NATIVE TENURE.

Archdeacon Hadfield.

—The notes which I have now read to the Committee imply that the Chiefs have power over some portions of the land. Fifteen years ago, I set it down as a questionable right or power; I view it in the same light now. I limit such right of Chiefs to deal with lands obtained by conquest only; and do not consider that it extends to any land which has become vested in the tribe by long possession. I wish to guard myself, in reference to what I am saying on this subject, by premising that I am speaking of tenure to land as it existed prior to the establishment of the British Government in the Colony, and not since that event. The Chief of a tribe must be regarded as holding his position by a double title. His first title must arise from his undoubted descent through a long line of well known ancestors from the original head of the tribe. His second title depends on a more democratic principle, that is, he must be the acknowledged and the elected head of the tribe. The Chief is the representative of the territorial right of the tribe, not because he is descended from numerous ancestors of noble blood, but because he has been acknowledged as such on account of his personal qualifications and influence, and has in fact been recognised as the guardian as well as the mouth-piece of the rights of the tribe. I have no doubt whatever on this subject. I understand that whatever rights to land existed previous to the treaty of Waitangi among the Natives are still rights with them, being guaranteed by that treaty. I investigated Maori title to land irrespective of the influence which may have been exercised by the Government, and eight or ten years previous to the establishment of British sovereignty.—[*Evidence at the Bar of the House of Representatives, August* 1860*: in Sess. Pap. E—No.* 4.]

X.—Mr. Swainson, *late Attorney-General of New Zealand.*

W. Swainson, Esq.

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

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

Such is the account given by an intelligent New Zealander, of the customs among them as to the disposal of landed property.—[*Swainson's New Zealand* 1859: p. 150.]

XI.—Mr. Busby, *formerly British Resident at New Zealand.*

James Busby, Esq.

I have read much of "Manorial" and "Seignorial Right," of "Tribal Right," and even of "Feudal Right," in relation to the Maori tenure of land. Persons use these expressions, with ideas more or less distinct attached to them, taking it for granted that corresponding ideas exist in the minds of the Maories.

The Rev. Mr. Hobbs lately showed that the words "Mana" and "Rangatira," which are the words in the Maori language supposed to represent the ideas of right and of authority, represent no such ideas in the minds of the Maories. In fact, the ideas must exist before words to represent them are called into existence.

I question whether many of the Maories are better informed on such points now than they were at the time of the Treaty of Waitangi, but it is very certain that at that time no Maori entertained the idea of a "right" existing in one party which implied an obligation upon all other parties to respect it: no one conceived the idea of authority carrying with it the corresponding obligation of obedience. Such rights and obligations are the creation of law, and cannot subsist without it. The Maories had no law but the law of the strongest.

It is certain that the Maories had no fixed rule to guide them in the disposal of their land. It was a commodity to which no exchangeable value had even been attached—a transaction for which no