1908.

NEW ZEALAND.

NATIVE LANDS AND NATIVE-LAND TENURE:

REPORT OF NATIVE LAND COMMISSION ON THE OPERATION OF SECTION 11 OF "THE NATIVE LAND SETTLEMENT ACT, 1907."

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

Rotorua, 11th March, 1908.

To His Excellency the Governor.

MAY IT PLEASE YOUR EXCELLENCY,—

We desire to make a report on a difficulty that has met us in carrying out our functions under the Commission. We have found amongst the Wanganui and Ngatimaniapoto Tribes much distrust of section 11 of "The Native Land Settlement Act, 1907," and this has hampered us in obtaining the consent of Maoris to the opening-up of lands for settlement. No doubt this distrust has not been created wholly by the passing of that provision in the statute quoted. The discussions that are taking place amongst Europeans about Maori ownership of land have doubtless influenced them. They, however, say that they ought not to be prevented from either selling or leasing their lands if they please, and the effect of section 11 of the Act is to force them, if they wish to lease their lands, to sell the half of what they wish to lease.

We may explain the provisions of the statute. By section 4, which is the first section of Part I, it is provided that so often as the Commission has reported that any Native land is not required for occupation by the Maori owners, and is available for sale or leasing, an Order in Council may be issued to declare that such lands shall be subject to Part I of this Act. Section 11 provides that as soon as land becomes subject to Part I of the Act the Board in which the same is vested shall with the approval of the Native Minister divide such land into two portions approximately equal, and set apart one such portion for sale and the other for leasing. If, therefore, for example, Maori owners resolved to lease say 2,000 acres of land, and the Commission reported that this area of 2,000 acres was not necessary for their own occupation, the result would be that the Board would have to sell 1,000 acres of the 2,000 acres, and only lease 1,000 acres. It might happen that this land that the Maoris desire to lease was land belonging to children, or Maori owners might have children who would be their successors and to whom the land would be necessary for occupation when they became of age. Such instances as these are entirely ignored by the statute, and the Board would be forced to sell half of the land, and thus perhaps deprive the true owners who are under age of the possibility of utilising the land when they become of age. The section, however, is a two-edged sword, for, suppose the Maoris had 2,000 acres which they did not requiref or their own occupation, and desired to sell the whole 2,000 acres, the statute provid esthat only half of the area shall be sold. It forces the Board to lease half, though the Maoris do not desire to remain landlords. We are of opinion that the full effect of this provision was not clearly seen by the Legislature, else we feel sure it would not have been enacted into law, and we have no doubt that now we have pointed out the position the Government and the Legislature will both consent to an alteration of the existing law. It is not our duty or function to enter upon any

disputed political question, and we do not therefore desire to deal with the question of leasehold or freehold. It is necessary, however, to state the position the Natives take up. The Natives are freeholders when they obtain their Crown grants or Land Transfer certificates of title, and the Natives have, according to "The Native Rights Act, 1865," the same political rights and rights of property as other subjects of the Crown. As has been well said, any State that fails to give equal rights to all its citizens, whatever their race or colour, fails in its duty, and condemns its Government as incompetent. If, therefore, the Maoris as freeholders are not to be permitted to lease their lands when they desire to do so, but are to be forced to sell half of the land they desire to lease, the same law must be applied to Europeans. We need not point out what the effect of this would be. If no European could lease any land unless he sold half of the land he intended to lease either in town or country, the present system of landholding would be entirely changed. That would be a blow struck at the right of holding freehold heavier, so far as we know, than any that has been struck at it in any part of the world, and would properly be deemed to be a great infringement of the rights of property. Those who contend that all farmers ought to be freeholders cannot limit that position to those who are leaseholders of Maoris or of the Crown—the principle must be extended to those who are leaseholders of Europeans. Is New Zealand prepared to say that no European freeholder can lease his land unless he gives his tenant a right to purchase the land leased? Or are the people of New Zealand prepared to say that no European freeholder can lease his land unless he is prepared to sell the half of it? Those who would advocate such principles are the opponents of freehold tenure. The attack, therefore, made on Maori landlordism is an attack made on European landlordism, for in a free State with a just Government the Maori freeholder cannot be placed in a position inferior to the European landowner. The Maoris resent, and, we think, rightfully resent, this attempt to place them in a servile position compared with European landowners. That the State has a right to prevent them disposing of their lands must be admitted, because the Maori lands are communal lands and the Maori owner has a duty to successors different from that of an ordinary European landowner towards his family. The State has a right to see that the Maori, unused to our civilisation and unused to our individual system, shall not deprive himself of the land that belongs to him and his tribe. The right of the State to act in such a direction has been acknowledged by all the Parliaments of New Zealand. To go further, and to say that the Maori is not to have the other rights of a landowner, would, as we have said, be striking a blow at the security of landed property in this Dominion. No doubt Maori landlords, like European landlords, have to admit the "eminent domain" of the State, and Parliament has affirmed that when land is necessary for closer settlement the State can on paying the proprietor compensation, take land for that purpose, giving, however, the owner of the land the right to select a considerable area for his own use. What we have said does not touch the principle laid down in the Land for Settlements Act. Unfortunately in the past the Maori has been too ready to sell his land and to waste the proceeds of the sales. There has been no necessity to apply the provisions of the Land for Settlements Act to Maori land. The Crown could and can always obtain land from the Maoris for close settlement. The danger has been, and is, that the Crown makes purchases without in many instances sufficiently realising that the people of the Maori race must remain mainly farmers and have sufficient land not only for their present needs but for their future development.

