1907.

NEW ZEALAND.

# NATIVE LANDS AND NATIVE LAND TENURE

(GENERAL REPORT ON LANDS ALREADY DEALT WITH AND COVERED BY INTERIM REPORTS).

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

Wellington, 11th July, 1907.

MAY IT PLEASE YOUR EXCELLENCY,—

We have the honour to present the following report dealing with matters of general interest arising out of the inquiries we have made into the position of Native lands in certain districts of the North Island, and suggesting legislation to give effect to the recommendations we make. We have already transmitted interim reports as follows:—

| | Date. |
|---|---|
| 1. On Waimarama Estate and Poukawa Reserve, Hawke's Bay ... ... | 19th March, 1907. |
| 2. On Mohaka and other blocks in the Tairawhiti Maori Land District | 22nd March, 1907. |
| 3. On lands in the Whanganui District | 26th April, 1907. |
| 4. On lands in the Rohe-Potae or King-country ... ... ... | 4th July, 1907. |

Your Excellency has directed, among other things, that we report how the Native lands which are unoccupied or not profitably occupied "can best be utilised and settled in the interests of the Native owners and the public good"; how, after making provision for the use and maintenance of the Maori owners and their descendants, the surplus, if any, may be made available for settlement by Europeans, "on what terms and conditions, by what modes of disposition, in what areas, and with what safeguards to prevent the subsequent aggregation of such areas in European hands"; and, further, to report as to "how the existing institutions established amongst Natives and the existing systems of dealing with Native lands can best be utilised or adapted for the purposes aforesaid, and to what extent or in what manner they should be modified."

It seems to us necessary before stating our opinion as to the best mode of opening to settlement the unoccupied Native lands, whilst making adequate provision for the needs of the Maori race, to review briefly existing modes of disposition and schemes for the settlement of the Maoris on their own lands.

## REVIEW OF PAST POLICY AND LEGISLATION.

The confusion of our Native-land laws is admitted by every one. The history of over forty years' legislation on the subject reveals sharp changes or oscillations of policy, corresponding with changes of Government and political parties. While there has been no material change in the method of investigating titles, the mind of the Legislature has swung like a pendulum between

the extremes of restriction against private alienation and free trade in Native lands.

A *résumé* of our early Native-land laws down to the year 1890, with pertinent criticisms, is set forth in the report of a former Royal Commission, appointed in the year 1891, and composed of Messrs. W. L. Rees, J. Carroll (the present Native Minister), and Thomas Mackay (see Appendix to the Journal of the House of Representatives, Sess. II, Vol. ii, 1891, G.-1). We give a *précis* of the very able historical review made by that Commission.

The important changes in policy, it will be noted, were made—

1. In the year 1862. Prior to this Native lands were alienated, although the ownership had not been ascertained by a competent tribunal. The Act of 1862 required that the question of Native ownership should be decided prior to the sale or leasing of the land. The Crown waived its right of pre-emption. Direct dealings with Maoris for their lands, under certain restrictions and after ascertainment of title, were authorised.

2. In 1865 the Native Land Court was constituted as a tribunal to investigate titles. By the adoption of a strange course of procedure not more than ten individuals could be inserted in any certificate of title. These individuals became for purposes of alienation the absolute owners of the lands vested in them. Europeans commenced to deal with them by purchases, leases, and mortgages, and vast areas of land were thus acquired by Europeans in many districts. The Maoris, who by custom were the owners of these tribal lands, and whose rights as beneficiaries should have been recognised by law, saw those lands passing, in many cases without their concurrence and against their will, into the hands of strangers.

3. The complaints arising out of the operation of the Act of 1865 necessitated the change made by "The Native Land Act, 1867," section 17. While certificates of title could still be issued to ten of the owners, the names of the beneficiaries were required to be registered. But, not to impede settlement, the ten nominal owners were empowered to lease for a term not exceeding twenty-one years, but not to sell or mortgage until the land had been subdivided. Large areas were leased under this Act by the ten nominal owners. The Act was useful in preventing the absolute alienation of the lands from the beneficial owners.

But the interests of beneficiaries had not been safeguarded under these two Acts as to the proper and due distribution of purchase-money or rents. Cases of misappropriation by the certificated owners were only too frequent.

4. The next great change was made in 1873. The Legislature by that Act established the principle of individual title. The memorial of ownership, by which name the instrument of title under the new Act was called, contained the individual names of every member of the tribe or hapu interested in a particular piece or block of land. While recognising the right of direct negotiation between the owners and Europeans, restrictions were imposed, which hampered alienation. No contract or agreement, no lease, sale, or mortgage, could be valid or effectual unless it were executed by every person named in the memorial, and in accordance with the prescribed formalities.

The Commission remarks generally on the effect of this change,—

"This Act, having established the principle of individual title where no such title by nature existed, has been the foundation and source of all the difficulties which have since arisen, not only in the transfer of land from Natives to Europeans, but in the settlement of the North Island of New Zealand. . . . This erroneous principle has been the pregnant cause of mischief and confusion. The continual attempts to force upon the tribal ownership of Maori lands a more pronounced and exact system of individual and personal title than ever obtained under the feudal system among all English-speaking peoples has been the evil of Native-land dealings in New Zealand."

The opinion of the late Mr. Justice Richmond is quoted. He strongly disapproved of direct individual dealings between Maoris and Europeans. He advised that all conveyances made to Europeans should be by grant from the Crown; that the chief Natives should be required to sign on behalf of the community an instrument of cession into the hands of the Crown for the purpose of making the proposed grant.

Remarking on the evil effects of the system inaugurated by the Act of 1873, the Commission goes on to say,—

"The tendency in the Act to individualise Native tenure was too strong to admit of any prudential check. The desire to purchase Native estates overruled all other considerations. The alienation of Native land under this law took its very worst form and its most disastrous tendency. It was obtained from a helpless people. The crowds of owners in a memorial of ownership were like a flock of sheep without a shepherd, a watch-dog, or a leader. Mostly ignorant barbarians, they became suddenly possessed of a title to land which was a marketable commodity. The right to occupy and cultivate possessed by their fathers became in their hands an estate which could be sold. The strength which lies in union was taken from them. The authority of their natural leaders was destroyed. They were surrounded by temptations. Eager for money wherewith to buy food, clothes, and rum, they welcomed the paid agents, who plied them always with cash, and often with spirits. Such alienations were generally against the public interest, so far as regards settlement of the people upon the lands. In most of the leases and purchases effected the land was obtained in large areas by capitalists. The possession of wealth, or that credit which obtained it from financial institutions, was absolutely necessary to provide for Native agents, interpreters, and lawyers, as well as to distribute money broadcast among the Native proprietary. Not only was this contrary to public policy, it was very often done in defiance of the law.

"Of all the purchase-money paid for the millions of acres sold by the Maoris not one sixpence is left. Their remaining lands are rapidly passing away. A few more years of the Native Land Court under the present system, and a few amended laws for free trade in Native lands, and the Maoris will be a landless people.

"But it was not only in the alienation of their lands that the Maoris suffered. In its occupation also they found themselves in a galling and anomalous position. As every single person in a list of owners comprising perhaps over a hundred names had as much right to occupy as any one else, personal occupation for improvement or tillage was encompassed with uncertainty. If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture. The apprehension of results which paralyses industry cast its shadow over the whole Maori people. In the old days the influence of the chiefs and the common customs of the tribe afforded a sufficient guarantee to the thrifty and provident; but when our law enforced upon them a new state of things, then the lazy, the careless, and prodigal not only wasted their own substance, but fed upon the labours of their more industrious kinsmen.

"The pernicious consequences of Native-land legislation have not been confined to the Natives, nor to the Europeans more immediately concerned in dealing with them for land. The disputes then arising have compelled the attention of the public at large, they have filled the Courts of the colony with litigation, they have flooded Parliament with petitions, given rise to continual debates of very great bitterness, engrossed the time of Committees, and, while entailing very heavy annual expenses upon the colony, have invariably produced an uneasy public feeling."

So far the policy followed by Parliament was to permit direct negotiation for the sale, lease, or mortgage of Native lands, subject to ascertainment of title and complying with certain formalities. The Crown had waived the right of pre-emption. This was the heyday of the free-trade policy.

In 1884 we have the first signs of another change. The Crown resumed its pre-emptive right in the King-country by "The Native Land Alienation Restriction Act, 1884," and absolutely prohibited on penalty of fine and imprisonment the sale or lease of any portion of that territory to private individuals. In 1886 the Native Land Administration Act was passed. It was an effort to stay the individual dealings with Native lands. The Act was inoperative owing to two reasons, the first of these being that the control of their lands was taken away from the Maoris and placed in the hands of persons not in any way responsible to them; the second, that the Act was made optional, not impera-

tive. No lands were brought under its operation. The Maoris objected to being totally deprived of all authority and management of their ancestral lands, and therefore they refused to bring those lands under the Act.

