

agreement for the extinguishment of the Native title and surrender to the Crown of the land named therein, and the orders of the Native Land Court were to be deemed a final extinguishment of the Native title within the boundaries delineated on the plan annexed to the deed. Knotty questions might arise as to the exact legal effect of this Act, but the intention of it is doubtless to vest the balance of the land in the Crown, after setting apart the reserves made by Mr. Mantell and the further reserves made up to that time.

We have quoted the proceedings of the Native Land Court pretty fully because in some quarters that was understood to be an untrammelled settlement of the matter arrived at, after solemn judicial proceedings. But we have cited them in vain if we have not sufficiently shown that there was a broad acknowledgment by that Court, and those giving evidence before it, that justice had not up to that time been done to the Natives; that doubts were expressed by that Court as to the validity of the deed, and also as to the Government's position on the matter of the unfulfilled promises; that while the Court was sitting, and without previous warning or notice, the Government, by an order of reference, placed the matter wholly within the jurisdiction of that Court; and, further, that the tribunal, holding the matter of granting the reserves to be one purely within the discretion of the Governor or the Crown, decided that, whatever the demands of the Natives, the Court was completely bound by the evidence of the Crown witnesses, and accordingly entirely followed them. This was scarcely, we take it, the kind of investigation contemplated by the Act of 1865. Even had the first intention to demand a release from the Natives been carried out, at least the Natives would have had the chance of discussing, before they did sign, whether the proposed allotment was a fair one or not. Unless we are to apply to the Crown a different set of principles from those applicable to individuals, we feel that, notwithstanding the Court proceedings were validated by special Act, the fairness and justice of the allotment is within the scope of our inquiry. If we are barred by those proceedings we but perpetuate a wrong, since the Judge who presided at that Court, and the witnesses on whose evidence the decision was arrived at, all agree that the Natives ought to have been met in a more liberal spirit.

The question, then, that arises for us to decide is, what would have been a liberal spirit? Certainly not 14 acres per head. The number of landless Natives in the South Island of the Ngaitahu Tribe proves this beyond all doubt. The Natives have claimed the tenths, or one-eleventh of the whole. We have no hesitation in saying there is no evidence that it was intended to apply this system, formerly in vogue, to this sale. The Company had already found great difficulties arising from it, and Commissions had been set up and were inquiring how best to settle the difficulties. Naturally they would not desire the same difficulties to arise in the new purchase. Besides, probably it would not in any case have been thought to have been in the interest of the Natives themselves, who would be occupying 5,000 or 6,000 acres, to reserve for them a couple of million acres at one time.

Another suggestion has been made, that from 50 to 150 acres per individual should be taken as a guide. Here again a difficulty arises as to the class of land that is to be given. One acre in Christchurch would do more to keep a Native than a thousand on some hilltop. Had the Court in 1868 been given a free hand it would certainly have taken the circumstances of locality, quality, and accessibility into question. At this date there is, however, no land which can be set apart, or, if there were, the setting of such apart would not be conducive to effective settlement of the Dominion.

Another means of arriving at a measure of compensation, or "restitution," as it was called, was suggested by the Smith-Nairn Commission of 1879. That Commission, having found that the reservation the Natives were entitled to would be fairly and properly represented by 1 acre reserved for every 10 acres sold to Europeans, suggested that an account should be opened. One side was to consist of one-eleventh of the proceeds of all sales of the land bought from the Natives; the other was to show the then value of all reserves, and in addition

1882, I.—2,
p. 33.

1888, I.—8,
p. 61.

1888, I.—8,
p. 33.

1881, G.—6.