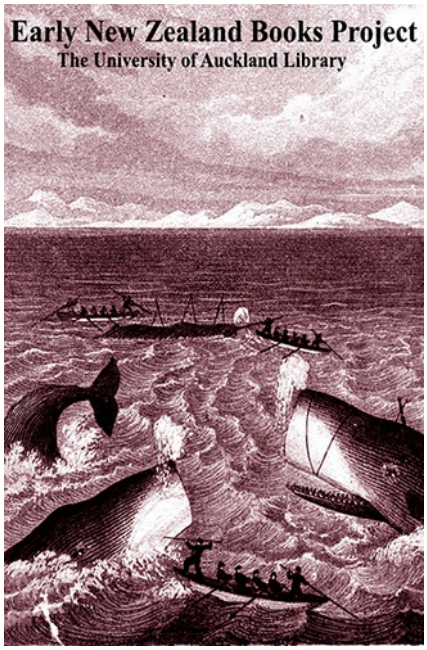
Early New Zealand Books Project
The University of Auckland Library



Our Dealings with Maori lands

James Mackay

First published by Kidd and Wildman in 1887

Digitised and made available online by the University of Auckland Libraries and Learning Services.

Epub © 2013 Early New Zealand Books Collection

ISBN 978-1-927289-32-7

Contents

1. Our Dealings With Maori Lands, P 1-32
2. An Act To Define And Determine The Title To Lands Held By Aboriginal Natives, P 33-57
3. Comments On Draft Act, P 58-60
4. Publication details
5. Conditions of use

[TITLE PAGE]

OUR DEALINGS WITH
MAORI LANDS;

OR,
COMMENTS ON EUROPEAN DEALINGS FOE THE PURCHASE AND LEASE OF NATIVE LANDS, AND THE LEGISLATION THEREON.

By JAMES MACKAY,
LATE CIVIL COMMISSIONER FOR THE COLONY OF NEW ZEALAND,
ETC., ETC., ETC.

ALL RIGHTS RESERVED.
Auckland:
KIDD & WILDMAN, BOOKSELLERS, STATIONERS, AND PUBLISHERS.
MDCCCLXXXVII.

[Page 2 is blank]

Our Dealings with Maori Lands.

OUR DEALINGS WITH MAORI LANDS.

AS very considerable dissatisfaction obtains among those persons of the European race who during the last few years have purchased or leased, or have negotiated for the purchase or lease of native lands in the North Island of New Zealand, principally owing to the conflicting and fluctuating legislation on that question, and as the present method of dealing with their estates is universally deprecated by the Maori people. The disposition and dealing with native lands, whether by Government or otherwise, being one of vital importance to the North Island, I purpose, to endeavour to show some of the causes which have led to the existing discontent in this matter. I consider it to be the duty of all persons who have any knowledge of the subject to give such information as is in their power; in order that steps may be taken by the Legislature of the colony to enact such measures as will remove or alleviate the difficulties at present besetting this important question. In order to do so, and make things clear to persons who have recently arrived in the colony, it is proposed to proceed with it as follows: –

Firstly. – The Maori tenure of land before the arrival of Europeans in New Zealand.

Secondly. – European dealings from their first arrival until 1840, when the law of England, so far as it was applicable to the circumstances of the colony, became the law of New Zealand.

Thirdly. – The system of Government land purchases from 1840 until 1862, when the Native Lands Act, 1862, was passed.

Fourthly. – The legislation respecting Native Lands Courts and Lands from 1862 to 1886.

Fifthly. – With measures which might be enacted to facilitate and simplify the dealings with, and disposition of Native Lands.

It is not my intention to enter at length into the subjects included in the three first heads, but only so far as will make the whole intelligible to the reader. The other two will be dealt exhaustively with, as being what immediately concerns the whole colony at the present time.

Firstly. – The Maori tenure of land prior to the arrival and settlement of Europeans in New Zealand was not of such a vague and undefined nature as many persons suppose. There were a number of tribes inhabiting the country, and the estate of each had its well-known and established boundary. Within these great external limits were subdivisions for each sub-tribe or sept (hapu) in the tribe. These boundaries were occasionally varied, altered, or expunged by conquest in war, and in a few instances by intermarriages. This latter was not a general rule, because, according to native custom, husband and wife were not one as far as any description of property was concerned. If a man belonged to one tribe and his wife to another, he could reside with her on her people's land, and "vice versa," but neither acquired any right to the lands of the other. The children could occupy the lands of both tribes, but they always distinguished between that which they inherited from the male line and that which accrued to them from the female. Sometimes an old chief would partition his lands amongst his children together with certain hapus. Land was occasionally given for services rendered in war, or otherwise. There are a few cases where an actual purchase has been made.

In the matter of acquiring land by conquest: – If a tribe was exterminated, or if nearly annihilated, and the small remnant was captured, they became the slaves (taurekareka), and the land the absolute property of the conquerors, the chiefs of whom would at once proceed to mark out portions for themselves and their respective followers. The rule was first come first served, precisely similar to miners pegging out claims in a new rush on a goldfield. One man would put up a pole with a bunch of feathers on it, another would place a long stone in the ground for his boundary. A gentleman who did not like to travel to the summit of a mountain, and who being of high rank was very sacred (tapu), would quietly observe, "that hill is my head." On one occasion a chief had been left out in the scramble, and he went to an adjacent forest and filled his hair with the berries of the hinau tree. On rejoining his companions he shook the berries ou to the ground, and said that is my piece, pointing to the spot where he had procured them, and that constituted a good and valid title, and his descendants own that land to this day. If a conquest was partial, each party held that which they occupied; but this generally produced further fighting. They both retained possession until one was strong enough to conquer or drive the other off. In the case of the original owners being driven off the land, and the victors occupying it, and the fugitives by permission of the party in possession being allowed to return and occupy a portion of their former holdings, they then became the vassals (rahi) of the dominant tribe. They were not body servants, like the slaves (taurekareka), but had to perform feudal service, join in war, paddle the chief's canoe, and supply food for tribal

meetings. As far as can be ascertained the lands of a sub-tribe or sept (hapu) were held in common, and there were no cases of individual rights or ownership in land, unless by the death of all but one of the members of a sub tribe.

There is probably no better illustration of Maori tenure than that of the Highland clans before the rebellion of 1745, with this exception that there were no vassals or slaves among the Highlanders; they were all free

men. The Highlander paid no rent to his chief, who had no more proprietary right in the soil than he had. He would aid his chief in war; but there were cases both among the Celts and the Maoris where the head of a powerful sub-tribe or sept (hapu) declined to join the forces of their acknowledged lord. Then there is another similarity. "Mac" in Scotch means "son or offspring of;" in the Maori the word "Ngati" has the same signification, For instance, Mackay – offspring of Kay; Macdonald – of Donald; Ngatitamatera – offspring of Tamatera; Ngatitoa – of Toa. Now, for chiefs we have Eric Mackay, Lord Reay, head of the clan Kay, and the subtribes or septs of Scowrie, Bighouse, &c. on the Highland side, and Taraia Ngakuti of the Ngatitamatera, and the septs (hapus) of the Ngatipare of Cape Colville, and the Ngatitawhake of Ohinemuri, &c, representing the Maori clan of Tamatera, Pare and Tawhake being children of Tamatera.

Secondly. – The first Europeans who arrived in New Zealand with the intention of living in the country consisted of traders, runaway sailors, and convicts who had escaped from Botany Bay. The missionaries came at a subsequent period. However, all four classes dealt with Maori lands in much the came manner – paying for large areas with goods and articles of small value. But, in justice to these old pioneers and to the natives, it must be said that both parties were contented with their bargains, and such a thing as repudiation was unknown. A chief's word was his bond in those days. After the Charter of New Zealand as a British colony, on the 16th of November, 1840, and ita subsequent proclamation as such, these laud claims were investigated by Commissioners specially appointed for the purpose, and which though recognised as valid, yet the most of them were reduced very considerably in extent; but, strange to relate, the land thus cut off, or excluded from the claim was in many instances retained by the Crown, and not given back to the original Maori owners. The next and most extensive land purchase operations were made by an association which had been formed in England, known as the "New Zealand Company," for the purpose of acquiring lands in and colonising New Zealand. Their operations were, in the first instance, confined to the country now forming the provincial districts of Taranaki, Wellington, Nelson, and Marlborough, but were subsequently extended to other portions of the Middle Island. This company dealt in a more liberal and systematic manner with the natives than the previous mentioned classes of purchasers. Their operations were in full swing when Captain William Hobson, R. N., arrived at the Bay of Islands as Her Majesty's Consul, etc., which brings us to the subjects dealt with under the third heading.

Thirdly. – In 1840 the Maori people were very numerous and warlike, and were well-supplied with arms and ammunition, and any attempt to have taken their lands by force would have resulted in the extermination of all the Europeans then residing in the country. Captain Hobson therefore in that year entered into a treaty, called the Treaty of Waitangi, with a number of the principal chiefs of the Northern tribes, at a place known as Waitangi, at the Bay of Islands, It was subsequently signed by the Waikato and several other tribes. This treaty extended the Queen's protection to the Maori people, and guaranteed to conserve to them all the rights to their lands, forests, fisheries, and other property they possessed. In return the chiefs agreed to cede to the Queen the sovereignty they possessed over their respective tribes and people. Also, that the Crown should have the pre-emptive right to purchase such lands as the natives were willing to sell.

New Zealand was thus made a British colony, but as one of the dependencies of New South Wales, and Captain Hobson, R. N., was appointed to be the Lieutenant-Governor thereof.