The Act was repealed by section 4 of "The Native Land Act, 1888." The repealing Act revived free trade in individual interests in land. But cases decided in the Supreme Court and the Court of Appeal revealed dangers, and created uncertainty in regard to transactions between Maoris and Europeans under the Act of 1873, and in 1890 a Commission was set up to inquire into the position of these transactions. As a result the Legislature decided two years later to set up a distinct tribunal called the Validation Court for the purpose of inquiring into the *bona fides* of past transactions, which informalities and changes in the law had affected, and validating them.

The Commission of 1891 advised the appointment of a Native Land Board, to which would be delegated the sole power of leasing and managing tribal lands, under directions from Native Committees representing the owners of the various blocks. It expressed the opinion that "the public would thus be able to obtain land in many districts now locked up, in suitable areas, at inconsiderable cost, with perfect titles, and without delay."

It remains for us to sketch the progress of policy since 1891. The colony was concerned at that time with the insecurity of titles obtained by purchasers and lessees, revealed by the decisions of the Supreme Court. Validation Acts were passed (1892 and 1893), and a special Court constituted for the purpose of investigating the *bona fides* of transactions. In 1892 the pre-emptive right was resumed all over the colony, and the Government set about the purchase of Native lands in a systematic manner. The issue of a Proclamation that the Crown was in negotiation for the purchase of any Native land barred private dealings until the withdrawal of the Proclamation. The scheme was further amplified by "The Native Land Purchase and Acquisition Act, 1893," but that Act seems to have remained inoperative. It was not until 1894 that Parliament passed a general enactment. Section 117 of "The Native Land Court Act, 1894," prohibited private dealings with Native lands, but saved all the rights of the Crown. Provision was made for the completion of pending dealings. At the same time, in order to facilitate alienation and to overcome the difficulties of communal ownership, provision was made for the incorporation of the owners of a block or of adjoining blocks, and the appointment of Committees with full powers to alienate, subject to the consent of the Commissioner of Crown Lands for the district and the control of the Public Trustee over the proceeds of alienation.

In 1895 the Governor was empowered by Order in Council to except lands from the operation of the restrictive section 117 of the Act of 1894. There was thus centralised in the Government of the day the power (1) of deciding by Proclamation what Native lands should be acquired for general settlement, and (2) by Order in Council of deciding what lands of what Native owners should be sold, leased, or mortgaged to private individuals.

From 1895 to 1900, although there were numerous amendments made in the law, there was no change in policy. But the period is marked on the one hand by a vigorous prosecution of the purchase of Native lands by the Crown, and on the other hand by a constant use of the Governor in Council's power of excepting lands from the restrictions against private alienation. Subsidiary schemes for the settlement of Native lands were put forward and sanctioned by the Legislature, generally in the direction of consolidating in the hands of committees or of trustees the powers of alienating or of managing tribal lands, so as to overcome the difficulties of title inherent in tribal lands with large numbers of individual owners. Thus section 3 of "The Native Land Laws Amendment Act, 1897," empowered the Native owners to convey to the Surveyor-General or the Commissioner of Crown Lands or to some other fit person appointed by the Governor upon such terms as to sale, leasing, managing, improving, and raising money upon the same as may be agreed upon between the parties, or as may be declared by the Governor in Council.

In conjunction with the Native-land legislation of this period it must be borne in mind that the question of land-settlement generally had more than any other subject occupied the forefront of colonial politics. "The Land Act,

1892," had defined the tenure of the Crown lands of the colony, and confirmed the principle of small holdings. The Native-land Purchase Acts of 1892 and 1893 were framed for the purpose of bringing Native lands under the operation of the Land Act. In 1894 Parliament sanctioned the compulsory acquisition of private estates (except Native lands) for closer settlement, and for the assistance of the small settler the Advances to Settlers Office was created. For the purposes of the Land Act 2,729,000 acres of Native lands were purchased between 1892 and 1900 (including incomplete purchases subsequently completed), at a cost of £775,500. During the same period the Governor in Council excepted from the operation of section 117 of "The Native Land Court Act, 1894," an area of 423,184* acres for the purpose of lease or sale to private individuals and of mortgage to the Government lending Departments. The procedure of obtaining an Order in Council excepting land for the purpose of leasing was subject to so much delay that comparatively little land was brought under cultivation in this manner.

Events that followed in quick succession between 1892 and 1900—the wholesale purchase of Native lands under the pre-emptive right at prices that seemed inadequate, and under a system that appealed to the weaknesses and improvidence of the Maoris; the sudden introduction of settlers into hitherto virgin areas through the medium of the ballot-box, the necessity of providing roads and other means of communication with the new settlements and of providing by rates for their maintenance; the hampering restrictions against leasing, which, while retarding the utilisation of unoccupied lands, allowed large areas of expired leaseholds to revert to the owners and to be subjected to costly and futile litigation; the delays in partitioning and surveying lands and in the completion of titles, to which delay Parliament contributed by legislative interference with the work of the Native Land Court; these and other circumstances conspired to create between 1897 and 1900 a bewildering state of affairs.

Maori opinion was gradually consolidated in numberless meetings all over the North Island, and for the first time the Waikato confederacy, under the leadership of their hereditary chief and of their representative in Parliament, took an active part in Maori politics. Petitions setting forth general principles for the future administration of Native lands were presented year after year, and one numerously signed was presented to the late Queen Victoria on the occasion of her Diamond Jubilee. Though divided on many points, the tribes were unanimous in asking—

(i.) That the Crown cease the purchase of Native lands;

(ii.) That the adjudication, management, and administration of the remnant of their lands be vested in controlling Councils, Boards, or Committees composed of representative Maoris.

The revulsion of feeling not only of the Maoris, but of the general public and of Parliament, against the Crown purchases influenced the Government to put proposals before Parliament, which, without waiving the Crown's right of pre-emption, practically decreed the cessation of its purchases, except as to dealings then pending. The preamble to "The Maori Lands Administration Act, 1900," recites the policy of the Legislature in placing it upon the statute-book, and it is well, in view of the position to-day, that the policy enunciated there, however ineffective the operative sections of the Act may have proved, should be borne in mind. The preamble recites as follows:—

"Whereas the chiefs and other leading Maoris of New Zealand by petition to Her Majesty and to the Parliament of New Zealand urged that the residue (about five million acres) of the Maori land now remaining in possession of the Maori owners should be reserved for their use and benefit in such wise as to protect them from the risk of being left landless: And whereas it is expedient, in the interests both of Maoris and Europeans of the colony, that provision should be made for the better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive, and for the encouragement and protection of the Maoris in efforts of industry and self-help: And whereas it is necessary also to make provision for the prevention, by the better administration of Maori lands, of useless and expensive dissensions and litigation. . . ."

* See G.–4, 1905. The figures are made up to the 31st July, 1904.

The first proposition was effected, as we have seen, by the discontinuance of the Crown purchases. To "make provision for the better settlement and utilisation of large areas of Maori land at present lying idle and unproductive" it was proposed to constitute Maori Land Councils, in which lands could be vested by the owners, or which could be appointed by the owners as their agent for the purpose of leasing their lands. This would obviate the difficulties of individual ownership, and enable large blocks to be dealt with, for the Council as trustee or agent could guarantee to the successful applicant a perfect title. The Legislature had worked its way back to the position it assumed under "The Native Land Administration Act, 1886." For the reasons given above, this Act remained inoperative, and was subsequently repealed. The Act of 1900 was doomed to fail for the same reasons. It is true that in the Whanganui District large areas were voluntarily vested in the District Council, and steps were taken in the King-country, the Hot Lakes District, and on the East Coast to vest other lands by deed of trust in the respective District Councils. But on the whole the Maori people showed an unwillingness to intrust the administration of their lands to the Councils. The reasons are not far to seek, and may be stated as follows:—

(*a.*) They objected to being deprived of all authority and management of their ancestral lands.

(*b.*) Experience had not convinced them of the stability of legislative enactments, and they suspected that the new policy was only another attempt to sweep into the maw of the State large areas of their rapidly dwindling ancestral lands.

(*c.*) They had not as yet been convinced, as European lessees or purchasers knew to their cost, of the expense, delays, and uncertainty attending alienations by direct negotiation; that in all these bargains the fair value of the alienated land was discounted by these elements in the mind of the European negotiator.