If, however, the Parliament of the Dominion were to enact that no freeholder, European or Maori, could lease his land unless he at the same time sold half of the land he intended to lease, or gave his tenants a right of purchase at the true value, there are strong reasons why the Maori should not be subject to such a law:—

(1.) The Maoris have sold large areas to the Crown at, in many instances, inadequate prices, and when they could sell only to the Crown:

(2.) In numerous instances the lands left to them are small in area considering the number of owners; and to compel them to sell half the area they desire to lease would leave their successors inadequately provided for:

(3.) The use of land must be for a long period the Maoris' only avocation.

Numerous examples might be given of the injustice that might be done were the Maoris compelled to sell half of the land they desire to lease. In one block, *e.g.*, that consisted of 21,361 acres, the Crown has bought four-fifths of the block, leaving to the Maoris one-fifth. If section 11 is enforced, they cannot lease what is left unless they sell the half—that is, that they would only have left on lease one-tenth. In other cases where small remnants of blocks have been left to Maori owners by the Crown, on the ground that they would be left landless if such remnants were not left to them, must the Maoris still further divest themselves of their only heritage if they desire to lease? To quote other examples, we may mention Taumatamahoe Block in the Upper Whanganui district. This was originally a large block containing 155,300 acres, to which the Maoris obtained a title in March, 1886. By 1893 the Crown had purchased 82,670 acres, leaving 72,630 acres to the Natives. In 1896 the Crown acquired 19,765 acres of this balance, and three years later 12,161 acres. In 1906 the Crown again purchased, and there is now left to the Natives 25,163 acres out of the original 155,300 acres. Last year we recommended that an area of about 5,000 acres should be reserved for papakaingas and for farms for the owners, the balance of 20,000 acres to be leased. The owners did not wish to sell. Under section 11 10,000 acres would have to be sold. Should not the very large area already acquired by the Crown be taken into consideration when the disposition of the balance held by the Native owners is under review? From the King-country we give some instances. Kinohaku West originally contained 162,371 acres. The Crown commenced purchasing in 1893 or 1894, and at the close of the purchases in 1904 had acquired 130,616 acres, representing thirty-nine subdivisions. The Natives hold 31,755 acres in sixty-one small subdivisions, of which they have leased wholly or in part twenty-six subdivisions of an area of 10,575 acres. Our recent investigations show that the Natives propose the following disposition of the balance of 21,180 acres, viz:—

	Acres.
For sale	3,349½
For lease	7,716
For Maori occupation	8,960¼
Not dealt with	1,154¼
	21,180

We found, in consequence of the numerous successive partitions rendered necessary by the Crown's purchases, and the adjustments among the Native owners on partition and by succession, that one family had four or five small subdivisions of unequal area; that they were occupying, and wished to retain, say, one or two, and to lease the other subdivisions to adjoining Crown settlers or members of their families. This Maori family had already sold to the Crown several thousand acres. There were other families in a similar position in the following blocks in the King-country: Hauturu, East and West; Pirongia West; Kopua; Kahepuku; Ohura South; and portions of Rangitoto and Rangitoto-Tuhua.

