

Commenting on the foregoing, Mr. A. Mackay said that—

“With reference to the occupation and appropriation of certain of the Company’s ‘tenths’ in the Town of Wellington, the memorandum by Lieutenant-Governor Eyre explains the motive for using these lands for purposes foreign to the original intention, and, while admitting the rights of the Natives to the lands in question, justifies the conduct of the Government in appropriating any portion that may be required for public purposes, on the ground that the Government were placed in an anomalous position without an acre of land at their disposal.”⁽¹⁾

In addition to the exchanges of Motueka reserves effected during the Spain Commission in 1844, the Board of Management at Nelson found it necessary to make further alterations. In a letter from the Crown Solicitor at Nelson, dated 23rd April, 1849, the Acting Resident Agent of the New Zealand Company was informed that His Honour the Superintendent of Nelson had approved of the following exchanges: The Board of Management to receive Section 181 for Native reserve No. 29; No. 210 for No. 74; No. 211 for No. 73; No. 218 for No. 35; No. 243 for No. 36; No. 184 for No. 20.⁽²⁾ This arrangement was considered to be of great benefit to the trust estate, inasmuch as the land taken in exchange by the Board was of superior quality to the land given up.⁽³⁾

Apart from the sixteen sections specially reserved by Commissioner Spain in 1844 for the Motueka Natives, further lands were later set aside for these Natives out of the Company’s reserved “tenths.” In his report of the 26th July, 1870, Major Heaphy refers to a further apportionment of sections at Motueka in 1862 on the recommendation of Mr. James Mackay to certain Natives who had been overlooked on the original payment and in the subsequent distribution of reserves.⁽⁴⁾ From the translation of a memorandum dated 17th December, 1862, it would appear that Mr. James Mackay awarded Sections Nos. 144, 145, 146, and 147 to six Natives for their use; and he also refers to Sections 126, 127, 129, and 132, which were subdivided amongst members of the Ngatirarua and Ngatiawa Tribes. Parts of all these sections are vested in the Native Trustee at the present day.

5. ACTS OF PARLIAMENT.

An Act for the better government of New Zealand, under which a Royal charter was issued altering the present Constitution and giving the colonists representative institutions, was passed by the British Parliament in 1846. Its author was Earl Grey, who in a long despatch dealt with the impolicy of recognizing proprietary rights in the Natives over waste lands, and, in fact, placed a construction on the Treaty of Waitangi which was not strictly orthodox. The despatch and charter would, according to one writer; “have set New Zealand in a blaze from north to south.”⁽⁵⁾ The principal objection to the measure was that it limited the franchise to those who could read and write the English language, a qualification which few Maoris possessed, and thus “gave to a small fraction of Her Majesty’s subjects of one race the power of governing the large majority of her subjects of a different race.”⁽⁶⁾

Sir George Grey set the charter aside, and in 1852 he introduced his own Constitution Act, which, although it excluded the objectionable English test, still disfranchised the bulk of the Native population, who held their lands collectively and therefore could not vote as individuals owning property valued at £50.

When Colonel Gore Browne assumed office as successor to Sir George Grey it was understood that he would have power to act on his own opinion on Native affairs, pending reference to the Colonial Office. The Maoris, who were not represented until 1867, did not understand the new Parliament, and preferred dealing with the Queen’s representative. In 1856 an Act for the management of lands set apart for the benefit of the aboriginal inhabitants of New Zealand, known as the New Zealand Native Reserves Act, was passed. Its object was to place the reserves in the hands of Commissioners, who were given power to lease for twenty-one years, and, with the precedent consent of the Governor in Council, to sell, exchange, or lease for a longer term than twenty-one years.

“This Bill was a step towards the individualization of the communal land rights of Natives, a question as dangerous as it was difficult. Common ownership was a basic Maori custom, and as such was protected by the Treaty of Waitangi and the Constitution. The Bill provided that acts under it should be done ‘only with the advice and consent of the Executive Council’—that is, by Ministers—and the Attorney-General asserted that the subject was not a ‘Native question.’ A number of Legislative Councillors protested to the Governor. Colonel Browne gave his assent, and forwarded the problem to the Colonial Office, which did not overrule him.”⁽⁷⁾

The Commissioners appointed under the Act for the Wellington Province were H. St. Hill, S. Carkeek, R. R. Strang, Rev. T. B. Hutton, Tamehana te Rauparaha, Matini te Whiwhi, and Rawiri Puaha. For the Nelson district Messrs. Domett, Poynter, and Brunner were appointed by the Governor, and during their administration nothing of importance occurred except the granting of one exchange in the Motueka district.⁽⁸⁾

(1) Memorandum by A. Mackay: Parliamentary paper G.—2B, 1873.

(2) Mackay’s Compendium, Vol. 2, p. 281.

(3) *Ibid.*, p. 265.

(4) Appendix to Journals, House of Representatives, D.—16, 1870.

(5) “New Zealand Rulers and Statesmen,” by W. Gisborne.

(6) Governor Grey to Earl Grey, 3/5/47: Great Britain—Papers relating to New Zealand, 1848.

(7) “A History of New Zealand,” by Shrimpton and Mulgan.

(8) Section 142 and part Section 143 (40 acres), Motueka, were exchanged with Charles Thorpe for Section 165. Reference: Copy of deed of exchange, Mackay’s Compendium, Vol. 2, p. 393. The deed refers to Section 165 as containing 90 acres, but, as all the suburban sections were of a uniform area of 50 acres, the exchange must have affected another section also. According to the plans, this other section was undoubtedly No. 180, although the Schedule to the 1873 Act shows Section 165 as containing 90 acres, and omits No. 180.