(*d.*) Most of the lands, which in the year 1900 were declared to be lying idle and unproductive, had reached that stage when the struggle in the Native Land Courts was or anticipated to be most acute, and for the majority of the Maori owners, so long as the title was in abeyance and they were immersed in the joys of litigation, the settlement of the country could wait. It was for the moment outside the range of their politics.

Between 1900 and 1906 we therefore find the Legislature encroaching upon the principle of voluntarily vesting lands in the Council for administration. By section 8 of "The Native and Maori Land Laws Amendment Act, 1902," the Governor was empowered to vest lands in the Council as sites for townships; by section 9 of "The Native Land Rating Act, 1904," the Native Minister was empowered to vest lands in the Council on default of payment of rates; by section 3 of "The Maori Land Claims Adjustment and Laws Amendment Act, 1904," certain lands, specified in the Schedule, over which the Native Minister had discharged survey mortgages in order to prevent the sale of the equity of redemption, were vested in the Councils. But the greatest step was taken in 1905, when section 8 of "The Maori Land Settlement Act, 1905," left it to the discretion of the Native Minister in two districts—Tokerau (being the whole of the district north of Tamaki at Auckland), and Tairawhiti (being, roughly, the portion of the Hawke's Bay Land District lying to the north and north-east of the Waikari River, south of Mohaka)—to move the Governor in Council to vest in the Maori Land Boards of those districts lands which in the opinion of the Native Minister were not required or not suitable for occupation by the Maori owners. Last year the vesting of lands in the Boards by the Governor in Council was authorised by sections 3 and 4 of "The Maori Land Settlement Act Amendment Act, 1906," (1) where the lands were infested with noxious weeds, and (2) where they were required for settlement by the Maori owners on a proper and effective basis. These two sections are in force throughout the North Island. The position reached in 1906 was therefore this: that Parliament, or those initiating the Native legislation, recognising the unwillingness of the Maori people to place their lands under the administration of the Councils or Boards, had decided to use compulsion in certain cases.

Concurrently with the development of this policy, limited private alienation was permitted by the legislation of 1900, and in districts hitherto restricted, such as the King-country and Upper Whanganui, many blocks were leased with the consent and upon the recommendation of the Councils. The tendency towards "free trade," which had persisted throughout the long course of legislation, developed in 1905 a demand for the removal of all restrictions against leasing, and the adherents of that policy succeeded in placing on the statute-book section 16 of "The Maori Land Settlement Act, 1905," which permitted a greater measure of freedom in leasing Native lands than had been enjoyed for over a decade.

There is no doubt in our minds that the legislation of 1894 to 1900 and that of 1900, by tying the hands of the Crown in the further acquisition of Native lands, by restricting the leasing of those lands and by substituting a system depending for its success on the willingness of the Native owners to vest areas in the administrative bodies constituted, created a deadlock and a block in the settlement of the unoccupied lands. On the other hand, the vigorous settlement of Crown lands under the Land Act and the Land for Settlements Acts exhausted the available supply of lands suitable for close settlement. The agitation of 1904 and 1905 forced the Crown once more into the field to resume its purchases, forced Parliament to sanction the compulsory vesting of lands in the Maori Land Boards, and reopened the free leasing of Native lands.

Upon the Maori owners, apart from the bewilderment produced by conflicts of policy, the legislation had a twofold effect: Thrown to a great extent upon their own resources, and actuated by the example of farmers newly settled in their midst, alarmed by the criticisms of the Press and the drastic schemes outlined therein or from the political platform, pointing in the direction of compulsory seizure and practical confiscation, they contemplated the possibility of utilising their lands in the pakeha way. A survey of the position revealed the difficulties inherent in individual ownership, which prevented organized effort as well as individual action. The demand to be assisted to farm their own lands, under a system affording scope to the more capable and energetic individuals of the community, was conveyed to Parliament by petition and the representations of the Maori members. In 1905 and 1906 this new aspect of the Native-land question was presented to the country, and occupied, among other matters already reviewed, a prominent place in the deliberations of Parliament.

### Existing Modes of Disposition.

The various methods of alienating or rendering Native lands available for settlement may thus be summarised:—

1. By sale—
   - (*a.*) To the Crown, in accordance with sections 20 to 25 of "The Maori Lands Administration Act, 1905." The Crown must buy at not less than the assessed value, and must see that sufficient land is reserved for the support and maintenance of the vendors. The Crown can, by obtaining the signatures of a majority in value of the owners, acquire the whole of any block on payment to the Receiver-General of the purchase-money for the interests of the minority who have not signed.
   - (*b.*) To private persons—
     - (i.) If the land was a separate area owned by not more than two persons, the title to such land as a separate area having been ascertained by partition or otherwise prior to the 31st October, 1895.
     - (ii.) If owned by more than two owners, then subject to removal of restrictions by the Governor in Council on the recommendation of the Maori Land Board.

     And subject in either case to compliance with certain formalities and to confirmation.
2. By lease—
   - (*a.*) By direct negotiation between lessees and Native owners, subject to compliance with formalities in the execution of deeds

and the approval of the Board of the terms and conditions of the leases, or in some cases to confirmation by the Native Land Court.

(*b.*) By direct negotiation between the committees of incorporated blocks, or Trustees appointed under the Act of 1897, and private persons.

(*c.*) By vesting voluntarily or by Order in Council in the Maori Land Board, or by appointing the Board agent and the Board leasing the land in suitable areas by tender or auction.

We are not concerned in this broad statement with cases of alienation by way of mortgage, or for the satisfaction of survey liens, or with the operation of wills.

### Crown Purchases.

Prior to 1905 there was no legislative regulation fixing the minimum price to be offered by the Crown for Native lands. Except for public works and scenic reserves, there was no provision for the compulsory acquisition of such lands. We have already remarked on the injustice of Crown purchases prior to 1905, and shown how a vast estate passed from the Maori owners for the purposes of general settlement in the Whanganui and Rohe-Potae districts at a price which seems inadequate. Parliament in 1905 fixed the minimum price at the capital value assessed under "The Government Valuation of Land Act, 1896." This was equitable. But in the absence of competition an approach to market value was difficult of ascertainment. It is admitted that, in respect of lands carrying milling-timber in localities where such timber can be economically worked, the Crown has made no allowance for its value, alleging that in the hands of the Waste Lands Boards milling-timber is not an asset. But why should the Maori owners be penalised because in the administration of our Crown lands the most has not been made of valuable milling-timber?

Theoretically the Crown does not buy unless the owners are willing to sell. But the experience of half a century shows—(1) that in the absence of competition produced by restrictive legislation, and in the face of encumbrances due to litigation and survey costs, circumstances are created which practically compel the Maori people to sell at any price; (2) that the individualisation of titles to the extent of ascertaining and defining the share of each individual owner in a tribal block owned by a large number gives to each owner the right of bargaining with the Crown and selling his interest; it gives scope to secret dealing, and practically renders impossible concerted action on the part of a tribe or hapu in the consideration of the fairness or otherwise of the price offered, or in the consideration of the advisability of parting at all with the tribal lands; (3) that the weaknesses and improvidence of the race are directly appealed to. The sight of a Government cheque-book and the prospect of a good time at the hotels or on the racecourse or of an investment in the latest motor-car are sufficient for the majority of owners in any Native block to waive all consideration, and to put their signatures to the purchase-deeds.

There was no provision prior to 1905, nor is there now, for controlling and preventing the wasteful expenditure of the proceeds of a sale. Under the present system no purchase can be effected if the Native owners were informed that the purchase-money would not be paid directly to them, but would be held in trust by some responsible officer or body to be expended for the improvement of other lands belonging to the vendors or to be invested for their benefit. That such a provision is necessary at the present time the evidence of waste and prodigality in connection with the recent purchases in Hawke's Bay, Whanganui, and the King-country is absolutely conclusive.

That there is danger of the Maori, if unchecked, divesting himself completely of his interests in land has long been recognised, but it was not till 1905 that the duty was cast upon the Governor of ascertaining before the completion of a sale whether the Maori vendors have other land sufficient for their maintenance, and of either reserving a sufficiency out of the land under purchase or setting apart other Crown land for the purpose. The minimum area considered sufficient is fixed by statute at 25 acres of first-class land, or 50 acres of second-class land, or 100 acres of third-class land for each man, woman, or child. The Governor may impose restrictions on this reserve, or vest the same in some

administrative body for the benefit of the vendors. Any larger area may be reserved, of course; but it is easy to contemplate circumstances where the liberality of the Crown may be affected and circumscribed by the pressing demand for land.

In our report on the King-country lands we noted one provision in recent legislation whereby the sale by the majority in value of a block passed the interest of the minority and enabled the Crown to complete its title to the whole block.

