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Report of the Royal Commissioner on the Electoral Roll of Mongonui and Bay of Islands District.

Colonial Secretary's Office,
Wellington, 17th June, 1879.

THE following report of the Royal Commissioner appointed to inquire into certain matters connected with the electoral roll of Mongonui and Bay of Islands District is published for general information.

J. BALLANCE,
(in the absence of the Colonial Secretary).

To His Excellency Sir HERCULES GEORGE ROBERT ROBINSON, Governor of New Zealand.

YOUR EXCELLENCY,—

In obedience to the terms of a Commission issued to me on the 11th of February last, I have made the inquiry therein indicated and set forth. For reasons which it is not necessary to detail, I thought it best to open the investigation at Russell, in the Bay of Islands; but, after taking some evidence there, I found that, to render the inquiry exhaustive, it would be necessary to take additional evidence at other places, which, under the terms of your Excellency's Commission, I was able to do. Accordingly, in addition to Russell, I held a Court at Whangaroa, at Mongonui, at Hokianga, and lastly at Auckland. I was accompanied throughout by Mr. Grey, a shorthand reporter, to take notes of the evidence, and by Mr. Brown, interpreter to the Supreme Court at Auckland, to translate the Maori evidence. I have every reason to be satisfied with the assistance rendered me by these gentlemen. A *verbatim* report of the whole of the evidence given by thirty-eight witnesses was accurately taken, and accompanies this report. However unpleasant some portions of the duty may have been to myself, I think it will be seen that the inquiry has been conducted in an impartial and unsparing manner, and that the report of the evidence will show that it has been searching and exhaustive.

Probably the most convenient form in which I can place the matter before your Excellency will be to give a brief narrative of the local political circumstances of the Mongonui and Bay of Islands Electoral District for the last few years; then to direct attention to the salient features of the evidence; and finally to express, in plain terms, as I am commanded to do, my opinion on the various matters and questions on which I am directed to report.

Up to the year 1871 political feeling in the Bay of Islands was in a state which may be described as calm and peaceful. The old Mission families, their connections and friends, rested placidly, in the calm assurance that they had a prescriptive right to control the public feeling and political action of the district in which they resided. Maoris, it is true, were on the electoral roll, but this, up to the year 1871, was probably regarded by the dominant families rather as a source of strength than of weakness. At the general election of 1871, however, the serenity of the political atmosphere was rudely disturbed. For it was found that their chosen candidate, Mr. Carleton, was to be opposed by Mr. McLeod, and, incredible as it must have seemed to many, the latter gentleman was actually returned as the member for the district.

ERRATUM.—In the *New Zealand Gazette* No. 65, at page 813, in Warrant under "The Neglected and Criminal Children Act, 1867," for "Burnham" read "Caversham," and for "Canterbury" read "Otago."

It is pertinent to this inquiry to remark that the result of the election was said at the time to be mainly due to the active exertions of Mr. John Lundon, a gentleman whose name occurs with great frequency in the evidence taken by me. In 1873, owing to the resignation of Mr. McLeod, another election took place in the district. The candidates this time were Mr. John Lundon and Mr. John Williams, the present member. There was a third candidate, whose name need not appear here, for the contest, which was close, lay between the above-named gentlemen, Mr. Williams being elected by a small majority. It may here be remarked, by way of parenthesis, that Mr. Edward Marsh Williams, the brother of the successful candidate, filled at that time and up to a recent period the office of Registration and Returning Officer for the Mongonui and Bay of Islands electorate. Mr. John Lundon, the defeated candidate, does not appear to have accepted his defeat as final. On the contrary, with the view apparently of again contesting the seat at some future period, he seems to have determined that the electoral roll should become more favourable to himself. Accordingly, during the registration period of 1874, he caused many electoral claims to be filled up and made, mostly by Maoris and half-castes, who were supposed to be adherents and supporters of his own. And, notwithstanding many discouragements, efforts such as these have been persisted in and continued by Mr. Lundon up to the present time. These continued efforts, which appear only to have been intensified by a second defeat, seem at an early period to have spread consternation and dismay among Mr. Lundon's opponents. Most of the claims preferred by Mr. Lundon's Maori friends were made on freehold qualification, the freehold in all cases being held in common by a number of persons. It was therefore determined to test the validity of that qualification, with the view of checking the action taken by Mr. Lundon. Accordingly a test case was selected in 1876, to be argued before Mr. Lawlor when holding his Revision Court at Russell, in that year. The case selected was that of Hone Mohi Tawhai, a chief who claimed in respect of a freehold of sufficient average value, and under Crown grant, but held in common between himself and seven other Natives. After argument by Mr. Carleton on the one part, and Honi Mohi on the other, Mr. Lawlor decided against the validity of the claim, and ordered Honi Mohi's name to be struck off the roll. The decision thus obtained was promptly acted on. The Registration Officer, Mr. Williams, took the earliest opportunity of objecting, in his official capacity, to many of the Maoris already on the roll, and to almost all the new claims made by Maoris, and in nearly all cases the objections were based on Mr. Lawlor's decision.