The Government, at first, only purchased sufficient land for their immediate requirements in and around Auckland.

In 1842, Captain Wakefield, the agent for the New Zealand Company at Nelson, and several influential settlers, were killed by Te Rauparaha and the Ngatitoa tribe, at Wairau, Marlborough, owing to a dispute about the purchase of that district by the New Zealand Company. This was the first European blood shed in connection with the purchase of land.

In 1846, Sir George Grey, then Governor of the colony, inaugurated a system of Government land purchase, and a very stringent ordinance was enacted by the Governor and the Legislative Council (November 16, 1846). The preamble is given to show how determined the Crown were to uphold the pre-emptive rights which had been acquired under the "Treaty of Waitangi."

"An ordinance to provide for the prevention by summary proceedings of unauthorised purchases and leases of land."

PREAMBLE.

"Whereas, it is essential to both the peaceable and prosperous colonisation of New Zealand that the disposal of land therein should be subject to the control of the Government of the colony. And to that end the right of pre-emption in and over all lands within the colony hath been obtained by treaty, and vested in Her Majesty, her heirs, and successors. And all lands alienated without the sanction of the Crown, by any person of the native race to any person not of the same race, do, by virtue of such alienation, vest in the Crown as part of the domain lands thereof. And, whereas, divers persons have, without the sanction of the Crown, entered into contracts for the purchase, use, or occupation of lands, which private contracts are not, and in most cases cannot, be made with due regard to validity of title to the land comprised therein, and are often defective by reason of a want of a clear understanding by the parties to the contract of the terms and meaning thereof. And, whereas, by such secret and irregular purchases, not only is the law sought to be evaded, but the general tranquillity of the colony is liable to be seriously endangered. For the purpose therefore of providing a

speedy and efficient remedy for the evils aforesaid: Be it enacted by the Lieutenant-Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows: –

It is unnecessary to give the provisions in "extenso," but they were shortly as follows: –

1. Forbidding the purchase or lease of land or purchase of timber.

2. Forbidding any person from residing, or, in any way occupying native land, without being the holder of a license from the Government.

3. Penalty for infringing the above not less than £5, or more than £100, to be recovered in a summary way.

4. If any person continued in occupation for one calendar month after conviction he was liable to be fined again as above.

Land Purchase Commissioners were appointed, the chief of whom was the late Sir Donald Maclean, and under this system large areas of land were acquired by the Crown in various parts of the CoIony. This plan worked pretty well and smoothly until 1858 (Sir Thomas Gore Browne was then Governor of the colony), when

complications arose at Taranaki, which continued until the celebrated interview took place between the Governor and Wiremu Kingi Rangitake about the Waitara block, which culminated in the first war at Taranaki in 1860. After this the country was in a disturbed state for some years, and Government Land Purchase operations were virtually suspended. In 1862 a Native Lands Act was passed by the Legislature, which brings us to the conclusion of the third point under review.

Fourthly. – After the conclusion of the Taranaki war of 1860, many persons (both European and native) were of opinion that if there had been any properly constituted tribunal for the investigation of the title and claims of natives to lands, that conflict could have been averted. The Government then considered it desirable to enact some measure dealing with this question, and accordingly The Native Lands Act, 1862, was passed. This Act was "reserved for the signification of Her Majesty's pleasure thereon," 15th Sept., 1862. On the 6th June, 1863, Sir George Grey (then Governor) signed a proclamation that "Her Majesty had been pleased to assent to it." From this point the former policy of the Government with reference to the purchase of native lands was completely reversed. The Crown relinquished and abrogated the pre-emptive right of purchase, which it had acquired under the provisions of the Treaty of Waitangi. It will be remembered that document was made between Queen Victoria on the one part, and certain Maori chiefs on the other; and the Legislature considered the question one of Imperial policy and importance, or they would not have inserted a section specially reserving the Act for the Queen's assent. Be that as as it may, one of the contracting parties – and the stronger one of the two – gave up a certain right which had been obtained by Her. This did not, however, release the Crown from its other liabilities under that treaty, and they were still bound to protect the Maoris in undisturbed possession of their lands, forests, fisheries, and other property. It is also a law of nations that a treaty shall be interpreted in favour of the weaker party. The Act will, however, speak for itself, and it is unnecessary at this stage to make further comment on it. The preamble is as follows, viz.: –

"Whereas by the Treaty of Waitangi entered into by and between Her Majesty and the chiefs of New Zealand, it was, among other things, declared that Her Majesty confirmed and guaranteed to the chiefs and tribes of New Zealand and the respective families and individuals thereof, the full exclusive and undisturbed possession of their lands and estates which they collectively or individually held, so long as it should be their desire to retain the same. And it was further declared that the chiefs yielded to Her Majesty the exclusive right of preemption over such lands as the proprietors thereof might be disposed to alienate, And whereas it would greatly promote the peaceable settlement of the colony and the advancement and civilisation of the natives if their rights to land were ascertained, defined, and declared, and if the ownership of such when so ascertained, defined, and declared, were assimilated as nearly as possible to the ownership of land according to British law. And whereas with a view to the foregoing objects Her Majesty may be pleased to waive in favour of the natives so much of the said Treaty of Waitangi as reserves to Her Majesty the right of pre-emption of their lands, and to establish courts, and to make other provisions for ascertaining and declaring the rights of the natives to their lands, and for otherwise giving effect to the provisions of this Act, and it is expedient that the General Assembly of New Zealand should facilitate the said objects by enacting such provisions as are hereinafter contained."

It will be necessary to refer shortly to some of the provisions of this Act.

Section 2 sets forth – "All lands in New Zealand over which the native title has not been extinguished, may save as hereinafter excepted, and after the respective owners by native custom of the same shall have been ascertained as hereinafter provided, be dealt with and disposed of under the provisions of this Act."

Further sections provide for the constitution of Courts. The appointment of Resident Magistrates to be presidents of such Courts. The making of rules for the empanelling of any jury, and for generally conducting the business of the Courts. Then for procedure, the proceedings of the Court to be confirmed by the Governor, and signified to the President. The Governor to have power to make reserves, and to make such reserves inalienable, subject to such reservation, and upon the confirmation of the proceedings of the Court as aforesaid, the President and members of the Court shall sign and issue a certificate of title in favour of the tribe, community, or individuals whose title shall have been ascertained, defined, and registered as aforesaid.

By section 15 it was enacted, "That where a certificate was issued in favour of any individual person or persons not being more than twenty in number, the Governor may endorse his signature on the certificate, which, when sealed with the public seal of the colony, shall have the same force and effect as a grant in fee simple to the persons described in the certificate." Section 17 provides for the disposition of lands thus: "The individual person or persons named in any certificate as the owner or owners thereof, or as having any particular estate or interest therein, may dispose of the interest which he or they may have in the lands described in such certificate by way of absolute sale or lease or exchange for other lands or otherwise to any person or persons whomsoever." A duty was payable to the Crown thus: "Upon each first sale of land, after the issue of the certificate or Crown grant in exchange for the certificate, the purchaser of the lands then sold shall pay a duty or sum after the rate of £10 in every £100 upon the amount of the consideration or purchase money of such lands, and upon each subsequent sale of the same lands the purchaser thereof shall pay a duty or sum after the rate of £4 in every £100 upon the amount of consideration or purchase money of such lands." This section further enacted "that no transfer or conveyance shall be valid until such duty shall have been paid." It is unnecessary to make further quotations from the above-mentioned Act, it suffices to say that the Crown by it relinquished their right of pre-emption, and with the exception of lands reserved for their benefit, use, and occupation, which were to be inalienable, the Maoris could deal with their lands as they pleased. It may, however, be mentioned that the Native Lands Act, 1862, never had a fair trial, as the outbreak of war at Waikato in 1863 unsettled both Europeans and natives, and few, if any, titles were investigated and determined under its provisions. One thing is certain, that it had this merit, which cannot be claimed by any subsequent law passed respecting native lands, that it was clear, concise, and easy to understand; and instead of being obstructive in its character, full and free permission was given to any person to acquire land by purchase, lease, or otherwise, with the single exception above mentioned.

As if farther to show that the natives were to be placed on the same footing as British subjects (it may be remembered that in the preamble to "The Native Lands Act, 1862," it is stated that it is desirable that native title, when ascertained and defined, should be assimilated as nearly as possible according to British law, the Colonial Legislature in 1865 passed "The Native Rights Act, 1865." It is intituled "an Act to declare that the Maoris shall be deemed to be natural-born subjects of Her Majesty, and to declare that the jurisdiction of the Queen's courts of law extends over the persons and properties of all Her Majesty's subjects within the colony."

This Act conferred on the Supreme Court an original jurisdiction over lands held under Maori custom. Maori title to land "was to be determined according to the ancient custom and usage of the Maori people so far as the same can be ascertained." It actions involving questions of Maori title to, or interests in land, the Judge before whom the case was tried "shall direct any issue or issues to be tried by the Native Lands Court, and the Judge of the Native Lands Court before whom the same shall be tried, shall return the verdict or judgment, as the case may be, into the Supreme Court, and such verdict or judgment shall be taken as conclusive, both as to fact and as to Maori custom or usage, and shall be dealt with by the Supreme Court in the same manner, and shall have the same effect as the verdict of a jury in the Supreme Court." This Act is still law, but I am unable to cite any case to which it has been applied.