While it is clearly the duty of the State to provide land for the wants of an increasing population, it must see that in the performance of that duty it does no injustice to any portion of the community, least of all to members of the race to which the State has peculiar obligations and responsibilities. The time has come when it behoves the State to consider not the theory on which its purchases of Native lands are founded, but the practical results of a system which, with occasional pauses and slight improvements, has persisted for more than half a century.

An alternative has been suggested that the Land for Settlements Acts shall be applied to Native lands. It is urged that, as the private estate of a European may be acquired compulsorily for close settlement, so the private estate of a Maori should be subject to the same liability. Legislation in this direction would not contravene the articles of the Treaty of Waitangi. But, supposing such legislation were passed, the limitations imposed (see section 12 of "The Land for Settlements Consolidation Act, 1900") on the right to take land compulsorily, as the law now stands, will prevent the acquisition, we believe, of any but a very small area of Maori land. For if each of the Maori owners exercised the right of selecting and retaining, say, up to only one-half of the maximum of 1,000 acres of first-class land, or 2,000 acres of second-class land, or 5,000 acres of third-class land, we know of only three cases in the districts we have visited where any surplus will be available for settlement purposes. And surely it will not be suggested in the case of a Maori owner of land that his right of selection shall be restricted within such limits, narrower under the circumstances than those permitted to a European, as to insure the acquisition of areas worth all the trouble to the Land Purchase Commissioners. To do so would be to reveal a desire to ignore "The Maori Rights Act, 1865," and to treat the Maoris not as citizens entitled to equal rights, but as pariahs.

It is our duty to point out that it would be difficult to defend the present system of land-purchases. The Crown purchases land from the Maoris, and pays for these purchases out of borrowed money. As soon as the purchases are complete and a title obtained from the Native Land Court the land is passed over to the Lands Department for survey, sale, &c. The income derived from the sale of these lands becomes ordinary revenue. No provision is made for the repayment of the amount borrowed for the purchase of the lands. We do not suppose that any one would say that this is sound finance, yet this is the system that has been going on for a number of years, and it has been the policy adopted not by one Government, but by many Governments.

Our review of the position compels us to recommend to Your Excellency that the acquisition of Native lands by the Crown under the present system of purchase be discontinued.

## Private Alienation.

The view has been repeatedly urged that the Maori should be permitted full freedom to dispose of his lands as he thinks fit, on condition that he does not denude himself of his estate, but be compelled to retain "sufficient land for his occupation and maintenance." The policy is stated in another way: that the Maori should be placed on the same footing as the European in regard to the disposition of his lands.

Dealing first with alienations by way of sale, we quote the statement made to the Commission of 1891 by Mr. E. Bell, of the legal firm of Bell, Gully, Bell, and Myers, as to the different steps by which an ordinary investor in Maori

lands has possibly to proceed before he secures a registrable title to the property. With few amendments, necessitated by amendments in legislation, his statement will apply to-day if "free trade" in Native lands were resumed.

Mr. Ernest Bell, in reply to the questions put by the Commission of 1891, said (see G.–1, 1891, pp. 162–63),—

"The person dealing may not have had previous experience. He may be a *bona fide* settler going for the first time to take up a block of land, and he has entered into a contract on his own account with the Natives for lease or purchase at a certain consideration. If he is wise he next consults a lawyer, and has a search made, which elicits the fact that there is a large number of Native Land Court fees outstanding, which he has to pay, and an enormous survey lien, which he is also called upon to pay. The piece of land for which he is negotiating may be 100 acres out of, say, 1,000 covered by the lien. He is told, however, that he must pay the whole of the survey lien on the 1,000 acres, because there is no person who can or will apportion the survey lien to the 100 acres. He then has his deeds prepared, and he pays interpreters in different places where signatures have to be obtained for the usual indorsement and interpretation. He then takes his deed to the Stamp Office, as he has to have it stamped before it passes the Trust Commissioner. He is there told that rates have been accumulating upon this block since the year 1, and he is mulcted, first of all, in a proportion of the rates that have accumulated on the land. He has probably had some difficulty in getting all the signatures, and perhaps he has not been able, through the Natives living in different parts, and through the difficulties that are always connected with the obtaining of Native signatures, to get all the signatures within the three months from the date of the first signature. The Stamp Office then proceed to assess the duty. They first of all assess the Native duty of 10 per cent. upon the capital value of the lease, or 10 per cent. upon the principal. They then tell him that, as he has not presented the deed within the prescribed three months from the date of the first execution, he must pay 100 per cent. fine upon this 10 per cent. duty. . . . They then tell him that the ordinary duty is at the rate of 7s. 6d. upon every £50 (in the case of a purchase), and that he is fined the maximum penalty for the ordinary duty also. He then has to pay the fee required in the Trust Commissioner's Court, and the Trust Commissioner may make requisitions before giving his certificate. Either before or after he has passed the Trust Commissioner for adult signatures he has to go to the Supreme Court for the passing of the alienation of minor's interests by the trustees. There are certain affidavits and fees which have to be made and paid in the Supreme Court, and he has to pay his lawyer's bill for going before the Judge. After he has got his deed through these ordeals he presents it for registration. He is then informed that it appears he has been purchasing from some successors. Evidence is required that the succession duties on the succession orders have been paid. He probably has never heard about the succession duties at all, but he is told that he cannot register until he pays them. He then has to go to the trouble of getting from the Property-tax Commissioner an assessment of the deceased Natives' share. He then has to prepare the papers for the Stamp Office and send them up for execution. The interpreter has again to be called in and the whole business gone over again. When the deceased's estate duties are paid —and he has also to pay fees for copies of succession orders to be lodged with his deeds—he then is told that upon payment of certain other fees, and probably one or two liens which were omitted before, he will get his deed registered. And after all this he may be told that his title is not good, and a caveat may be lodged. A petition may be presented to Parliament complaining of the whole transaction. Then the petition is considered by the Native Affairs Committee, and the unfortunate man has to come down to Wellington, attend before this Committee, and pay all his witnesses' expenses. The Native Affairs Committee refer the petition to the Government, and the Government may order a further inquiry to be made by the Trust Commissioner. During the recess the Trust Commissioner holds the inquiry, and states that he is satisfied with the transaction, and thinks that the title ought to issue. By the time that this

inquiry is over another session has come round, and a further petition is presented complaining about the Trust Commissioner's inquiry; and a new member of Parliament may come upon the scene—entirely new to the whole of the previous transactions—and he thinks that there has been great unfairness towards the Natives, and the whole business is raked up in Parliament. In the meantime the subject of all these processes has had probably to pay the expenses of bringing his witnesses forward for the second inquiry by the Trust Commissioner. It is possible then the case may become the subject of Supreme Court proceedings. This is a shocking state of affairs. It is a scandal in a civilised country. . . . And I think I am not exaggerating the position when I say that, generally speaking, no lawyer can honestly advise a client of his to have anything whatever to do with Native-land dealings."

In our report on lands in the Whanganui District (pp. 14 and 15) we dealt fully with the leasing of lands in that district since the general removal of restrictions against leasing effected by section 16 of "The Maori Land Settlement Act, 1905." It is admitted that large areas of hitherto unoccupied lands have thereby been brought under settlement. But it is well for the colony to know some of the existing defects in legislation, some of the dangers and difficulties attending the leasing of lands by direct negotiation with the Maori owners.

### Limitation of Area.

The maximum area that may be included in any one lease is fixed at 640 acres of first-class, 2,000 acres of second-class, 5,000 acres of third-class, and 15,000 acres of fourth-class land, and in exceptional cases the limit of 15,000 acres may be exceeded. But a question has been raised whether there is anything to prevent a lessee taking up as much land as he likes in separate leases, each covering an area not exceeding the prescribed maximum.

Any person holding or owning more than 2,000 acres of freehold land, inclusive of not more than 640 acres of first-class land, is debarred from leasing (in his own name) any Native land. But a person holding or owning just that maximum and no more may probably lease further, and even to the extent of as much land as he can get. Further, it is doubtful whether the present occupier under lease of the largest tract of land, provided his freehold, if any, did not exceed the above maximum, cannot acquire further leasehold to any extent.

It is probable also that there is nothing in our Maori-land laws to prevent the aggregation of leasehold lands; there is no provision governing transfers or requiring from a transferee or sublessee a declaration as in the case of the original lessee; so that probably leaseholds may be aggregated either in the hands of a person already possessing an abundance of leaseholds, or in the hands of those who own large freeholds.

It is a curious reflection that, while the colony has committed itself to a policy of close settlement in respect of Crown lands, with limitations as to the area any one selector may hold, it has permitted, and still apparently permits, aggregation in Native lands.

