

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

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

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

NATIVE TENURE.

Rev. J. Hamlin.

VII.—MR. SPAIN, formerly H.M. Commissioner for determining Titles to Land in New Zealand. Commissioner Spain.

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

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

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

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

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

The question, then, which your Excellency has raised, turns upon whether slaves taken in war, and Natives driven away, and prevented by fear of their conquerors from returning, forfeit their claims to land owned by them previously to such conquest.

And I most unhesitatingly affirm that all the information that I have been able to collect as to Native customs, throughout the length and breadth of this land, has led me to believe and declare the forfeiture of such right by aborigines so situated. In fact, I have always understood that this was a Native custom fully established and recognized; and I never recollect to have heard it questioned until your Excellency was pleased in the present instance to put forward a contrary doctrine.

Since that time I have made every further enquiry in my power amongst competent and disinterested persons, whose testimony has fully confirmed my original opinion.