That decision was sustained by Mr. Lawlor in the succeeding year (1877), all the objections being held to be fatal to the claims. Those claims were, however, renewed by Mr. Lundon, and fresh ones added. During the registration period of last year no less than 373 Native claims to be placed on the electoral roll were preferred at his instance, and by means of his exertions. In that batch of claims too, it has to be observed, a new qualification (the household) made its appearance. These claims, up to a certain point, met with the usual fate—that is, they were objected to by the Registration Officer. But on this occasion Mr. Lundon and some of his Native friends determined to procure legal assistance, and sustain, if possible, before the Revision Court, the claims so objected to. About this time also the Government were strongly urged by Mr. Lundon and others to dismiss Mr. Williams from the office of Registration and Returning Officer. The reason given for the request appears to have been that, being brother of the sitting member, he would be apt to show partiality, and had, in fact, shown it already. The Government, it seems, were not unwilling, several months before the time at which the Revision Court was held, to call on Mr. Williams to resign; but, as a matter of fact, the request was not made until the 4th of June, the day previous to the date at which the Revision Court was to sit. Mr. Williams at once complied with the request so made, and called the attention of the Government to the fact that numerous objections had been made, and would have to be determined on the following day. Mr. (or Captain) Baker was therefore at once appointed to be Registration and Returning Officer, in place of Mr. Williams, and attended the Revision Court on the 5th of June in that capacity. Mr. Tole, a gentleman of the legal profession, and a member of the House of Representatives, was also present on behalf of certain of the Maori claimants. On the claims being called on for revision, Mr. Tole raised the preliminary technical objection that Edward Marsh Williams, Registration Officer for the Mongonui and Bay of Islands Electoral District, had then no legal existence, and that consequently the objections made by him fell to the ground. Mr. Lawlor, the Revising Officer, at once ruled that Mr. Tole's objection was fatal, and ordered the whole of the names objected to, including, as they did, dead, absent, and disqualified persons, to be placed on the roll for 1878 and 1879. The new Registration Officer, Mr. Baker, it may be remarked, remained in the Court inert and speechless during the short discussion between Mr. Tole and the Revising Officer.

In reference to the first decision of Mr. Lawlor, I have now to point out that there are, in the Bay of Islands electorate, three classes of title to land held in common by Maoris who have claimed to be placed on the electoral roll as freeholders—first, land held under Crown grant; second, land certified to Native owners under the Native Land Act; third, land certified to a tribe. In regard to the second and third classes, I think that they may be dismissed as not being freehold of a sufficiently definite character, as regards individuals, to confer a right to the franchise. The first class, or land held under a Crown grant, is, I apprehend, in a different position. The position of the owners in a Crown grant I believe to be that of tenants in common, taking (save in exceptional instances) in distinct

moieties, and is one therefore, as I believe and am advised, which entitles to the franchise, if the freehold is of sufficient value. In the test case decided by Mr. Lawlor, the freehold was of sufficient value to satisfy the requirements of clause 7 of the Constitution Act. Mr. Lawlor's decision appears therefore to have been unsound, and consequently objections founded upon it were unsound also. But it has to be specially remarked that only a small proportion of the claimants possess the freehold qualification which I think entitles to the franchise. Of the 373 claims preferred by Maoris and half-castes during the registration period of 1878, I find, from positive evidence from official records, that no less than 213 are based merely on certificates of title under the Native Land Act, 97 claims being actually made on a single tribal certificate. The closest calculation I can make leads me to the conclusion that about 80 are made on Crown grants. But in some of the cases the land is of insufficient value, while in others more Natives have claimed than are on the grant. Making the necessary deduction, I believe the number entitled to the franchise on the freehold qualification to be under 50. Some of this number possess the additional qualification of a sufficient household, and outside of these there are about 20 who also possess a sufficient household qualification, and who, having claimed in respect of it, are entitled to be on the roll. Assuming, then, that the actual qualifications described in the claims preferred were the sole subject for consideration, of the 373 claims already alluded to as having been preferred in 1878, 70 ought to have been allowed, and the remainder disallowed. But when the mode is considered in which the claims were got up or prepared, it will be seen that the number of valid claims preferred in 1878 must be still further reduced indefinitely.

I proceed now to other features of the inquiry, and, as it appears to me that in a limited sense some of the parties involved are practically placed on their trial, I need not hesitate to refer to the personal motives and actions of persons connected with it.