The question arises, ought there to be any limitation of holdings in Native land? We need not point out that nation after nation has found that the aggregation of estates is against the well-being of the people. This has been affirmed from Pliny's days to the present, and we assume that the policy of this country is aginst that "*latifundia*" which is said to have destroyed Italy. In the administration of our Crown lands the limitation of holdings has been the avowed policy of the colony for thirty years, and has been affirmed by all political parties. The Land Act of 1877, initiated by Mr. Donald Reid, as Minister of Lands in the Atkinson Ministry, prescribed the maximum of land that could be held by any one selector in the case of rural land on deferred payment as 320 acres, and no person who was the owner in fee of 640 acres in all could become a selector. "The Land Act 1877 Amendment Act, 1882," introduced by the late Mr. Rolleston, then Minister of Lands in the Whitaker Ministry, contained the following provision in reference to perpetual leases

(section 13): "No lease shall be made to any person owning, nor shall any person be capable of becoming the lessee under a lease or a sublease who owns, any freehold land or land held under lease or license from the Crown whereby such person shall become either the owner, tenant, or occupier, in the whole, either by himself or jointly with any other person or persons, including the lands comprised in the lease, of a greater area than six hundred and forty acres anywhere in the colony."

And so through subsequent Land Acts and in the Land for Settlements Acts the principle has been affirmed. It was no doubt intended to apply the principle to Native lands in the Acts passed in 1895, 1900, 1901, and 1905. The intention of the Legislature has sometimes been defeated by ambiguity and looseness of language in the sections referring to the matter. We think that the intention of the Legislature should be placed beyond doubt, and in the direction of limiting the amount of Native land that should be purchased or leased and held by any one person, with a provision against subsequent aggregation through transfers or subleases.

It is outside the bounds of our Commission to inquire as to whether the limitation of area could not be dispensed with by the substitution of a graduated land-tax; but if limitation of area is a proper policy, as has been so often affirmed by the New Zealand Legislature, surely the limitation should be directly enforced.

### Other Difficulties.

Difficulties inherent in the nature of Native-land titles present themselves to the intending lessee. In the absence of any statutory administrative body to guarantee a title to the lessee, he has to take many risks and move in the direction of perfecting the title of the owners of the land under negotiation. If the area of the block to be leased exceeds the prescribed maximum for the class of land to which its position, quality, and character assigns it, the intending lessee may, notwithstanding, obtain the individual signatures of owners and risk on a subsequent partition complications as to the allocation of the interests acquired; or he may move the owners to apply for partition, and on that being done acquire the land by two or more leases. The Land Court may, however, refuse to subdivide until the survey of the original block or subdivision has been completed. Or the title may be subject to appeals, and pending the decision of the Native Appellate Court a negotiation for a lease, if it can take place at all, would be extremely risky. Where there are minors in the title—and there is hardly one Native block without one or more minors among the owners—other complications arise which, as we noted in our report on lands in the King-country, have blocked the registration of leases.

The term "free trade" is a misnomer as applied to such a system of land-dealing. It should mean in practice that all the people in the colony should be put on an equality in dealing with Maori lands. If the Maoris were allowed to sell when, how, and to whom they pleased, the people of the colony would not be put on an equality. Leading jurists have pointed out that even in the ordinary business of life freedom of contract is often a delusion. A recent writer—Melville M. Bigelow, Dean of the Faculty of Boston University—in his opening address, delivered in the Law School for the year 1906–7, said, *inter alia*, "Freedom of contract proved the worst kind of delusion. It runs to gigantic monopoly, and threatens to-day, whether for good or ill I am not concerned as a teacher of law to say, the whole fabric of equality." If the Maoris were permitted to sell their lands as they pleased it would mean the granting to certain individuals in this community of a gigantic monopoly.

We said in our Whanganui report, "Theoretically there is competition; practically there is none. The first man to secure the assistance of the leading influential owners to carry the deal through generally gets a clear field until he obtains the signatures of all willing to lease. And again, "It is possible for an ordinarily resourceful man, who is *persona grata* to the Maoris, who knows where to look for the influence necessary to 'round up' the scattered owners of a block and obtain their indispensable individual signatures—it is possible

for such a man to negotiate successfully all the leases he may require, and even to set up in business as a medium for obtaining leases for less fortunate, if *bona fide*, settlers not so well versed in the underground methods of dealing with Native lands. It is an art unknown to nine-tenths, if not more, of those who are searching one end of the colony to the other to find land, and because of their ignorance make the Native lands the butt of their indignant complaints. There is freedom of leasing to the man who knows, and unlimited scope for operating. To the disappointed frequenter of the land-ballots the way is practically closed."

Further, it has to be remembered that the large Maori blocks are communal or tribal lands, and therefore in one sense they may be said to be impressed with a trust. To allow the present possessors to destroy the tribal land means that they should destroy the tribe, and what has happened in the past would happen in the future—that certain persons, adepts in what was once termed "Oriental finesse," would become the possessors of Maori land for nominal sums.

The only fair thing, in our opinion, both to the Maori owners and to all would-be purchasers or lessees, is that the latter should be put on an equality, and this can only be attained by allowing the highest bidder to become the purchaser or lessee, but limiting the persons who can become competitors according to the extent of their land-holdings at the time of sale, so as to accord with the policy of the country in respect of Crown lands.

## Guarantee of Title.

But no such scheme as is indicated in the last paragraph is possible unless at auction the title is guaranteed to the highest bidder. And here the nature of the Native title places insuperable difficulties in the way. You cannot control the wishes of numerous individual owners, each of whom is given the right to dispose of his interest as he thinks best. The son will differ from the father, the sister from brother. No auctioneer under such circumstances can give satisfactory assurances.

It has been suggested that to meet the difficulty the lands should be partitioned so that the interest of each owner is defined by survey on the ground. We are of opinion that, even if the number of Native Land Court Judges were increased twofold, even if partitions were promptly surveyed by an adequate staff of surveyors, and the whole cost of these proceedings borne by the State, the task would be impossible of achievement within such limit of time as to satisfy the impatience of the country for the speedy settlement of the unoccupied Maori lands. Our researches have convinced us that this minute subdivision of land is not in the interest of the Maori people as a whole; that it is in many cases unnecessary, in some merely wasteful. It is inimical to speedy settlement, and impossible to carry out in a practical and effective manner, apart altogether from the enormous cost that would be entailed upon the land and its owners. We have quoted examples in our reports on lands in Wairoa (Hawke's Bay), Whanganui, and the King-country to show the cost that has been borne by the Maori owners in the past for the subdivision of their lands, and pointed out that after twenty or thirty years the process of individualisation is far from complete even in districts where the Court has been most active.

It is a recognition of this position that has called into existence schemes based upon the principle of consolidating the ascertained interests of individual members of a family, hapu, or tribe under such control as to insure to a purchaser or lessee a good title, secured with little expense. We have already referred to some of these schemes in our introductory review of legislation. They fall under four heads:—

(1.) Administration by the Public Trustee as in the case of the West Coast and other reserves. But we are of opinion that the concentration of control in a Department not in close touch with the Maori beneficiaries and their needs, whose paramount duty is to secure revenue from every part of the estate vested in it,

is not always in the interest of the Maori beneficiaries, and is distasteful to them.

(2.) Incorporation of the owners of a block or adjoining blocks, and the appointment of a committee of management with power to sell, lease, or mortgage. This system rests on the good-will of the owners. The procedure entails expense in the obtaining of signatures, and the legislation on the subject raises many disputed and doubtful points. It is capable of improvement, and will be found useful in the case of communal lands intended to be farmed by the owners.

(3.) The appointment of trustees approved by the Governor as provided by section 3 of "The Native Land Laws Amendment Act, 1897." Very little land has been conveyed to trustees in accordance with this provision. It is practically a dead-letter.

(4.) Administration by Maori Land Boards constituted under "The Maori Land Administration Act, 1900," and amendments, and reconstructed under "The Maori Land Settlement Act, 1905."

We have already noted that the tendency in policy between 1900 and 1906 was in the direction of compulsorily vesting lands in these Boards, upon one pretext or another, for administration. We are of opinion that these Boards must be used much more freely and on a greater scale in future if large areas of unoccupied Maori lands are to be opened to settlement.

In arriving at this conclusion we have carefully considered the many questions that present themselves for investigation and answer. The solution must under the circumstances be a compromise, but its efficacy must depend largely on the view that the Legislature takes of the present needs and the future possibilities of the Maori race.