During the session of 1865, farther legislation on native lands was enacted by the passing of "The Native Lands Act, 1865." This repealed "The Native Land Purchase Ordinance, session 7," No. 19, hereinbefore alluded to, "The Intestate Natives Succession Act, 1861," "The Native Lands Act, 1862," and "The Native Lands Act Amendment Act, 1864." It was intituled "An Act to Amend and Consolidate the Laws relating to Lands in the Colony in which the Maori Proprietary Customs still exist, and to provide for the ascertainment of the Titles to such Lands, and for Regulating the Descent thereof, and for other purposes."

This Act provided more extensive and complicated machinery for the investigation of Native title to lands than that of 1862.

A Chief Judge, Judges, and Assessors were appointed under it. The certificate of title ceased to be endorsed by the Governor, but on it being forwarded to him "it was lawful for him to cause a grant from the Crown to be made and issued under the public seal of the Colony, of the lands comprised In the certificate to the persons named therein for the estate or interest therein described or mentioned, and if the certificate shall have been accompanied with any such recommendation (to make the land inalienable, or other conditions) of the Court as aforesaid, it shall be lawful for the Governor to insert in the grant any such restrictions on alienability, limitations, or conditions, or some of them, as may be expressed in such recommendation."

The above section gave the Crown a greater power than was conferred under the Native Lands Act, 1862. By it the Governor had authority to make restrictions in the case of native reserves only. In the Act of 1862 the restrictions were for the benefit of the natives alone, but in that of 1865 restrictions could be recommended by the Court without consulting the natives; and it might not be difficult to find a few instances where land has been made inalienable because of its value for public purposes – the Crown having no power under these Acts to take land for such objects, excepting for roads only.

In the Act of 1865 a very material alteration was made in the matter of certificates of title, the section (23) referring to them is as follows: – "At such sitting of the Court, the Court shall ascertain by such evidence as

it shall think fit, the right, title, estate, or interest of the applicant, and all other claimants to or in the land, respecting which notice shall have been given as aforesaid, and the Court shall order a certificate of title to be made and issued, which certificate shall specify the names of the persons, or of the tribe, who according to native custom own or are interested in the land, describing the nature of such estate or interest and describing the land comprised in such certificate, or the Court may in its discretion refuse to order a certificate to issue to the claimant or any other person, provided always that no certificate shall be ordered to more than ten persons. Provided further that if the piece of land adjudicated upon shall not exceed five thousand acres such certificate may not be made in favour of a tribe by name."

Now the Act of 1862 provided that a certificate could be issued "in favour of any persons not being more in number than twenty," and as under its provisions it was competent to issue tribal certificates which could at any time be subdivided, it is quite fair to assume that where the number of owners exceeded twenty that it was intended a "tribal certificate" should be ordered. By the Act of 1865 the Native Lands Court is directed to "ascertain the right, title, estate, or interest of the applicant and all other claimants," and further enacts that the Court shall order a certificate of title which shall specify the names of the persons who own or are interested in such land, etc. After taking all this trouble the number was to be narrowed down to ten unless they owned upwards of 5000 acres. If they possessed an area in excess of that quantity they could then obtain a tribal certificate, but not otherwise. This certainly is a most extraordinary provision, and not as farseeing or reaching in that respect as the Act of 1862.

This section has done incalculable injury to private purchasers of native lands, and has inflicted gross injustice and robbery on numerous persons of the Maori race, and has been a fruitful source of ruinous litigation. For instance, on the investigation of the title to a block of land, say containing four thousand nine hundred acres, it was found there were four septs (hapus) of a tribe entitled to the land, the aggregate number of persons composing the same being sixty, the Court then gave its decision accordingly, and requested the natives to select the names of ten of such owners to be placed in the certificate. This being done, the title issued in due course, leaving fifty of the acknowledged owners out in the cold. It may be said, "Well, that is all right, the ten are trustees for the other fifty;" but such was not the case either in law or in fact. Others will probably ask, "But why did not they apply for four certificates, with ten names in each. There was provision in the Act for that?" The answer to this question is very plain – namely, that the Maoris at that time knew nothing of the working of the Native Lands Act, as it was entirely new to them, and neither the Court, or the would-be purchasers enlightened them on the subject: the former because the majority of the Judges had a noted aversion to "subdivisions of hereditaments," on account of the large amount of trouble involved in investigating and deciding such cases; the latter, as the fewer natives to deal with the better for them. The Maoris who had been excluded from the certificate speedily became acquainted with one phase of the case. The ten men who should have been trustees, in most instances treated the estate as if it was their sole property, and sold or leased it and pocketed the proceeds, ignoring the other owners who had as much right to the consideration money as themselves. In a few cases the ten certificated owners behaved honourably to their people, but these were the exception and not the rule. The Government system of purchase under the repealed Land Purchase Ordinance of 1846, was greatly superior to this, as far as the tribe was concerned, as the money was paid at large public meetings of natives, and although the Commissioner might hand it to the principal chief, it was almost invariably fairly divided among the owners; in fact, many participated in the proceeds of sales whose claims would not now be recognised by the Native Lands Court. It is therefore not difficult to arrive at the conclusion that the natives soon became highly dissatisfied and disgusted with the new land law.

By the Act of 1865 the duties payable to the Crown were altered, and confined to paying on the first disposal of the land by sale or lease a sum of ten pounds per centum on the consideration or purchase money paid on a conveyance in fee simple, and on the amount of rent in each year (reserved) in the lease. The provision contained In the Act of 1862, for paying four pounds per centum on the consideration for subsequent dealings with the same land was dropped.

Before concluding the question about the ten certificated owners or grantees it may be expedient to direct attention to some of the provisions of an Act passed in the last session oi Parliament, styled "The Native Equitable Owners Act, 1886," which sets forth in the preamble thereto that "Whereas under 'The Native Lands Act, 1865,' certificates of title and Crown grants of certain lands were made in favour of or to natives nominally as absolute owners. And whereas in many cases such natives are only entitled and were only intended to be clothed with title as trustees for themselves and others, members of their tribe or hapu or otherwise. Be it therefore enacted by the General Assembly of New Zealand, in Parliament assembled, and by the authority of the same, as follows:" –

Section 2. Upon the application of any native claimant to be beneficially interested in any land as aforesaid, the Native Land Court of New Zealand may make inquiry into the nature of the title to such land, and into the existence of any intended trust affecting the title thereto.

3. According to the result of such Inquiry, the Court may declare that no such trust exists, or if it finds that any such trust does or was intended to exist, then it may declare who are the persons beneficially entitled.

4. The Court may thereupon make order that the persons so declared entitled to such beneficial ownership shall be owners as

tenants in common of the land, the subject of such trust, and they shall be deemed to be such owners in like manner as if their names had been inserted in the certificate or grant affecting such land.

5. The foregoing enactments shall not apply where the land the subject of such certificate or Crown Grant as aforesaid or any share therein has heretofore been sold or conveyed by such nominal owners or any of them or their successors, but this exception shall not apply to lands in the South Island portions whereof have been

disposed of to the Government. Provided always that no native claimant shall have any claim on the Government or be allowed to question the title of the Government to any land purchased by it. Where land subject to this Act is also subject to a lease for an unexpired term of years, any order made as aforesaid shall not prejudice the estate or term of the lessee, but the lessee, after notice of such order, shall pay any rent to accrue, due under his lease, to the Public Trustee, whose receipt shall be a good discharge for the same. Such rent shall be paid out to and among the parties beneficially entitled in accordance with any partition or determination of interests as aforesaid.

It is improbable that many cases will be brought forward under the statute above alluded to, as a very large proportion of the lands granted under the Act of 1865 have been sold. It is also very doubtful whether any advantage which may accrue from this ex post facto legislation, is equivalent to the mischief which may be done by educating the natives up to the idea that titles derived from the Crown are not worth the parchment they are written on, and can be set aside by the same tribunal which created them, A Maori can understand a final decision, but if he finds there are any legal loopholes he will endeavour to squeeze through them. In the old days of Government land purchase if a native was aggrieved at the action of the District Commissioner he would appeal to the Chief Commissioner, and was generally satisfied with his ruling, but in some instances nothing would please him but personally interviewing the Governor on the question, after which the matter would be dropped. Another great disadvantage of interfering with existing titles granted by the Crown is that European capitalists are now very chary about investing in estates which have been acquired under any law affecting native lands. It will be observed that the Crown are very careful to guard themselves against the outside owner being able to make any claim upon them or to question their title. Why do not they extend the same protection to the Europeans who have purchased from the ten certificated owners or grantees? In the case of an existing lease, and the lessee having a right to a renewal thereof, his position may be found to be very difficult from the importation of additional landlords into the question, who, it is highly probable, would be antagonistic to the original lessors. The lessee is not to blame in the matter; the law allowed him to take a lease from the ten ostensible owners, and if anyone is culpable it 1s the Crown, and they ought to uphold the legal rights of purchasers and lessees and if any natives have been wronged by defective laws the Government should glve compensation for such grievances, but should refrain from upsetting existing grants and titles.