I have already pointed out that Mr. Lundon's apparent object in getting up the Maori claims was to render the electoral roll more favourable to himself. With that object in view, it is clear from his own evidence that the questions of whether the claimants were qualified, or whether they signed the claims, or whether the claims were duly attested, were matters of complete indifference to him so long as the supreme object was gained. Mr. Lundon has himself permitted a Native in his presence to sign the names of twenty absent persons to electoral claims, and has caused the forms so prepared to be taken away to a distance to be signed by another person as attesting witness. Very many of the claims preferred were certainly never signed by the persons purporting to have signed them, and false attestation has been the rule, not the exception. Raneira Warerau's name appears as the attesting witness on 203 of the claims made in 1878, and he admitted in evidence that he had not seen more than ten of the claimants sign their names. Isaac Williamson is the attesting witness to ninety-nine claims, and he admitted in evidence that not more than five or six had signed in his presence. In addition to this, Williamson made the extraordinary statement that he had authorized another person to sign his (Williamson's) name as attesting witness because he was too busy to travel around for the purpose himself. Passing now from these circumstances, upon which I feel that it would be useless to dwell, I regret to have to say that I consider the official conduct of the late Registration Officer, Mr. Williams, open to grave censure. Many of the disclosures elicited by this inquiry, and which might have justified objections, were quite unknown to Mr. Williams, and were not indicated in his formal objection. His reasons, I think, must be sought elsewhere. The wholesale objections made by him in his official capacity, and which certainly included names which ought not to have been objected to, were made, as it seems to me, on very inadequate information. Mr. Williams is an excellent Maori scholar; he has resided in his district for more than forty years. Yet his personal knowledge on which his objections were founded only extended to twenty-two names out of the total number objected to. In all other cases he seems to have relied almost absolutely on general statements by the Resident Magistrates of Hokianga and Mongonui respectively, that the claimants were not entitled to a vote. Mr. Williams in his evidence repeatedly and deliberately says, in speaking of his objections, "I objected to all names I had a doubt upon." This is by no means my conception of the duty of a Registration Officer in this respect. Where he objects he ought, I think, to have no doubt at all. For it must be remembered that the burden of proof lies on the person objected to, who, moreover, has no claim for costs against the Registration Officer in case he establishes his right to the franchise. Practically in these cases the claimants do not appear, and the objection therefore, if wrongfully made, amounts to disfranchisement. The extreme view which Mr. Williams took of his duty as Registration Officer must, I think, have grown up out of the political situation which I have already described. Moreover, there is no doubt that many names were left on the roll of persons whose qualifications were similar to those objected to, and it happens that the persons so left on the roll resided for the most part in districts over which the influence of Mr. Williams's family might be supposed to extend. It is not surprising, therefore, that a suspicion of bias should be excited in the minds of the political opponents of Mr. Williams's family. I have already intimated, the information on which Mr. Williams founded his objections was derived in great part from Mr. Von Stürmer, the Resident Magistrate of Hokianga, and Mr. White, the late Resident Magistrate of Mongonui. In the case of Mr. Von Stürmer, the memorandum containing the information was not produced, but Mr. White's memorandum was read in evidence by Mr. Williams on the 6th of March, and I beg to refer your Excellency to it. I have no hesitation in saying that it was not a

memorandum on which any Registration Officer ought to have relied, as it contained the strongest internal evidence that it was the production of a partisan. Yet Mr. Williams seems to have relied on it with more implicit faith than the writer expected, or even desired. I can only account for such conduct, on the part of a gentleman whose character for honor and integrity stands high, by supposing that, unconsciously to himself, he had suffered his judgment to become warped and his official acts influenced by personal or political antipathy to his brother's opponent, Mr. Lundon. That being my deliberate opinion, it is, I think, a matter for great regret that, when Mr. Williams found his feelings enlisted in local political questions, he did not retire from a position where his honor might not unreasonably be called in question.