## The Position of the Maori Race.

The Maori race is, in our opinion, in a most difficult and critical position. There is great pressure from European settlers to obtain possession of their lands. Crown lands suitable for settlement are limited in area, while large tracts of Maori land are lying unused. The position of the Maori people deserves careful and immediate consideration. There are many of the tribes and hapus in what we might term a decadent state. They have lost the habits of industry of their ancestors, and they have not acquired the habits of the European in this respect, and they are looking to the future with no hope. The race in many parts of the colony has declined, and seems vital in only a few parts. What is to become of the Maori people? Is the race to pass away entirely? They are a people able physically and intellectually. We have been amazed, in meeting some of the chiefs who have appeared before us, at their intellectual vigour. We doubt if among uneducated Europeans who have had no greater advantages than the Maoris there could be produced the same percentage of men of alert intelligence. If also it is considered that half a century ago the race were living as cannibals, the immense development of the Maori people must surprise every one. The race is worth saving, and the burden and duty of preserving the race rests with the people of New Zealand. So far back as 1865 it was declared by statute that the Maori people were citizens of New Zealand, entitled to all the privileges and advantages of citizenship ("The Maori Rights Act, 1865"). The Maoris, we believe, can not only be preserved, but also become active, energetic, thrifty, industrious citizens. This is not a matter of speculation. We have seen it in some instances. On the east coast of the North Island there are industrious Maori communities just as well-behaved and just as industrious as European settlers. We see in the Thermal Springs District Maoris acting as gardeners, as labourers, and mechanics, doing work as well as Europeans, and they have been doing such work for years. And where opportunities have been given to Maoris to obtain the higher education they have acquitted themselves well.

Viewed from this standpoint the Native-land question at the present juncture cannot be dissociated and considered apart from the well-being of the Maori people. It is not for us to state, but indications all point to the conclusion that for good or ill the next few years will decide the future of the race, when the Legislature has determined not only how its surplus lands shall be disposed of, but how the reserves shall be secured against further encroachment, and utilised in a manner above the reproach of those who do not appreciate all the difficulties the Maori has to face in following in the wake of a rapidly advancing civilisation.

To our minds, what is now the paramount consideration—what should be placed before all others when the relative values of the many elements that enter into the Native-land problem are weighed—is the encouragement and training of the Maoris to become industrious settlers. The statute-book may be searched in vain for any scheme deliberately aimed in this direction. The Legislature has always stopped short when it had outlined a scheme or method of acquiring Maori lands or rendering such available in different ways for European settlement. The necessity of assisting the Maori to settle his own lands was never properly recognised. It was assumed that because he was the owner according to custom and usage, and because the law had affirmed his right of ownership, he was at once in a position to use the land. He was expected to do so, and to bear the burdens and responsibilities incident to the ownership of land. Because he has failed to fulfil expectations and to bear his proportion of local and general taxation he is not deemed worthy to own any land except the vague undefined area that should be reserved for his "use and occupation." But the causes that have conspired to the failure have not been investigated with a view to remedial measures. And where in spite of supreme difficulties the Maori has succeeded in making good use of his land the fact is not sufficiently recognised. The spectacle is presented to us of a people starving in the midst of plenty. If it is difficult for the European settler to acquire Maori land owing to complications of title it is more difficult for the individual Maori owner to acquire his own land, be he ever so ambitious and capable of using it. His energy is dissipated in the Land Courts in a protracted struggle, first, to establish his own right to it, and, secondly, to detach himself from the numerous other owners to whom he is genealogically bound in the title. And when he has succeeded he is handicapped by want of capital, by lack of training — he is under the ban as one of a spendthrift, easy-going, improvident people.

The land-settlement policy of the colony is framed in such a manner that the Waste Lands Boards undertake all the preliminary work of putting the titles to selections in order, of surveying them as far as possible with a view to practicable fencing-boundaries, road access, and homestead-sites. The selector concerns himself only with financial arrangements to effect the necessary improvements. Here again the State comes to his assistance and lends him money on easy terms. He claims such facilities and assistance as a matter of right, because he is a valuable asset to the State. Under the Land for Settlements Acts we sometimes spend as much as £13,000 for the settlement of one settler, and we suppose that the average cost of settling one settler on land under these Acts is not much less than £1,500.

In dealing, therefore, with the lands now remaining to the Maori people we are of opinion that the settlement of the Maoris should be the first consideration. And it is because we recognise the impossibility of doing so on a comprehensive scale by the ordinary method of partition and individualisation that we recommend the intervention of a body, such as the Maori Land Board, to be armed with powers sufficiently elastic to meet the exigencies of the situation.

We were directed by Your Excellency to inquire and report as to what areas could or should be set apart, *inter alia*, for future occupation by the descendants and successors of the Native owners, and how such land can in the meantime be properly and profitably utilised. In our recommendations as to the leasing of the surplus lands we were influenced largely by the necessity of

making such a provision. We are, moreover, of opinion that some of the surplus Maori land should be sold, but the purposes of any such sale should be defined. The area of good land available for disposition in this manner, having regard to the present necessities of the Maori people, their prospects as settlers under a proper system, and the needs of their descendants, is not as great as is generally supposed. Of inferior land not suitable for close settlement, and fit only for forest reserves and such purposes, there is ample, but we doubt if there will be any keen demand for such land. Where we have recommended areas for sale we have done so at the request of the owners. We have stated their wishes as to leasing.

## Recommendations.

We have the honour to submit for the consideration of Your Excellency the following recommendations. They fall under two heads—(*a*) General and (*b*) Specific.

### A. General.

1. That the purchase of Native lands by the Crown under the present system be discontinued.

Pending dealings to be completed through the Maori Land Board of each district, after due inquiry as to the wishes of the non-sellers in the different blocks affected, and with due regard to the location and accessibility of the Crown interests, three-fourths of purchase-money to be paid to Public Trustee to hold in trust for the owners, to be invested for their benefit, or used for the improvement of their other lands. Balance to be paid to owners.

2. That alienation by direct negotiation between the owners and private individuals be prohibited.

Pending dealings :—

(*a*.) Sales : These having been permitted by Order in Council, time should be given for completion of signatures and compliance with formalities.

(*b*.) Leases :—

(i.) In order to meet the difficulties raised by the presence of minors in the title, and seeing that Parliament last year intended, as we think, to empower the trustees of minors to lease to the full extent allowed as in the case of adult interests, and it having been represented to us that the Maori owners are anxious and willing that the leases should be validated, and that large sums of money have been expended by lessees in improvements and in obtaining leases, such leases shall be validated as good up to twenty-one years, and for a further term of twenty-one years if the Board is satisfied as to the rental for the extended term and that such extension will not injure the Maori infants.

(The only power that the trustee of Maori infants had to grant leases was contained in section 5 of "The Maori Real Estate Management Act, 1888." Apparently some lawyers seem to have thought that section 16 of "The Maori Land Settlement Act, 1905," gave a power to the trustees to lease up to fifty years; but any person with even a limited knowledge of law reading this section would see that it does not purport to give any such power. Europeans, however, have obtained such leases. When European trustees exceed their powers, we are not aware that Parliament ever interferes to validate their transactions. We know of no case that has ever happened in New Zealand where a European trustee has exceeded his powers that an Act of Parliament has been passed to validate his action. The only case in which something like this

was done was the case of Cutten's property; but there the beneficiaries applied to Parliament, and it was done through a private Act. But in the past when Maori lands have been dealt with contrary to law Parliament has from time to time validated illegal transactions. It is actions like these that tend to make the Maoris believe—and we cannot say that their belief is unjustifiable—that they are treated differently from Europeans. These lessees have been misled by their legal advisers. They have in some cases improved the land at considerable expense, and if their leases were declared wholly void they would suffer great loss. Possibly they may have a remedy against their legal advisers for negligence. We think that Parliament should make it known to dealers with Natives that it is not just to expect that when a European does not comply with the law in the purchase or lease of Maori lands Parliament should step in and save him from the consequences of his disobedience of statutory requirements. There are scores of cases every year happening amongst Europeans where they are unable to enforce agreements because of the non-compliance with certain statutory requirements, such as those required by the Sale of Goods Act, by the Statute of Frauds, &c. No one thinks of asking Parliament to validate such agreements. And we think that it should be made clear that Europeans ought not to be led to believe that, if they can get any agreement with a Maori, whether in compliance with the law or not, Parliament will step in and help them to make an illegal agreement valid.)

(ii.) Other leases: Within two months of the passing of an Act giving effect to these recommendations application to be made to the Board for permission to complete, and Board may grant such permission and fix a time within which leases may be completed. At end of such time, if not complete, interests of non-lessors to be partitioned.

3. Further alienations only through the Board as agent for the owners, or, in the case of lands vested in it, as registered owner of such lands.

Powers of Board:—

(*a.*) May sell land or part thereof—

(i.) If owners so desire, after due inquiry as to their wishes.

(ii.) In order to raise money for the purpose of roading, surveying, opening land for settlement, or to discharge liens and encumbrances.

