charged against the owners, to be paid in money or land as desired. But all subdivisional surveys carried out after a lease is effected—all highway rates—should not be borne by owners where there are lessees occupying the land. No charge should be made against owners for such public works as roads or bridges except where they come under the legitimate operations of Road Boards.

One Commissioner for each district will be sufficient, whose duties shall be to give effect to the machinery and arrangements agreed upon; to hold open inquiries for the purpose of validation; to perform the same functions as a Frauds Commissioner, but shall in no way act as Government agent for the purchase and leasing of Native lands.

I entirely condemn Committees. They will become either only formal, docile instruments in the hands of a superior guiding mind, who may or may not be honest, or they may become merely obstacles from sheer ignorance simply. In both instances injury will result to the owners. It is my opinion—which I hold strongly—that any set of Committees, with an equal number of Commissioners at their head, may degenerate into legal swindling machines, say nothing of the cost to the country.

Now we come to a most critical and important part of the whole question. It is self-apparent that, however admirable such a measure as the foregoing may be designed or drafted, still, it may become in itself a dead-letter, and therefore useless; and in such case it then, on its part, becomes unfair to the rest of the people of the country. The question, then, is to make it effective to make it apply. In the first place, then, I affirm that we, the owners of the land, have a full right to the full enjoyment of our inheritance, as before stated; but I grant, at the same time, that when we receive its increased advantages we should not enjoy unfairly a favoured immunity from the general taxation borne by any other British subject—in other words, there should be one law for the Maori and the pakeha. My idea, then, is briefly this: First abolish "The Stamp Duty Act, 1882," and then let there be enacted at once, in conjunction with Land Court laws, that at the expiration of a specified time, of, say, two or three years, all Native lands shall bear taxation in the form of a land-tax, the same as is proposed for Europeans. This course will suggest to us the necessity of doing something to make our lands productive, and to adopt means towards their utilisation, so as to be in a position ready to meet the proposed coming taxation; and if the laws are equitably made we should be in a position to meet taxation, and if the laws are equitable and we do not take advantage of them the fault will be our own. I know that there is a growing intelligence among the Natives—that, with firmness, I believe the majority will rise equal to the occasion.

In the preceding remarks I have mentioned two or three years, because it will take a certain time to determine title; and I state positively we should not be taxed until that title is determined (which the Court should aim to do in as short a time as possible). In fact, we cannot be justly taxed otherwise, unless confiscation in all its enormity be resorted to.

As to the cost of title, the Natives should get their title at little or no cost. I justify this in the following manner: Natives in their normal state asked for no title beyond what they held under their own customs. They were content with it till the advent of the pakeha, who now requires the Maori to have a title like his own, there being no title otherwise; hence the creation of Land Courts. Therefore, as before intimated, there should be no drain on Native lands until title is completed, as it is only then that Natives can legally get revenue or benefit from their lands.

You will have seen in the preceding ideas on dealing with Native lands that there is only one great leading principle underlying the whole theory, and that is the question of State pre-emption. I have always consistently opposed pre-emption in its present form, and on every occasion the subject has been discussed among the Rohe Potae hapus I have brought the subject prominently before them, because pre-emption in its present form is unjust in the extreme. We are not assured the full value of our lands. It has the McKinlay air of Government self-protection about it; it is a monopoly. For in principle, as in actual practice, should Government offer us 5s. for land worth 7s. per acre? 5s. is the only price, and we have nothing but "Hobson's choice." But if we are assured full value by a system of alternative valuation, as I have suggested, then pre-emption concedes us the full advantages of free trade, while conserving the interests of the State, and at the same time holding in check the baneful tendencies towards the establishment of large landed proprietories—the curse of civilisation.

In conclusion, to summarise the vital bearings of the whole of the preceding ideas into one focus, one into the other, there is not a leading idea which can be omitted from the others; there is not a principle which can be differentiated from another without injuring the balance and without destroying the whole fabric.

I must crave your indulgence for having taxed your patience over this somewhat incoherent correspondence.

J. H. EDWARDS.

A few Words as to Native Schools and Endowments.

I THINK Natives should not be compelled to make endowments for primary Native schools unless they wish to do so voluntarily. There should, in my opinion, prevail one uniform system of school education, both for European and Maori, which is compulsory. European schools are maintained by the State, and Native schools should be assimilated. There is nothing sound in the argument that Native schools must be conducted differently to European schools. I utterly condemn the present system of distinct Native schools as useless, ineffective, and not warranting their great expense, with unsatisfactory results. In short, all Native schools should be the same as all the national primary schools, and under the Board of Education, to which one Native member may be elected where the district embraces a certain percentage of Native children. Discipline cannot be enforced in Native schools under the present system, and never can be until compulsory clauses are brought into operation.—J. H. E.

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