Another subject which demands some attention is the manner in which we taught the natives to repudiate agreements entered into in good faith between themselves and Europeans. It had been the custom for Europeans to enter into agreements for the purchase and lease of lands, and to make advances in money thereon previous to the investigation of the title, or the issue of a certificate of title, for the same. Por a long time good faith was maintained on both sides, and when the Court made the order for a certificate, the balance of the purchase money or rent was paid over to the natives, who executed the conveyance or lease, as the case might be. Unscrupulous persons, who were desirous of ousting the original negotiator, told the natives that, under the various Native Lands Acts, such "agreements were absolutely void, and that no action could be maintained for the recovery of any moneys or other consideration paid or given thereon." The natives, finding this to be true, had no scruple in ignoring agreements and payments on account; and, having acquired this knowledge, they next proceeded to attempt to upset conveyances and leases which had been executed subsequent to the issue of certificates of title, memorials of ownership, or Crown grants. A person advancing moneys to natives before the investigation of the title to land ran a considerable risk of paying the wrong owners, or of having numbers to deal with in addition to those to whom he had already made advances whensoever the title was settled. He might also lie out of his money for years before it was possible to complete his conveyance or lease; and it only appears reasonable that, after running all the risk, and expending an enormous amount of time and trouble, he should be allowed to conduct his operations to a successful issue without the law authorising a system of repudiation. Any person in the slightest degree acquainted with the question of native land purchases knows full well but for the system of prior advances and agreements the area of land the title to which has been investigated, and which has been conveyed and leased, would not have attained to its present large proportions: and large tracts, now occupied and improved, would have still remained native land. Before surveys could be made or titles decided some person had to negotiate and advance money, as the natives were powerless to do bo themselves from want of the necessary funds; and purchases generally commenced by the natives requesting a European to advance money for survey purposes, which subsequently ended in a purchase or lease.

In 1867 an addition to "The Native Lands Act, 1865," was passed, known as "The Native Lands Act, 1867." It repealed or amended seme clauses of the former measure. The most important change, and which is more immediately connected with the sale and lease of native land, is the radical alteration

made in the matter of "Certificates of Title;" whereas by the statute of 1865 the names of ten persons only could be inserted in a certificate of title; under the provisions of that of 1867 cognisance could be taken of the claims of any number of persons. By referring to section 17 of that Act it will be seen that, after providing that the interests of all persons, whether they have put in a claim or not, shall be ascertained by the Court, it further enacts that: "Provided that when it shall appear to the Court, upon such inquiry, that any persons more than ten in number, or that any tribe or hapu are interested in such land, and that such persons, tribe, or hapu so interested consent that a certificate in favour of persons should be ordered to issue to certain of the persons interested therein, not exceeding ten in number, in such case a certificate may, at the discretion of the Court, be ordered to be issued to such last-mentioned persons; and the Court shall cause to be registered in the Court the names of all the persons interested in such land, including those named in the certificate, and the particulars of the interests of all such persons; and in the certificate to be issued in such cases, there shall be a recital that the certificate is issued under this section of this Act, and no portion of the land comprised in such certificate shall, until it shall have been subdivided as hereinafter provided, be alienated by sale, gift, mortgage, lease, or otherwise, except by lease for a term not exceeding twenty-one years, and no such lease shall contain or be made subject to any proviso, agreement, or condition for the renewal thereof." This section further provides for a subdivision of the land comprised in the certificate, if the persons interested, or a majority of them, make application to the Court in that behalf. It is a very peculiar circumstance that, while under the Act of 1865 the ten persons named in the certificate had the absolute right to dispose of the land in any manner they pleased, to the injury of the people they represented, yet, when the names of all the persons interested in the land are inserted, either in the certificate of title or in the Court register, they are not allowed to sell it, or to lease it, for any term exceeding twenty-one years. Presumably it was enacted on account of the wrongs done in the cases where, under the Act of 1865, only ten names appeared in the certificate of title; but why was the restriction on alienability added?

The ten persons named In the certificate in many instances leased the land to Europeans, and the "registered owners" were not consulted in the matter. The ten "certificated owners" received the rent from the lessee, and generally put it in their own pockets, and did not account to the other persons interested for their shares of it. Occasionally, though very rarely, the "certificated owners" might be found acting honourably in the matter, and dividing the rents fairly among all the parties interested. The result of the working of the 17th section of the Act of 1867 was very unsatisfactory and there were interested and unscrupulous persons of the European race who endeavoured to persuade the "Registered Owners" that they could upset leases made under its provisions, on the ground that those instruments should have been executed by all the owners, whether their names were in the certificate or on the "Court Register," and that they could compel the lessee to pay rent to them, and that there were good grounds for actions in the Supreme Court against such lessee. If it had been the intention of the Legislature that the ten "Certificated Owners" should not have the power to lease the land, they would have inserted a proviso "that no lease should be valid without the consent of all the owners thereto." The Supreme Court and the Court of Appeal have decided that a lease made by the ten owners is good in law, and if they fail to pay to the "Registered Owners" their fair proportion of the rent, the latter have their remedy against them, but not against the lessee. If there is any doubt on this point, it

should be set at rest forthwith by legislation, because the cases affected thereby are very numerous, and highly valuable and important interests are at stake.

Between 1867 and 1873 a large area of land was leased under the provisions of section 17 of the Native Lands Act, 1867, but in 1873 a Native Lands Act was passed which repealed the former statute. The new law came into operation on the 1st January, 1874. The preamble was as follows, viz.: –

"Whereas it is highly desirable to establish a system by which the natives shall be enabled at a less cost to have their surplus land surveyed, their titles thereto ascertained and recorded, and the transfer and dealings relating thereto facilitated. And whereas it is of the highest importance that a roll should be prepared of the native land throughout the colony, showing as accurately as possible the extent and ownership thereof, with a view of assuring to the natives without any doubt whatever a sufficiency of their land for their support and maintenance, as also for the purpose of establishing endowments for their permanent general benefit."

After authorising the appointment of judges and assessors, a new feature was introduced by creating District Officers, who were to make certain inquiries and report to the Chief Judge thereon. But in accordance with all previous experience in native affairs, the administrative branch of the Native Department, and the Native Land Court Judges did not work amicably, or in concert together, and in a short time district officers virtually ceased to act. It was also provided that the judge should make preliminary inquiries with a view to ascertaining whether the application to bring the land under the Act was in accordance with the wishes of the ostensible owners thereof. No attempt was ever made to give effect to this provision, and it became a dead letter. Another departure from the principles of the Acts of 1862, 1865, and 1867 was the substituting memorials of ownership for certificates of title. The sections relating thereto are as under: –

47. After the inquiry shall have been completed, the court shall cause to be inscribed on a separate folium in the court rolls, a memorial of ownership in the form No, 1 of the schedule hereto, giving the name

and description of the land adjudicated upon, and declaring the names of all the persons who have been found to be the owners thereof, or are thenceforward to be regarded as the owners thereof under any voluntary arrangement, as above mentioned (section 46 made provision for the Court adopting arrangements voluntarily come to amongst themselves by the claimants and. counter-claimants) and of their respective hapu, and in each case (when so required by the majority ia number of the owners) the amount of the proportionate share of each owner. Every such memorial shall have drawn thereon or annexed thereto a plan of the land comprised therein, founded on the map approved as hereinafter mentioned, and signed by the Judge and sealed with the seal of the Court.

48. To every such memorial there shall be annexed the following condition, namely, that the owners of the piece of land referred to in such memorial have not power to sell or make any other disposition of the said land, except that they may lease the same for any term not exceeding 21 years In possession, and not in reversion without fine, premium, or foregift, and without agreement or covenant for renewal or for purchase at a future time.

49. Nothing, however, in the foregoing conditions annexed to any memorial of ownership shall be deemed to preclude any sale of the land comprised in such memorial where all the owners of such land agree to the sale thereof, or to prevent any partition of such land in manner hereinafter provided if requited.

62. No lease of any land held under memorial of ownership shall be valid unless all the owners of the land comprised in such lease shall assent thereto, and the Court shall satisfy itself in every case of lease of the fairness and justice of the transaction, of the rents to be paid, and assent of all the owners to such lease; such leases shall be signed by all the owners in the manner hereinafter provided in respect of the signing of deeds and instruments.

65. In any case of a proposed sale or lease of land, held under memorial of ownership, if the Court shall find that all the owners are not desirous to sell or lease the said land, but that there are dissentients thereto, the Court shall ascertain the number of such last-mentioned persons; and if the Court shall find that the majority of the owners in either case are desirous that a subdivision of the land shall be made between them, then in every such case the Court may cause a partition of the whole land to be made into two aggregate allotments proportioned to the interests of those who wish to sell or lease, and of those who dissent, and shall award the same as the Court shall think just, one of these allotments to the dissentients, the other to the intending sellers or lessors, and thereafter the Court shall proceed in further matter of the particular sale or lease as hereinbefore provided.

97. After the passing of this Act no land comprised in any certificate of title heretofore issued under the seventeenth section of "The Native Lands Act, 1867," shall, until it shall have been subdivided and awarded, be alienated by sale, gift, or mortgage, lease, or otherwise, except in accordance with the provisions of this Act: Provided that it shall be lawful for the persons found by the Court to be interested, or for any of them to apply to the Court to subdivide the land comprised in such certificate, and thereupon the Court shall have such and the same power as it has in cases of partition in the case of dissentients to any sale or lease as hereinbefore provided, and a subdivision may be ordered notwithstanding that a lease or leases of such land or some part thereof may have been heretofore made; but no award of partition in such case shall take effect during the subsistence of any lease of the land comprised in such award.

98. All lands comprised in any such certificate issued as last aforesaid respecting which no conveyance, lease, mortgage, or contract has been made, may be dealt with in the like manner as land held under memorial of ownership under this Act: Provided that land comprised ia any such certificate respecting which any dealings may have heretofore been had, may be dealt with in the like manner as land held under memorial of ownership under this Act; but only in the case that in every dealing with such land the parties to such transactions shall satisfy the Court that they have the assent of all the persons whose names are endorsed on the certificate as well as the absent of those named on the face of the certificate to any such transaction.