(iii.) In order to raise money to enable owners to farm, or for purchase of other lands for them.

(iv.) To the Crown for the purpose of State forest reserves, reserves, parks, &c.

(*b.*) May lease (following generally section 8 of "The Maori Land Settlement Act, 1905"). And may set aside, out of areas to be leased to general public, sections to be leased to Maoris other than the owners.

(*c.*) May borrow money on the security of land or revenue for purposes indicated in clause 3, (*a*), (ii) and (iii).

(*d.*) May make reserves for burial-places, &c. (see subsection (*b*) of section 8, "Maori Land Settlement Act, 1905").

Provisoes: All sales and leases to be by auction to the highest bidder, subject to the following limitations:—

(i.) No person may acquire land, either by purchase or lease, if unimproved value thereof, together with unimproved value of land he already owns or holds under any tenure, exceeds £3,000. Declaration necessary.

(ii.) No sublease or transfer without consent of Board, who shall require sublessee or transferee to make declaration as in case (i).

(*e.*) Three-fourths of the net proceeds of sales to be paid to Public Trustee for investment.

4. Maori settlement: As to lands set apart for Maori occupation and farming.

Powers of Board:—

(*a.*) Reserve burial-places.

(*b.*) Set aside village-sites and issue occupation licenses to defined areas therein to Native owners, so as to secure good government in the kaingas.

(*c.*) Set aside papakaingas for individuals, families, or tribes.

(*d.*) Set aside blocks or parts of blocks as communal farms under the management of competent farmers, and to form the nucleus of farming communities.

(*e.*) Grant leases to Maori tenants specified by the owners for such terms as it may think fit, or issue certificates of partnership to members of families wishing to farm their subdivisions, or declare the owners of any land incorporated, in order that the land may be farmed under a committee elected by the owners.

(*f.*) Leases may contain provision—

(i.) Exempting lessee from payment of rent for term not exceeding four years.

(ii.) Requiring a percentage of improvements to be effected each year, and compelling residence and effective occupation within a prescribed time.

(iii.) For forfeiture of lease, saving value of improvements, and offer of land to other owners—failing them, to general public.

(*g.*) Raise money on security of land or revenue for purpose of advancing to Maori owners farming, or may out of proceeds of any sale form a fund for the purpose. Regulations as to terms, interest, &c.

5. Boards to have special powers as to timber, flax, minerals, grant of prospecting rights, &c.

6. To obviate delay and to secure as little expense as possible in disposal of areas for settlement, Board may offer lands after rough survey indicating allotment. Arterial roads may be laid out and formed where absolutely necessary before selection Cost of roading and survey to be loaded on sections.

7. Constitution of Boards and staff: Boards to be constituted as at present. But we think that the Presidents should be drawn from men experienced in the cutting-up and letting of lands, and should be Government officers paid by the Government. Travelling-allowances of President and allowances to members to be a charge on revenue from land. Each Board to have competent accountant as Clerk and Receiver.

8. Governor in Council may except lands from operation of above proposals, on condition that land so excepted be sold or leased at auction. Exception may be made in favour of owner, who, in the opinion of the Governor in Council on recommendation of Board, is able to manage his own affairs. Return of such exemptions to be laid on table of House within fourteen days of commencement of session.

9. Jurisdiction of Native Land Court limited as to land administered by the Board in matter of partitions, but not in regard to succession, testamentary

disposition, ascertainment of owners or beneficiaries, and adjustment of disputed tribal boundaries. Court may partition on application of Board.

10. Exchanges: Law requires amendment to permit of exchanges on large scale, so as to secure the consolidation of individual and family holdings.

We have not as yet made full inquiry into the procedure and judicial functions of the Native Land Court, but we have obtained the opinions of the Judges and Registrars of the Court, which we shall submit in a later report. We are strongly of opinion that the statutes dealing with the procedure of the Court and its functions in regard to the ascertainment of title, succession, wills, adoption, and appeals should be codified, so that the law as it is at present should be embodied in one Act; and sections dealing with special matters, and the force of which is spent, should be repealed. Then, there is urgent necessity for the codification of Native customs so far as they have been adopted and adapted by the Native Land Court. During our inquiry in the different districts we felt the need of something in the nature of a Domesday Book, which would reveal after a brief search the extent of ascertained land owned by each Maori in a district. Such a record is absolutely necessary in view of any legislation based upon the assumption of surplus lands for sale, &c., and recognising the advantage of consolidating as far as possible the interests of individual Maoris or of families. It is a large undertaking, but should be done in fairness to the Maoris and for the satisfaction of the country. It will entail expense, but we think that special officers of the Native Land Court should be detailed for such work. It may be necessary to call in the assistance of Maoris in each district.

### *Surveys.*

We have already pointed out in our interim reports the necessity for expedition in the survey of Native lands, and the vast amount of work now pending before titles can be completed and put on the Register. The matter deserves the earnest attention of the Government and of Parliament.

### *Summary of Native Lands dealt with by the Commission.*

The following is a summary of the area investigated by the Commission up to the present, and already reported on:—

| Name of District. | For Maori Occupation and Farming. | Available for Leasing. | Available for Sale. |
|---|---|---|---|
| 1. Hawke's Bay— | Acres. | Acres. | Acres. |
| (*a.*) Waimarama Estate and Poukawa ... | 26,380 | 4,680 | 2,300 |
| (*b.*) Mohaka and other blocks ... ... | 48,623 | 10,147 | ... |
| 2. Whanganui ... ... ... ... | 49,964 | 92,443 | ... |
| 3. Rohe-Potae or King-country ... ... | 92,148 | 163,769 | 34,522 |
| | 219,115 | 271,039 | 36,822 |
| Total ... ... ... | | 526,977 | |

| Area to be dealt with in | Acres. |
|---|---|
| (1.) Whanganui District ... ... ... ... ... | 90,485 |
| (2.) Rohe-Potae ... ... ... ... ... ... | 559,290 |
| Total ... .. ... ... ... | 649,775 |

Supplementary reports dealing with about 150,000 acres of this area will be presented during the session.

The area estimated to be acquired by purchase beyond the amount above stated may be put down at 150,000 acres.

It is interesting also to know what areas have been made and are now available for settlement in the various districts we have visited, by sale to the Crown or by vesting in the Boards.

*Native Lands in Districts visited by Commission available for Settlement, exclusive of Lands dealt with by the Commission.*

| | Acres. | Acres. | Acres. |
|---|---|---|---|
| 1. Whanganui— | | | |
| (*a.*) Purchased by the Crown— | | | |
| (1.) Defined ... ... ... | 68,437 | ... | ... |
| (2.) Undefined ... ... | 4,418 | 72,577 | ... |
| (*b.*) Vested in Aotea Maori Land Board for leasing— | | | |
| (1.) To be offered on 15th instant | 22,604 | ... | ... |
| (2.) Not ready for selection ... | 34,479 | ... | ... |
| (3.) For Maori settlement only ... | 7,200 | 64,283 | 136,860 |
| 2. King-country— | | | |
| (*a.*) Purchased by Crown and including areas cut out to satisfy survey liens, and not including Te Akau | ... | 65,390 | ... |
| (*b*) Balance of old purchases not selected | ... | 155,732 | 225,122 |
| Total ... ... ... ... ... | | | 361,902 |

B. Specific Recommendations.

1. Poukawa Native Reserve: An amendment to the Poukawa Native Reserve Act will be necessary to carry out our recomendations. (See G.–1, pp. 6 and 7.)

2. Waimarama Estate:—

(*a.*) Crown to acquire Waimarama 3A No. 4, 3A No. 3, and 3B.

(*b.*) Miss Meinertzhagen to obtain a lease for 4,680 acres in 3A No. 6.

(*c.*) Balance of 3A No. 6 to be leased to Morehu Turoa and Maraea Aorangi

(*d.*) Other portions of Waimarama, Okaihau, and Waipuka for use of owners.

(*e.*) Our recommendations as to Paparewa Reserve have been rendered unnecessary by the judgment of the Native Appellate Court, as the Court has practically given effect to our recommendations.

3. Mohaka, Whareraurakau, Tutaekuri No. 1, Tutuotekaha 1B, 2, and 4, Nuhaka No. 2 Subdivisions: We think that the Tairawhiti Maori Land Board should be empowered to give effect to our recommendations in respect of these blocks.

4. Whanganui lands: We think that the Aotea Maori Land Board should be empowered to give effect to our recommendations in respect of the blocks dealt with in this district.