There are also many cases in which the Maoris are trustees for infants. Such a trustee cannot sell the land of his beneficiaries—he can only lease. How, then, is section 11 to be given effect to? Are lands in trust to be exempt? If not, no lands held on trust or for endowment, if this principle were carried out regarding all lands, could be leased without a trust or endowment being seriously affected.

Again, it may be noticed that if Maori owners do not come before the Commission, and do not offer any land for sale or lease, their lands will, unless the Commissioners recommend that their lands be taken without their consent, remain unsettled, but they will remain Maori lands. An advantage is thereby given to those who refuse assistance in the opening-up of their lands for settlement. The provision is also a direct encouragement not to put their lands under the management of the Maori Land Boards, but to allow that system of private land-dealing to continue that permits certain favoured persons only to obtain leases of Maori lands.

We have found in the Rohepotae country that since our report of last year was issued the Crown has bought large areas of land. Some areas that we recommended to be set aside for Maori occupation only have been purchased by the Crown. Some areas that we recommended for leasing have been purchased by the Crown, and some areas that we recommended for sale have been purchased by the Crown. The exact area purchased by the Crown we have as yet been unable to ascertain. The

Lands Department informs us that it cannot at present give us this requisite information. We may ask, How is section 11 to be carried out in the Rohepotae country? Is the area that was set aside for Maori occupation, or for sale or for lease, and that has become the Crown's property, to be deemed a sale under section 11? If not, are the Maoris to be bound to sell still more of their land so that its provisions may prove effective?

If it is said that the Maoris have large tracts of land unoccupied and unused, the following facts ought to be considered:—

(*a.*) That land unoccupied in the European sense was, and still is used by the Maoris in some instances for hunting, as sanctuaries for birds, &c.:

(*b.*) It cannot be expected that the Maori race without training can at once become expert farmers according to European methods:

(*c.*) The State, having refused to recognise Maori titles in any Courts, and having compelled the Maoris to get grants or certificates from the Crown as their basis of title through the procedure of Native Land Courts, has prevented them getting titles to their lands save after long delays and at great expense:

(*d.*) Compelling them to have their lands surveyed before ascertainment of title has also cast a great burden on them:

(*e.*) In many cases the ascertainment of title to a block has taken years to complete.

We venture to affirm that if Europeans had been placed in the same position as Maoris in regard to their titles, they also would have had thousands of acres unoccupied. It may be also pointed out that many Europeans own unoccupied lands, and we think it has not been suggested that such lands should be confiscated by the State.

The Dominion, in our opinion, has a duty to the Maoris. Let the Maoris have time to learn farming according to European methods, and let agricultural instructors and guides be appointed to train them. If the Maoris fail when proper means are taken to teach them, and when their titles are complete, it will be time enough to cavil at their unused lands. There are, it must be confessed, many Maoris who have no desire to become farmers, who are lazy and without ambition; but who can say that their present state is wholly their own fault? Their contact with a different civilisation and a different environment from their old ways and customs, the evils of our civilisation that they have not been trained to avoid, can explain many of their failings. If we did our duty to them, there are promising signs that the Maoris would soon prove themselves industrious settlers, and become valiant, trustworthy, and zealous citizens. To do nothing for them, to let them drift and degenerate, to seize their lands because they are not such active settlers as Europeans, would mean the destruction of the race. And if such were the end of New Zealand's treatment of this great Native race, the European inhabitants of the Dominion would be ethically injured in a way that we perhaps cannot adequately realise. In our opinion the people of New Zealand must be both just and magnanimous to the Maoris, if we do not wish to sow the seeds of injustice and selfishness amongst the European population—seeds that may produce a crop that will injure our descendants—that is, if we believe that there is a moral law in existence in the world.

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

ROBERT STOUT,
A. T. NGATA,
Commissioners.

Approximate Cost of Paper.—Preparation, not given; printing (1,500 copies), £1 14s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1908.

Price 3d.]