It will be seen by the above recited clauses that lands held under certificate of title issued in accordance with the provisions of the 17th section of the Act of 1867 are assimilated to the position of lands held under the memorial of ownership provided for by the Act of 1873, – with this exception, that in the case of dissentients to a proposed sale or lease of lands held under memorial of ownership, a majority of the owners must apply for a subdivision or partition of such lands; whereas, in the case of the persons holding by a certificate issued under the provisions of the above quoted seventeenth section any of them can apply for a subdivision (see section 97 above). The reason why this difference of procedure under the same Act should exist is not apparent.

Another conflict takes place in the provisions of sections 48 and 49. The first absolutely forbids any dealings with land held under memorial of ownership except by lease for a term not exceeding twenty-one years. The last sets forth that nothing however in the foregoing condition shall be deemed to preclude the sale of the land comprised in such memorial where all the owners of such lands agree to the sale thereof.

In the preamble to the Act of 1873 it is announced among other things, that it is highly desirable . . . that the transfer and dealings relating thereto (land) be facilitated. It must be borne in mind that any number of names could be inserted in a memorial of ownership, and that, in fact, such documents have been issued containing several hundred names for one piece of land, and instances can be adduced where the persons representing such interests are scat-

tered throughout the country extending from the East Cape to Wairarapa and inland to Lake Taupo. Now it is utterly impossible to bring all these natives together to assent to any sale or lease. The Act of 1873 could not have been drawn by any person acquainted with native land purchase transactions, not only for the

above, but for other reasons. Some natives included in a memorial might be Hauhaus or Kingites, and nothing would induce them to agree to any sale or lease of the land. Others might wish to reserve their shares for their families; and several might object to the price offered or the amount of rent payable. On the Act being brought into operation it was found to be utterly unworkable. The Judges did not attempt to make the preliminary inquiries required by the Act, because they had no power or machinery for calling the natives together for that object. The district officers ceased to act; and the Native Lands Court made subdivisions of lands sold or leased, without the assent of all the persons interested therein. Such was the position of affairs; and the provisions of the Act of 1873 were so conflicting that it was understood that the Chief Judge would not sign any memorials of ownership ordered under its provisions, until the Native Minister guaranteed that the discrepancies and irregularities should be set right by further legislation. In the case of a proposed sale or lease, provision is made for a subdivision of the interests of dissentients thereto. It is somewhat strange that it did not occur to the person who drew that section (and who, in the preamble, deemed it to be highly desirable that the transfer and dealings relating to land should be facilitated), that there might be some dissentients to a conveyance or lease which had been partly executed; or that a purchaser or lessee, having acquired all the interests he could, might desire to secure them by obtaining a subdivision.

Until 1873, the duties on sales, and leases of native lands were levied under the Native Lands Acts, but in that year "The Native Land Duties Act" was passed. The duties were the same as in the Native Lands Acts, viz., £10 per centum where the estate is an interest in fee simple; and in respect of any lease a duty or sum in each year equal to £10 per centum yearly upon the aggregate amount of rent payable for each and every year of the lease. A new provision was introduced in respect to "duties in arrears and still remaining unpaid," "that over and above such amount of duty, a further sum by way of interest calculated at the rate of £10 per centum per annum upon the amount of such duty in arrear, from the day on which any such duty became due and payable." The above Act was repealed by "The Stamp Act, 1875, Amendment Act, 1881," and the duties have since been payable under the Stamp Act. This question will be considered separately in another portion of the pamphlet, but it was deemed necessary to allude to it here in order to show its severance from the Native Lands Act.

As before stated, subdivisions were frequently made by the Court without all the owners of the land assenting thereto, because it was found impossible to comply with the provisions of the Act of 1873 in that respect; and in 1878, in an amendment Act, the following section appears: –

11. Notwithstanding anything to the contrary thereto in "The Native Land Act, 1873," or any amendments thereto, it shall be lawful for the Court in its discretion, on the application of any native owner or other person interested therein, to hear and determine the value or extent of any estate or interest in any land held by such applicant under memorial of ownership or Crown grant, or award or conveyance; and if it shall deem fit to make an order vesting any part or portion of such land in such applicant."

Here, again, we have an enactment diametrically opposed to the policy of the Act of 1873. That Act provides "that a sale can be effected if all the persons interested in the land assent to such sale." By this section it would appear that individual interests had been acquired, or the shares of a portion of the owners, and the Legislature gave the Court the power to deal with such cases. This section should have gone further, and validated all purchases of individual interests acquired up to the passing of the Amendment Act of 1878, provided that such purchases passed the Trust Commissioner appointed under "The Native Land Frauds Prevention Act," and declared that for the future the assent of all the owners to a sale or lease was unnecessary.

Such a proceeding would have quieted many titles, removed ambiguity in the law, and prevented numerous costly lawsuits.

In 1880 "The Native Lands Court Act, 1880," was passed; among other provisions it was enacted by section 70, that "So much of 'The Native Land Act, 1873,' as is repugnant to this Act is hereby repealed – provided that a certificate of title issued under this Act shall have the same force and effect, and may be dealt with as a memorial of ownership under "'The Native Land Act, 1873.'"

The above statute contained no provisions respecting the sale or lease of land – it principally related to the procedure of the Native Land Court, but why certificates of title were substituted for memorials of ownership is not apparent? except it was from a mere desire to alter the existing law, and cause confusion as to the name of the Maori instrument of title.

In 1882 "The Native Lands Acts Amendment Act, 1882," was passed. It contained the following important section: –

7. "And whereas claims to lands have been heard and decided, or partly decided, and proceedings have been taken by the Native Land Court under 'The Native Land Act, 1873,' and its amendments, in which sundry provisions of the said Acts have not been technically complied with.

"Be it enacted that on the application of any person interested either originally or derivatively in any such land, it shall be lawful for the Court to inquire into the matter and make such order respecting the same as shall appear to the Court justly to remedy any mistake or any error in the proceedings,

"An endorsement made by the Court on any such order or on any instrument of disposition shall be valid and effectual for effecting the objects specified in such order, and an entry shall be made in the Registry of the Land Transfers and the Registry of Deeds Offices to the effect that such orders have been made."

It may be assumed that this provision was intended to be made to cover, amend, and legalise certain acts of omission and commlssion.

Firstly: For the very imperfect performance of their duties by the District Officers.

Secondly: The Judges never having made any of the preliminary inquiries as directed by the Act.

Thirdly: For Europeans having made purchases of shares or interests in land without having the assent of all the owners to the same.

Fourthly: For the Court having made orders for subdivisions of lands without the assent of all or of a majority of the persons interested therein.

Now, whether such proceedings or non-proceedings, contrary to the text and meaning of the statute, can be classed as a noncompliance with technicalities is very doubtful. Taking the above-quoted section for what it is worth, it evidently refers more to dealings for the purchase or lease of lands than to any other question. Under "The Native Lands Act, 1873," a person who had purchased the interests of all the owners could apply to the Court for an order vesting the land comprised in the memorial in him under freehold tenure. If this was given the Judge would recommend the issue of a Crown Grant to the purchaser, and there would be no occasion to make an entry in the Registry of the Land Transfers and the Registry of Deeds offices that such an order had been made; consequently the above recited section must be deemed to apply to cases where a person had purchased certain interests in a block of land but not all, and was unable to register his deeds because of not having the assent of all the persons named in the memorial of ownership. The Court then has to inquire into the merits of the case and make such order respecting the same as shall appear to the Court justly to remedy any mistake or any error in the proceedings. Then when the Court endorses the instrument of disposition, it can be registered. If this view is correct, it tends again to show, in despite of anything to the contrary in the Act of 1873, that purchases of shares less

than the whole of those comprised in a memorial of ownership were made, and orders of partition of such interests were granted by the Court.

By "The Native Land Division Act, 1882," it was enacted, among other things, as follows: –

Section 2. "This Act shall apply to all lands title to which is derived through the Native Laud Court, and to all lands title to which is derived through "The Poverty Bay Grants Act, 1869," or to any Act amending same, or making further provision in reference thereto, and shall not apply to any native reserve."

Section 4. "If any native grantee shall be desirous that division shall be made of the land included in his grant, or of any part thereof, he may apply to the Court to make such provision; and the Court may proceed thereupon, and may order a defined portion of the land to be granted to the applicant; or, if it shall appear to the Court that a majority in number desires that a division of the whole should be made, the Court may order such division as it shall deem just, and may order grants to be issued accordingly."

"(1.) The Court may order in any such grant any conditions, restrictions, or limitations, even in cases where the original grant was not subject to any such, or in extension or enlargement thereof if any such there were, and may order such new grants, or any of them, without any conditions, restrictions, or limitations, although the original grant may have been subject to such."

Further provision is made for the surrender of original grants, such surrender having the same effect as a repeal by scire facias. If such grant or other instrument of title is not produced at the hearing by the Court, it has power to declare such grant or other instrument of title to be null and void.

Section 10. "Land held by natives under the Land Transfer Acts may mutatis mutandis be similarly dealt with, and new certificates of title under the said Acts may be similarly issued

"Lands held by natives under memorial of ownership, or certificate of title under "The Native Land Court Act, 1880," may mutatis mutandis be similarly dealt with. Provided that the new instruments of title shall be Crown grants, or certificates under the Land Transfer Acts.

"Lands held by natives under the seventeenth section of "The Native Lands Act, 1867," may be similarly dealt with mutatis mutandis, but in these cases all the persons registered as owners, or their representatives as aforesaid if dead, shall be treated as owners in the division, though an application shall be sufficient if made by a majority of those named in the body of the certificate, or their representatives as aforesaid."