I have already alluded to the extraordinary ruling given by Mr. Lawlor on the 6th of June last on the technical point raised by Mr. Tole. That decision seems to me to have been almost childish, but its effect was to place on the electoral roll all of the names objected to by the Registration Officer, including the names of dead, absent, and obviously-disqualified persons. Mr. Lawlor was probably impressed by the fact that Mr. Tole, a gentleman of the legal profession, and a member of the House of Representatives, seriously raised the point; but he ought to have reflected that Mr. Tole might think himself at liberty to urge a point as an advocate which as a Judge he would deride. The decision was undoubtedly unsound, and was unfortunate in its effects, directly and indirectly. Taken in connection with other circumstances, it gave an appearance of probability to the suspicion that the Government had become a party to a design of placing Maoris on the roll without that proper examination into the merits of the claims provided for by law. Other circumstances were not wanting to strengthen the suspicion. Mr. Williams, the Registration Officer, had been practically dismissed the very day before the sitting of the Revision Court, and Captain Baker, who was appointed the same day to the vacant office, was a gentleman utterly incompetent to perform the duties. To use his own expression, he was "totally unacquainted with the duties," and, in my opinion, quite incapable of learning them. These things, which have been placed prominently before the public on many occasions, did look as if the Government were designedly promoting the improper packing of the roll, and deliberately burking an inquiry which might purge it. But, beyond the facts previously well known, nothing has come out in this inquiry to lend support to the suspicion, and I think an examination of the circumstances will show its utter improbability. Whether it was right or wrong for the Registration Officer to make his objections, the fact remained that they had been made. The impropriety, so far as it existed, had been accomplished. The burden of proof being on the claimants who had been objected to, no active duty remained for the Registration Officer to perform. It cannot be thought that the Government believed that inquiry before the Revision Court would be burked, except it be first assumed that the Government had knowledge that Mr. Lawlor, the Revision Officer, and an officer of the Supreme Court, would deliver a judgment grotesque in its absurdity. I am not prepared for so violent an assumption, and therefore, while the sudden dismissal of Mr. Williams, at so short a period prior to the sitting of the Revision Court, was no doubt most inconvenient and objectionable, I think the Government must be acquitted of the depth of iniquity which has been imputed to it.

In reference to the mode in which petitions to the House were got up, little need be said, after the description I have given of the way in which electoral claims were filled. If one in ten of the names on the petitions could be shown to be genuine signatures I should feel surprised. But the Maoris have a habit of allowing two or three persons to sign such documents for many others, present and absent; and this explanation may extenuate what otherwise might be regarded as wholesale forgeries.

In thus going over the facts of this inquiry as they have presented themselves to my mind, I have pretty plainly indicated the view I have taken of them; but, as I am specially enjoined to report an opinion on the various questions raised by this inquiry, I will here briefly recapitulate my opinion on the most important points.

I think, then, that Mr. John Lundon has for years past deliberately endeavoured to place persons on the electoral roll for the Mongonui and Bay of Islands District with the view of rendering it more favourable to himself, and without caring whether such persons were qualified or not. It is my opinion that, of the 373 claims which he caused to be preferred in 1878, four-fifths had no legal qualification, and that, of the remaining fifth, many were vicious and invalid by reason of the mode in which the claims were prepared. I think that the late Registration Officer, Mr. Williams, permitted, perhaps unconsciously, his political sympathies and dislikes to influence him in the discharge of his official duties as Registration Officer—that he made his objections on insufficient information, and thus became an instrument to forward the objects of a local party or faction. I think that both of Mr. Lawlor's celebrated, or notorious, decisions were unsound in law, and that his capacity is not equal to the performance of the duties of Revising Officer in a district where difficult questions may arise. I think that Mr. Baker, the new Registration Officer at Russell, is altogether unfit for that position. I think that the conduct of the Government in removing Mr. Williams from the position of Registration Officer at so unfortunate a time was inconsiderate, injudicious, and objectionable; but I do not believe that the Government, or any member of it, had any intention by that means of preventing due inquiry into the merits or demerits of the claims objected to by Mr. Williams.

It will probably be observed that scarcely any one concerned seems to come well out of this inquiry, and this circumstance has occurred forcibly to my own mind. In further illustration

of this curious feature of the case, I would direct attention to a circular which was produced in evidence by Mr. John Lundon, and will be found in his evidence. This circular unmistakably advises the packing of the electoral roll for a special purpose in as gross a manner as regards the qualifications as ever was attempted by Mr. Lundon. Yet it has come to my knowledge that it has been accepted without demur, and acted on with avidity, by gentlemen of the anti-Lundon faction, who are loud in their condemnation of the tactics pursued by their opponent. It has produced a singular effect on my mind to see that these gentlemen have a high sense of their own honor, and would feel greatly pained to find it impugned. Yet it is evident that in their minds the packing of the roll may be right or wrong accordingly as it serves or obstructs a special purpose or party prejudice. If, however, the peculiar circumstances of the district are considered—the sparse European population, the isolated communities, and the preponderance of the Native people—there is perhaps little cause for surprise; for in such a district, where Press criticism must be unfelt, and public opinion without existence, arbitrary exercise of power and immoral political manœuvres can have no sufficient check.

In some of the petitions into which I have been directed to inquire, the subject is raised of the Maori dual vote. This is a political question upon which I hold decided opinions, but I can scarcely think that it was intended that I should express them here, and accordingly I have scrupulously kept them in the background not only in this report, but throughout the inquiry. Still, I think I am justified in remarking, by way of conclusion, that the evidence which I have taken, and which I herewith submit to your Excellency, will be found to be highly instructive even on that point.

Wanganui, 12th April, 1879.

I have, &c.,

JOHN BRYCE.