5. Rohe-Potae, or King-country: Area dealt with to be administered by the Maniapoto-Tuwharetoa Maori Land Board, with power to—

(*a.*) Sell lands in Column II (for sale by auction) of Schedule 4—(i) to the Crown in blocks where the Crown has already purchased, (ii) to the highest bidder in other cases;

(*b.*) Lease lands in Column II (for lease by auction) of Schedule 4 to the highest bidder;

(*c.*) As to lands reserved for Maori occupation, our recommendations as to scheme of administration are given in paragraph 4 of general recommendations.

6. As to the Commission, for the more effective carrying-out of our work we ask that it be invested with statutory powers, as follows:—

(*a.*) On notification in the *Gazette* and *Kahiti* that the Commission will inquire into any block or blocks, all dealings therewith shall be suspended until such time as the Commission thinks fit.

(*b*.) The specific recommendations of the Commission to have the effect of law, unless within thirty days of report being laid before Parliament a resolution to the contrary is passed by either House.

GENERAL REMARKS AS TO INDUSTRIAL TRAINING OF MAORIS AND OTHER MATTERS.

If the Maori is to become an industrious citizen steps will have to be taken to provide for his education different from the steps that have been taken in the past. He may, in our opinion, become an efficient settler—just as efficient as the European settler. But it cannot be expected that he can equal a race that has been farming for thousands of years, whilst his race has only been engaged in what may be termed hunting and in the culture of small garden-patches. Two things are necessary, in our opinion, to be done:—

First, the primary education of the Maori should have what may be termed an agricultural bias. In the country districts of England and in France and in America this kind of education is being given. In fact, the Maori schools should have as an ideal what John Ruskin said should be proper training-schools in England. In the preface to "Unto this Last" he said,—

"There should be training-schools for youth, established at Government cost and under Government discipline, over the whole country—that every child born in the country should, at the parents' wish, be permitted (and in certain cases be under penalty required) to pass through them; and that in these schools the child should (with other minor pieces of knowledge hereafter to be considered) imperatively be taught, with the best skill of teaching that the country could produce, the following three things: (*a*) The laws of health, and the exercises enjoined by them; (*b*) habits of gentleness and justice; and (*c*) the calling by which he is to live."

In France, where in the rural districts peasant proprietorship is such a feature of the land-tenure, and the system of inheritance necessitates the splitting-up of the family land among the children in equal parts, measures have been taken for developing agricultural and horticultural knowledge in the normal schools, the communal schools, and the adult classes. The system is adapted as far as possible to the peculiar needs of the peasant class in the primary schools, with an advanced course in the secondary schools, accompanied by experimental and practical field or plot work. The main object of the programmes in vogue seems to be threefold: (1) To give the children an insight into the reasons underlying agricultural operations, in order to induce them later on to follow less blindly the routine which is still too much the rule with the French peasant; (2) to cultivate at the same time the knack of outward observation by means of experiments and object-lessons; (3) to increase in children the love for the country and for a country life.

Such a course if applied to our Maori schools will only provide for the training of children, and it will take many years before they can become farmers. Meantime there is a large amount of good material going to waste for want of systematic guidance and efficient leadership. There are large numbers of young Maoris who are working on farms or in the bush who are expert shearers, fencers, and good roadmen. They might be encouraged to become practical farmers, and their energies directed towards the cultivation of their own lands. These they have in many cases abandoned because of the unsatisfactory and unending attempts to obtain good titles.

Secondly, the guidance and leadership should, in our opinion, be provided by the State. It is required in the primary Native schools, and should be extended to the secondary schools, which persist in maintaining an ordinary grammar-school course not adapted to the present needs of the Maori people. Then, there are the State experimental farms, where selected Maori youths may specialise in the forms of agriculture—such as fruit-farming, poultry-keeping, and stock-breeding—most likely to be used in Maori districts. We think also that the Government should provide instructors of agriculture who should visit

Maori districts. In France the State has provided what are called "professors" of agriculture, who perform these functions amongst French farmers, and who advise them as to the management of their farms, point out to them if their cattle are unsuitable, if the mode of manuring their ground is not suitable, and advise them as to what kind of stock they should raise, &c. If this is found necessary in a country like France, which has been farmed for hundreds and hundreds of years, and amongst a community so well educated as the French people, how much more necessary is it for the Maori race. If Maoris or half-castes could be got to undertake the work they would no doubt be preferable, but we are afraid that there are none able to undertake the work at present. We think that this is a very pressing matter, and the Government should undertake at once to elaborate some scheme which would provide for the efficient teaching of Maoris in agricultural matters.

The establishment of communal farms under the general supervision of the Maori Land Boards in matters of title and finance, and under the management of competent European managers such as suggested by us in connection with Morikau No. 1 Block (see p. 13 of Whanganui Report), and in our general recommendations as to Maori settlement, would provide the necessary impetus and organized practical instruction. It should not be expected that all Maoris that are put upon the land will be successful. All Europeans are not successful, and there must of necessity be more failures among the Maoris than among the Europeans. But there will be, in our opinion, many successes; and if the Maori race is to be preserved they must be taught to be industrious, and to become efficient and scientific farmers.

We cannot pass over one great evil that must be combated. The consumption of alcohol has worked great havoc amongst the Maori people, and so far back as 1856 the report of a Board appointed by His Excellency the Governor to inquire into and report upon the state of Native affairs dealt with this question. At that time there was a law prohibiting the sale of spirits to the Natives, and that Board expressed the opinion that it had a beneficial effect, and stated, "There are doubtless many individuals among the Natives who wish the restriction removed, but the Board is of opinion that were all the tribes in the Island called upon to give a deliberate expression of their wishes on the subject, very few, if any, would be found in favour of repealing a law intended to prevent the spread of intemperance among them." (Proceedings of House of Representatives, Session IV, 1856, Vol. ii, p. 10.)

Then, there is often found a breaking-out of credulity, which takes the form of following some tohunga or prophet. Sanitary measures are often neglected, though a great improvement has taken place in recent years in this connection. Further, there is a thriftlessness or a want of care of money earned or obtained from the sale of land that is appalling. We have instanced cases in our interim reports. Such thriftlessness means that the money was wasted in ways that tend to the physical, moral, and intellectual deterioration of the race; and the sale of land by the Maoris is not only in many instances leaving them landless, but is killing them. No doubt, so far as indulgence in alcohol and in following false prophets is concerned, the Maoris may say that these evils can be seen among European people. There are hundreds of victims every year among the white race from the alcohol habit; and the race that can support Dowieism and Eddyism can hardly cast stones at the Maori people.

If the best that is in the Maori is developed on systematic lines, if he were trained to industrious habits, and to the exercise of care in money matters that such a training would engender, many of the evils would be mitigated. But we have thought it necessary to refer to them here because of the intimate connection such matters have with the Native-land problem. One of the Judges of the Native Land Court (Judge Sim) has put the case well in the following words: "I do not think any attempt to dissever the Maori from his land will result in success. His only chance lies in being encouraged and taught to utilise his land"

## Conclusion.

There are many districts to visit and large areas of Native lands to deal with. We have noted the areas in the districts we have visited that are not dealt with. But from communications received we are justified in stating that the Maoris in the North Island generally are anxious that we should meet them and hold a detailed inquiry into their lands. At Rotorua eleven Arawa chiefs waited on the Commission, and stated that there was a considerable area of land, stretching from Rotorua down to the sea-coast in the Bay of Plenty, that they desired to be opened for European settlement, and also for profitable Maori occupation. They asked us to visit their district in the summer months, and were good enough to state that from what they had learned they were content to leave the disposal of their lands in our hands. They urged, however, that the Crown do not resume its purchases in the Hot Lakes District. A similar request has been made to us by representatives of the Ngapuhi and other land-owners north of Auckland, and by leading men of the Poverty Bay and East Coast district.

We are not in a position yet to make definite recommendations on the questions of rating and taxation, and of reforms in Native Land Court procedure and administration.

There are areas held under special Acts and areas of papatupu land, viz.:—

(1.) Thermal Springs District,
(2.) Urewera Native Reserve,
(3.) East Coast Trust Lands,
(4.) West Coast Reserves,
(5.) Waikari-Mohaka Blocks,
(6.) Papatupu lands near East Cape and Cape Runaway, and north of Auckland.

It will be necessary to inquire as to how far the administration of these can be brought into line with that of other lands, and whether the reasons that necessitated special legislation in respect of them obtain any longer.

We have to record our appreciation of the assistance afforded us by the various Departments of State. In our investigations we have had the able assistance of Mr. C. P. Skerrett, K.C., and Mr. A. L. D. Fraser, M.H.R., who acted as advisers to the Maoris in the various centres.

We have the honour to be
Your Excellency's most humble and obedient servants,

Robert Stout,
A. T. Ngata,
Commissioners.

To His Excellency the Governor.

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