Section eleven provides for subdivision of lands granted to a tribe or hapu by name, Any persons claiming to belong to the tribe, not less than five in number, may apply to the Court for a subdivision. The proceedings being the same otherwise as in section ten.

Section 12. "Any person who, before the passing of this Act, has acquired an undivided share in any land granted to natives, or any estate or interest therein, may apply to have his estate or interest defined, and thereupon the Court may order a defined portion of the block to be granted to him proportionate to the value of the estate or interest acquired.

"Proceedings may be taken for perfecting his title thereto in manner before set forth for dividing land granted to natives mutatis mutandis. If the estate acquired is a leasehold, the Court may define a portion of the block to which the lease shall thereafter solely apply, and shall endorse a description

and plan of such portion on the lease. The endorsement shall be signed by a Judge, and sealed with the seal of the court, and the lease shall then cease to have any application to any portion of the block other than that contained in the description and plan."

The wording of section 4, above quoted, is rather ambiguous. One person can apply to have his share or part of his share or interest subdivided or partitioned, but if a subdivision of the whole block is required the application must apparently be made by a majority in number of those interested therein. This also conflicts with section 11 of "The Native Lands Act Amendment Act 1878," which is as follows: – "Notwithstanding anything to the contrary thereto in 'The Native Lands Act 1873,' or any amendment thereto, it shall be lawful for the court in its discretion, on the application of any owner or other person interested therein, to hear and determine the value or extent of any estate or interest in any land held by such applicant under memorial of ownership or Crown grant, or award or conveyance, and if it shall deem fit to make an order vesting any part or portion of such land in such applicant."

The investigation of the value or extent of any interest would necessitate the hearing of every person interested in the block, and the effect would generally be to cause a subdivision of the whole, consequently the application or desire of the majority would be a matter of little importance. The part of section 10 above recited, referring to lands held by certificate, issued under the seventeenth section of "The Native Land Act, 1867," traverses the ninety-seventh section of "The Native Land Act, 1873," which provides with respect to such lands, "that it shall be lawful for the persons found by the Court to be interested, or for any of them, to apply to the Court to subdivide the land comprised in such certificate." Whereas that now under consideration enacts that an application shall be sufficient if made by a majority of those named in the body of the certificate.

In 1883, Parliament passed "The Native Land Laws Amendment Act, 1883." Among other things it enacted, that "No person shall in any case be permitted to appear in Court by, or to have the assistance therein of, any counsel, solicitor, agent, or other representative.

"Provided that, if it is shown to the Court that any party to the proceeding is, through age, sickness, or infirmity, or through unavoidable absence, unable to appear, or if appearing is incompetent to conduct his case, such person may, in the discretion of the Court, be allowed to appear by a native." The above section was a means of frequently inflicting injustice on the natives. For instance, many an old chief, shrewd enough to take his own part in a Maori meeting or runanga, but unacquainted with the proceedings of our Courts, has been pitted against a well educated young Maori, and although having a good claim, has been worsted in the investigation of the title. If inquiry were made, numerous examples could be found of cases in which a clever native has been engaged and put forward to conduct claims in the Court, and appear as one of the claimants or counter claimants when he had not a particle of title or right to the land the subject of investigation. Surely the above section was an infringement of "The Native Rights Act, 1865," as British subjects have the right to appear by counsel in any proceeding in any Court of Law.

By the above Act of 1883, a person could not deal for any "native land" until after the expiration of the time allowed for a re-hearing (three months), and a further term of forty days. Before the passing of this Act, it had been customary to commence the execution of instruments of title immediately after the Court had made its order for the issue of a certificate of title or a memorial of ownership. The following section, which inflicts a very heavy penalty for its contravention, is a prominent and remarkable feature in this Act.

Section 8. "Any person who on his own behalf, or as agent or trustee for any other person, shall after the passing of this Act, and before the day to be so fixed as

aforesaid, take or accept any conveyance, lease, transfer, gift, or other assurance from any native, whether to himself solely, or to himself and others of any native land, or be a party to any negotiation, agreement, contract, or promise for the making to him or to him and others, or to any other person of any such conveyance, lease, transfer, gift, or other assurance shall forfeit and pay a penalty not exceeding £500, to be recovered in a summary way. And every such conveyance, lease, transfer, gift, and other assurance and promise shall, except as hereinafter provided, be null and void."

"Native land" in this and the next preceding section does not include land in respect of which a certificate of title or memorial of ownership has been ordered to be issued before the passing of this Act."

This statute further provided for the Trust Commissioner appointed under "The Land Frauds Prevention Act, 1881," making an inquiry as to whether the negotiations in respect of any instrument of title presented for his certificate had been commenced or carried on after the passing of this Act and before the day fixed by proclamation as aforesaid. If it was found that negotiations had been so made, then the Commissioner was to endorse a certificate to that effect on the instrument of title, which prevented the document from being registered in any Registry of Deeds or Land Office.

The above enactments applied not only to lands held under native title or custom, the title to which had not been investigated by the Native Land Court, but also to lands the title to which had been investigated under "The Native Land Court Act, 1880," for a period of three months and forty days after such adjudication. At the time the Crown held the right of pre-emption over native lands; the penalty imposed for dealing with such lands was any sum not less than £5 or more than £100. In "The Native Land Act, 1862," and subsequent enactments, it was laid down that all dealings for lands before the title thereto had been investigated by the Native Lands Court

were null and void. But even supposing it were right to inflict a penalty for such proceedings, no person has yet been able to discover why the penalty was imposed in cases where the title had been investigated, and an order made for a certificate of title to issue. A party purchasing or leasing the land under such circumstances had to take his chance as to whether there was a rehearing of the case or not. If the purchaser pleased to risk losing his money, in the event of a rehearing, that is a matter which apparently concerned himself only, and did not call for legislative interference or the infliction of a penalty.

A "Native Committees Act" was passed in 1883, which contains a proviso relating to land as follows: –

Section 14. – "In any of the following cases: –

"(1) Where it is desired to ascertain the names of the owners of any block of land being or to be passed through the Native Land Court; or

"(2) Where it is desired to ascertain the successors of any deceased owner; or

"(3) Where disputes have arisen as to the location of the boundary between lands claimed by natives, the committee may make such inquiries as it shall think fit, and may report their decision thereon certified in writing in the Maori language under the hand of the chairman of the committee, to the Chief Judge of the said Court for the information of the Court."

No operations have been initiated under this section, but if acted on carefully and properly, the Native Committees could render material aid to the Native Land Court by making preliminary investigations of claims to land, ascertaining the matters agreed to and those disputed, and leaving the latter as issues to be tried by the Court.

"The Native Land Alienation Restriction Act 1884," was enacted with the object of preventing Europeans dealing in any way for certain lands in the provincial districts of Auckland, Taranaki, and Wellington. This territory is known as the "King Country." It is not necessary to follow the boundaries minutely as set forth in the schedule. But approximately they are:

Commencing at Aotea Harbour on the West Coast of the North Island, thence by Te Wharauroa block to the Waitetuna river, thence by the northern boundary of the confiscated lands in the Waikato district, to the junction of the Wairaka stream with the Puniu river, thence by the Wairaka stream to its source, thence by a straight line to the confluence of the Mangare stream with the Waikato river, thence up that river to the Waipapa stream, and by that stream to its source; thence by the Tatua Whangamata block to Lake Taupo, thence across the lake to the mouth of the Tauranga river, thence by that river to its source in the Kaimanawa range, thence by the summit of that range to the source of the Moawhango river, thence by that river and the Rangitikei river to the southern boundary line of the Otairi No. 5 Block, thence towards the south generally by the southern boundary line of that block and the Otairi No. 24 Block to the Mangapapa stream, thence by that stream and the Turakina river to the southern boundary of the Maungakaretu block, thence by the southern and south-western boundary line of that block to the Whangaehu river, thence by that river and the Heao, and Paratieke blocks, to the Mangawhero river, thence by that river to the Mangakowai stream and by that stream to the north-western corner of the Ohineiti block, thence by the production of the northern boundary of that block to Karewarewa block, thence by that block and the Parihouhou, Aratowaka, and Pukenui blocks to the Whanganui river, thence by that river to the mouth of the Whangamomona River, thence by the latter river to its source, thence by a line due west to the boundary of confiscated lands at Taranaki, thence by that line to Parininihi (the White Cliffs), thence by the sea coast to Aotea Harbour, the place of commencement.

As a matter of public policy, and in order to prevent complications arising through negotiations for purchases of lands from natives living under allegiance to Tawhiao (the Maori King), it was desirable to lock up this country for a time until the Main Trunk Line of railway was arranged for, and the position of it definitely decided on. The Government, however, as usual, made an attempt to return to the pre-emptive right of purchase system, while debarring others from dealing they reserved the right to do so to themselves, thus, by section 7:

"Nothing in this Act contained shall be held to preclude the Governor from negotiating with the native owners of any land within the territory aforesaid for the purchase or other acquisition by Her Majesty of any such land they may wish to dispose of upon such terms and conditions as may be agreed upon between the Governor and such owners," It may not be generally known that the Crown could, by exercising the powers conferred on them by "The Government Native Land Purchases Act, 1877," and the Amendment Act of 1878, lock up any land as they pleased. It was only necessary for a land purchase officer to pay £5 or less to each of twenty chiefs or natives on the same number of blocks, and European negotiators would be forthwith debarred from further dealings by a "notification published in the New Zealand Gazette signed by or on behalf of the Governor that money had been so paid for the purchase or acquisition of such land or an estate or interest thereon, or that negotiations had been entered into in respect thereof, which would be sufficient notice to all persons of the prior rights of the Crown in respect of the land mentioned or described in the notice." On publication of such notice a copy of it was served on the District Land Registrar, and he lodged a caveat on behalf of Her Majesty the Queen, her heirs and successors, in respect of such land.

