

writes pressing for removal of restrictions. Here is one of the most remarkable features of the whole thing: that, although the Government had promised the removal of restrictions, and Mr. Fenton was prepared to act accordingly, no effort was made to carry out the assurance given by Sir Donald McLean. On the 27th April, some months afterwards, Mr. Bryce directs Mr. Morpeth to write to Captain Fergusson that it is ascertained certificates of title of blocks have not been signed by Chief Judge, and that therefore the Government have no functions to perform in the matter. Having first stated that they had been issued with restrictions, it is found afterwards that they had not been issued at all;—an extraordinary discrepancy. Then there is a correspondence with Natives on both sides, to which evasive replies only are returned. On the 14th September, 1882, Judge Fenton at length forwards the certificates; and Mr. Lewis, on the 9th October, 1882, writes that the certificates make the land inalienable excepting for lease. Mr. Bryce minutes letter, on the 9th October, 1882, "Let the matter stand over;"—that this long delay was extraordinary; and on the 16th June, 1883, Messrs Jackson and Russell, for the Native owners, ask for issue of Crown grant to enable subdivision. On the 18th June, 1883, Mr. Bryce directs reply that the grant is in course of issue but cannot be ready as soon as asked for; and on the same date he advises the Governor to direct the issue of grants, and the Governor does so. It is not very clear why they were not issued. There appeared to be some personal interference not recorded why they were stopped. Here is a copy of the certificate: "Court recommends that the land be made inalienable without power to the Governor to authorise otherwise." On the 26th July, 1885, Chapman and FitzGerald ask for the issue of the Crown grant without restrictions. They refer to the telegram of December, 1873, and also to the letter of the 5th January, 1874. Mr. Ballance minutes, "Refer to Mr. Barton"—who asks for plans. On the 23rd November, 1886, Mr. Lewis, Under-Secretary, writes or wires Judge Macdonald ("confidential") asking if case cannot be dealt with under the Equitable Owners Act. The Judge replies decidedly discouraging the suggestion, and says, "If restrictions not removed, will defeat Fergusson, but will not aid Natives not mentioned in the grant." He also mentions that the Court has made no restrictions, merely recommended them to the Governor, who is empowered to act or not as he thinks fit. The above are most of the important papers which I have examined relating to the case. I should remark that they disclose a most extraordinary state of things: the Native Land Court for years delaying its decision in trying to ascertain what the Government wished it to do. The Government, in my opinion, were bound by the decision in December, 1873, and July, 1874, conveyed by the Native Minister under the telegram and under the letter. Under both they undertook that the restrictions should be removed. The Chief Judge's decision was not given until the 27th of April, 1882; that is, eight years afterwards. During the whole of that time the Court was willing to sign the grant without restrictions, if the Government had wished it. You are therefore brought to this conclusion: that, the Government having given a pledge in 1873 and 1874 that the grant should be issued without restriction, yet for eight years they allow the Court to delay issuing the certificate, although Mr. Fenton asked for instructions in the matter. In 1882 Mr. Fenton appears to have been tired of the subject, and issued the certificate with the recommendation that the land should be inalienable. Mr. Macdonald says, on the 28th of October, 1886, that the Court, in recommending that the certificate should issue without restriction, was merely, in effect, a recommendation to the Governor, who is empowered to act on it or not as he thinks fit. When the certificate was issued with that recommendation the Ministry had power to carry out the undertaking given on its behalf eight years before. Mr. Macdonald then points out that if the restriction were not removed it would injure Fergusson but would not aid the Natives. This is a point which more particularly, as it appears to me, requires the attention of the Committee. There has grown up a habit of considering restrictions should be regarded in the light of there being or not a satisfactory title. As far as I know, the principle at stake is not the title, but whether the grantees have other resources and would not become paupers if the land were alienated. This provision, which was intended to protect the Natives from pauperism, has been used in this case, and, I believe, in a great many other cases, to delay the title, on the ground that the Government is not satisfied with the decision of the Native Land Court. Judge Macdonald points out that the decision in this case does not touch the question of ownership, and that if the restrictions were not removed it might hurt Fergusson without assisting the Natives entitled outside the grantees, for the title would still be vested in the grantees. It appears to me that this is a typical case. I have never gone through any Native land case so thoroughly as I have gone through this, and it seems to me to disclose a horrible state of things. A judicial Court is made the mere instrument of the Government of the day, and in this special case the Government purposely delayed to give effect to the assurance, made in the most absolute manner on their behalf, both by letter and telegram, that the land would be made alienable. There is no possibility of denying that such an assurance was given; there is no possibility of denying that the Government could have carried it out. But by means of the Land Court thirteen or fourteen years have elapsed, yet still the restrictions are not taken off. I wrote a minute on the subject, which I shall hand to the Committee. I did not attach it to the papers, as I was not sure whether I was in a position to do so—that is to say, whether I was examining the papers officially. I have told you that Mr. Ballance authorised me to speak to the Chief Judge, and that gentleman assured me there was no reason whatever why the restrictions should not be removed. He said the only question which he would consider, if the papers were put before him to advise, was whether the grantees were sufficiently provided for not to make it necessary to set apart the land inalienably for their use. He was aware, he said, that the grantees in this case were men of substance; and he would have no hesitation whatever in minuting that it was not necessary to make this land inalienable.

Sir Julius Vogel then read the following:—

Memorandum on Blocks 1 and 2, Maungatautari: I have carefully gone through these papers, and am painfully surprised at the subjection which the Native Land Court has appeared to occupy in relation to the Government. I can see no reason whatever for refusing the issue of the grants without restrictions. The Government promised this, by telegraph and letter, in 1873-74 to Mr. Every Maclean, from whom the property descended by subsequent purchase