The Governor, by similar notification, could annul the first notification, and the lands were then open for purchase or lease, after the expiration of two months

from the date of the publication of the notification of withdrawal of the Crown's negotiations.

The Government were in nowise particular as to whether they paid a deposit to the right

owners, or not before issuing a notification under "The Government Native Land Purchase Act of 1877." For instance, in the Whanganui district a block of land known as Rangitatau, containing 47,000 acres, was thoroughly understood to belong to certain members of the Ngarauru tribe, residing at Waitotara. This was situated to the northward of the boundary line of the lands owned by the Whanganui tribes, which division had been frequently alluded to in the Native Lands Court, and affirmed by it, and was universally accepted by the natives as being correct. The Government desired to acquire the land, and endeavoured to deal for it with the proper owners of the Ngarauru tribe, who were at that time in negotiation with some European settlers for the sale of it to them. The natives, finding the latter would give a higher price than that offered by the Government, declined to sell to them. The land purchase officer then found some three or four natives residing at Whanganui among the tribe of that name, but who were distantly related to the Ngarauru, and he paid them a sum of money for their claims to the Rangitatau block, and it was forthwith proclaimed as "land under negotiation by the Crown." The European negotiators completed the survey of the block, and after it bad been for a long period under proclamation, a sitting of the Native Land Court was held, at Whanganui, and the Ngarauru tribe were found to be the owners. The persons who had received money from the Crown were adjudged not to be entitled to any interest in it, and the European settlers completed their purchase. It is unnecessary to supply further examples, but they are numerous, and from that now given it is not difficult to come to the conclusion that a power thus wielded by a Government could be used to inflict hardships and injustices on both natives and Europeans.

"The Native Land Alienation Restriction Act, 1884," has been repealed by "The Native Lands Administration Act, 1886," but "The Government Native Land Purchase Act, 1877," and "The Government Native Land Purchase Act Amendment Act, 1878," still remain on the Statute Book.

Before leaving this branch of the subject it may be as well to briefly notice "The Thermal Springs District Act, 1881," and its amendments. The following extracts will explain its purport: –

Section 2. – "The Governor may issue proclamations from time to time defining districts of the colony to be subject to this Act, being localities in which there are considerable numbers of the ngawha, waiariki, or hot or mineral springs, lakes, rivers, or waters; and from time to time may vary the boundaries or abolish any of such districts.

"3. – After the publication in the Gazette of any proclamation defining a district as aforesaid, this Act shall be in force therein, and it shall not be lawful for any person other than Her Majesty to acquire any estate or interest in native land therein, except by virtue of or through the means prescribed or permitted by this Act."

The Government, it is said, made overtures in the public interest, and rightly so, to the native owners of lands in the neighbourhood of Ohinemutu, Lake Rotorua, to allow the Crown to conserve, control, and manage certain lands which contained thermal springs, etc., so as to prevent them from falling into the hands of European speculators to the detriment of the general public. The natives of the Ngatiwhakaue tribe agreed to allow the Crown to deal with a certain portion of their lands near Lake Rotorua, and on the 25th November, 1880, through the agency of F. D. Fenton, Esq., entered into an agreement to that effect,

"The Thermal Springs District Act" was passed in 1881. On the 12th October in that year the Governor, by proclamation, brought the Pukeroa-a-Ruawhata block, containing 3200 acres, under the provisions of that Act. (This is the land the subject of Mr. Fenton's agreement.) Subsequently, on the 22nd October, 1881, by a further proclamation, the Tauranga and East Taupo district, containing 616,890 acres, was defined under the Act, and on the 24th October, 1881, an addition of 29,900 acres was made to the East Taupo district. The natives express great amazement and dissatisfaction at such a large area of their lands having been proclaimed under "The Thermal Springs District Act, 1881," and state (with what accuracy cannot here be exactly determined) that they never entered into any agreement to let the Crown administer some 650,000 acres of their lands. This statement is in a manner borne out by the preamble to "The Thermal Springs District Act, 1883," which sets forth that the agreement was made with the chiefs of Ngatiwhakaue for lands adjacent to Lake Rotorua, which was confirmed by subsequent arrangements made by Mr. H. T. Clarke, on behalf of the Government, for the same lands. Had there been any other agreements they would doubtless have been alluded to in the same preamble. On one point, however, there is no difficulty in arriving at a conclusion, that is, that the Ngatiwhakauae tribe could not cede the large territory so proclaimed, as only a small proportion of it is owned by them. The natives complain that there are included within the districts proclaimed under the Thermal Springs Act large areas of land which do not contain any "ngawha, waiariki," or hot or mineral springs, lakes, rivers, or waters; and which lands they desire to sell, lease, or otherwise deal with. They also complain that the Government administration of the township land at Rotorua, is very unsatisfactory to them.

There is another class of land which has not heretofore been alluded to, known as "Confiscated Lands." These lands are situated in the provincial districts of Auckland and Taranaki, and were principally the property of natives who rebelled against the Queen's authority, and took part in the Waikato and Taranaki wars. The confiscation was made under the provisions of "The New Zealand Settlements Act, 1863." Such natives as remained loyal were awarded compensation for their claims in money and land. Those natives who had been in rebellion,

and subsequently returned to their allegiance, also received land sufficient for their use and maintenance. Natives who remained aloof from Europeans in the King Country and elsewhere, have also been repeatedly offered land within the confiscated territory. Lands taken under "The New Zealand Settlement Acts" are not subject to the ordinary native land laws and Courts, as they are deemed to be lands over which the native title has been extinguished, excepting that by special enactment the Native Land Court has the power to subdivide blocks awarded to tribes by the Compensation Courts established by "The New Zealand Settlements Act, 1863."

The lands confiscated in the Waikato and Bay of Plenty districts were dealt with by the Compensation Courts. Those at Taranaki were partly investigated by such Courts, but a considerable portion was not adjudicated on by them, and some large areas were abandoned by the Crown, "by which they reverted to the position of 'native lands.'" The whole of this question has been recently legislated on under "The West Coast Settlement (North Island) Act 1880." This was, in effect, a reconfiscation of the whole district, so far as it was not then awarded to loyal natives, or sold to Europeans. Large reserves were made for the use and occupation of the natives, and others were set aside to be leased for their benefit. The result, however, is not satisfactory, as the natives complain that their lands were not dealt with in the same manner as those in the Waikato and Bay of Plenty districts, and that the loyal Natives were for years kept out of the Crown Grants for the lands which had been awarded to them by the Compensation Courts, and in some cases where they had in good faith sold the whole or part of such lands to Europeans they were placed in a very awkward position by the subsequent action of the Government. Also, that the rentals received from the reserves set apart for their benefit are greatly diminished in amount, by the large deductions made by the Government for administration.

Lands confiscated at Tauranga were originally taken under "The New Zealand Settlements Act, 1863," but the Government only retained 50,000 acres. They purchased Te Puna-Katikati Block; and, on the 18th May, 1865, Sir George Grey (then Governor) returned the remainder to the natives. The latter portion was dealt

with under a special enactment, "The Tauranga District Lands Act, 1867." A Commissioner was appointed under that Act to inquire into and investigate the claims to the lands "abandoned or given back to the Crown." This has worked on the whole satisfactorily. The only objection raised by the natives to the operation of it is, that lands have been made inalienable which they had previously arranged to sell to Europeans. A Commissioner was recently appointed to ascertain the necessity or otherwise of imposing such restrictions, but his decisions in some cases have not given satisfaction to any of the parties concerned,

In consequence of the rebellion of some tribes at Poverty Bay, it was intended to confiscate certain lands there, but an arrangement was come to between the Crown and the loyal natives, by which a considerable area was ceded to the former, subject to the investigation of the claims of the loyal natives. To accomplish this "The East Coast Land Titles Investigation Act, 1866," was enacted by the Legislature. The Courts established in accordance with this statute had powers similar to those conferred on Native Lands Courts. These tribunals gave satisfaction to the natives, but an unfortunate error was made in the Crown grants issued in lieu of the Court Certificates – the owners were made "joint tenants" instead of being "tenants in common." This has been partially amended by subsequent legislation, but great injustice has been done to persons who should have succeeded to deceased intestate owners. The Native Lands Court having refused to allow a son to inherit his father's interest, on the ground that the land being held by the owners as joint tenants, the interest on death lapsed In favour of the survivors. This should be rectified by legislation, as the son not being able to succeed to his father's estate, is neither in accordance with justice or Maori custom. The several Native Lands Acts have contained provisions for deciding what person or persons are entitled to succeed to estates of natives dying intestate.

The interpretation sections of "The Native Land Acts of 1865 and 1873," and "The Native Land Court Act of 1880," contain the following: –

"Native" means an aboriginal native of the colony of New Zealand, and includes all half-castes, and their descendants by natives.

To exemplify the operation of this section, a case is here cited: Two half-castes, who are well-educated, marry two European women, both have children by these marriages. The younger recently died intestate, leaving several pieces of land with titles thereto. Application was made to the Court by the surviving uncle, on behalf of his brother's children, for a succession order in their favour. The Court sat, and on finding the children were not "the descendants of half-castes by Maoris," declined to make any order on their behalf, but issued it in the name of the uncle. He, being an honourable man, at once conveyed the interests to his brother's children. Had he been otherwise, what would have been the position of the orphans?

In passing, it may be as well to allude to wills as made by natives. These are often very vague, and not properly attested. The Act permits informal wills to be received by the Court, but there is room for some alterations and amendments in that respect. In "The Native Land Court Act, 1886," section 44, it is enacted: "If the deceased made a will or left any writing bearing his signature or mark which, though not legally executed as a will, the Court shall be of opinion was intended to be a testamentary disposition of any such estate, share, or interest, it shall make the order as nearly as may be in accordance therewith."

Maoris are not at all particular about signing the names of other people without their consent being first obtained. It ought, there-

fore, to be indispensable that such documents should be executed before two persons having no interest in the property to be devised, and if possible these witnesses should be Europeans, and not Maoris (which could easily be done in settled districts); the Government could render assistance in this matter by publishing in the "Maori Kahiti" (Gazette) a form of will to be used by natives, with plain directions as to its execution and attestation, then there would be no excuse for informal documents of that description. In any case a scrap of paper not witnessed, and presented by the man claiming to succeed to "real estate," should not be received by the Court. Many of these so-called wills bar the rights of the persons who are next of kin, and who, according to both European and Maori custom, would be justly entitled to succeed to the hereditaments of the deceased person.

Having thus briefly reviewed the laws affecting dealings with native lands from 1862 to 1885; the important and entirely new departure in legislation on these questions, which was the outcome of the last session of Parliament, next demands most careful and serious consideration. The statutes alluded to are "The Native Land Court Act, 1886," "The Native Land Administration Act, 1886," and "The Native Equitable Owners' Act, 1886." The provisions of the latter have been discussed in an earlier portion of this pamphlet, and it does not appear necessary to refer to them again.

"The Native Land Court Act, 1886," repealed a large number of statutes relating to native lands. The Act, however, contains provision for continuing proceedings which had been commenced under the repealed Acts as follows: – Section 115. "Provided that any incompleted procedure thereunder shall from its stage when this Act comes into operation be, at the discretion of a judge, either continued and completed under this Act, in like manner as if such procedure had been commenced hereunder, or at like discretion shall be continued and completed under the Act under which such procedure was initiated."

Applications for investigation of title, division, or succession, heretofore made, if not dealt with beyond gazetting, shall have the effect of applications for investigation, partition, or succession under this Act.

116. The several courts constituted under "The Native Lands Act, 1865," "The Native Land Act, 1873," "The Native Land Court Act, 1880"; and under this Act shall, notwithstanding the repeal of any Act, be deemed, and taken to have been, and to be, and continue to be, one continuous Court."

117. "Any proceeding commenced, and any right or duty given to, or imposed on, or accrued to, any one of such Courts shall be deemed to have continued to any or all of such subsequently created Courts, which subsequent Courts respectively shall be deemed to have had, and the Court under this Act shall be deemed to have full jurisdiction to complete such proceeding, to exercise such right, and perform such duty."

The question of inheritance of lands by the descendants of half castes by Europeans has been already considered herein; also the enactment respecting Maori wills. Section 26 contains a new feature with regard to "succession orders," viz.: – "If during any hearing it appear that a native has died entitled to an interest in the land to be partitioned, but that no succession order has been made in respect of such interest, the Court may, if it deem fit, summarily appoint a successor to such interest, in like manner and with like effect as if the matter of such succession were then properly before it on an application under this Act for succession, but no rehearing shall be had in respect of any such appointment."

This, at first sight, appears very simple, and also facilitates a subdivision; but a native properly entitled to succeed to the estate of a deceased person might be a hundred miles away at the time the land he was interested in came on for subdivision in the Court; and there being no previous application lodged in the Court or notified in the Gazette, he might even be ignorant of the death of the relative whose estate he was entitled to succeed to. At some subsequent period he ascertains that a succession order has been made in favour of a distant kinsman of the deceased person, and he has no redress, because the statute has decreed that there shall be no rehearing in such a case. To show the necessity of careful dealing, and due notice being given, and even then how very grave mistakes may occur, the following instance, which actually took place at a recent sitting of the Native Land Court, will suffice. Two natives rejoiced in the name of H – Te W – , rightfully they ought both to have been included in a grant of a piece of land, which may be styled the "M block." One (the younger of the two) had his name inserted in the

grant of "M"; the elder was left out. H – Te W – , senior, died, and a native nearly related to him, who may be called B., applied for a "Succession Order," it was gazetted, in due course the Court sat. H – Te W – , junior, was absent, and B. appeared before it. He proved that there was a native named H – Te W – in the grant of "M block", that he died at a certain time, and a certain place; and that he (B) was the next of kin (which was all correct, as far as it went, B. being under the misapprehension that H – Te W – , senior, was the grantee in "M"). The Court made an order accordingly in favour of B. The natives present at the Court, discussed the question among themselves, after the adjournment. They all knew that both the H – Te W – s were owners in the M block, according to Maori custom, but that only one was entitled under the Crown grant. Next day H – Te W – , jun., having been informed of the proceedings in the Court, brought a number of his co-grantees with him and appeared on the scene. He first interviewed a native land agent, and asked him "if a living man could have a successor appointed for his estate during his lifetime without his consent being obtained?" On being answered in the negative, he entered the Court and informed the Judge that he "was the H – Te W – whose name appeared in the grant of the M block." This

statement being duly substantiated by proper witnesses, the Court decided in his favour. Then the difficulty arose: H – Te W – had been proved to be dead, and B. had been granted a succession order to inherit his interests in "the M. blocks;" to prevent further complications the name of B. was struck out in the order (the Court had the power to amend errors in proceedings), and that of H – Te W – , junr., substituted in lieu thereof, so H – Te W – had the heretofore unheard of right to succeed to his own undoubted interest in "the M block." The presiding judge at first contemplated cancelling the order, but that was in excess of his powers, and could only be done by the Chief Judge granting a rehearing of the case (the law then in force allowed re-hearings), but he had the authority to amend defects and errors in proceedings in his Court, and he altered the order accordingly, and H – Te W – , junr., succeeded to H – Te W – , junr., in his own right.

Now, If such an error could be made when an application had been duly lodged in the Court, and gazetted, is it not to be expected that numerous and greater mistakes will arise when in the hearing of a sub-division case, any native can (unknown to the proper successors) jump up in the Court and claim to succeed to the deceased owner of an interest in the land under investigation. And the wrong done could not be remedied except by a special Act empowering the Court to re-hear the case.

By section 23 it is enacted "That any native owner of land held otherwise than in severalty, or any person who may claim to have purchased or acquired an undivided share therein, may apply to the Court to make partition thereof, and thereon the Court may proceed to partition as hereinafter provided: –

Section 31. – Where the title to land the subject of partition is memorial of ownership, or certificate of title under any Act relating to native land, each partition order shall be prepared in duplicate, and when the approved plan of the parcel of land shall be placed or endorsed thereon, and when the title to the parcel of land, the subject of such order, shall have become ascertained, such duplicate order shall be signed by a judge, and sealed. A judge shall then mark the muniment of original title as cancelled, and it shall thereby be cancelled.

The above recited sections of the Act of 1886 go still further to prove that the acquisition by sale or lease of individual and undivided shares, or interests in lands held under a certificate of title issued in accordance with the seventeenth section of "The Native Lands Act, 1867," or by a memorial of ownership under "The Native Land Act, 1873," is legal, although all the persons interested therein have not assented to such sale or lease. If it is not so, then why authorise any person who may claim (not "has purchased") to have purchased or acquired an undivided share in land to apply to the Court to make partition thereof? Nine-tenths of the applications for subdivision which have been, or will hereafter be, made by European purchasers or lessees will be for lands comprised in the two above-mentioned instruments of title, as it must not be overlooked that the Acts of 1867 and 1873 were in operation for thirteen years, during which period land transactions were very numerous, until a new provision was made in "The Native Land Court Act, 1880," substituting "Certificates of Title" for " Memorials of Ownership." Also that, as previously mentioned, certificates issued under the seventeenth section of the Act of 1867 had in effect become memorials of ownership.

Section 120 of the Act of 1886 is rather ambiguous. It is as follows: – "A conveyance or lease of land not held under Crown Grant, or of any estate or interest therein (except, and until prohibited by law), shall be as effectual to vest in a grantee or lessee the estate purporting to be assured, as it would if such land were held by Crown Grant."

The only documents of title issued under the respective Native Land Acts, and amendments thereto, are "Orders of the Court," "Certificates of Title" of two or three kinds, "Memorials of Ownership," and "Crown Grants." As the above quoted section does not apply to the latter description of instruments of title, it must be deemed to refer to all the others, as there is no exception made to any of them. If dealings with lands, the title to which is a "Memorial of Ownership," is not prohibited by law, it follows that the acquisition of undivided interests therein, without the assent of all the owners, is legal.

Undoubtedly in the first instance, under the Act of 1873, conveyances and leases so obtained were illegal; but can any person who considers the tendency of subsequent legislation do otherwise than come to the conclusion that subdivisions of undivided interests in lands so acquired have been authorised by statute, anything in the Act of 1873 notwithstanding; which view taken together with other enactments is confirmed by Section 11 of the Act of 1878, thus: "11. Notwithstanding anything to the contrary thereto in 'The Native Land Act 1873,' or any amendments thereto, it shall be lawful for the Court in its discretion, on the application of any Native owner or other person interested therein to hear and determine the value or extent of any estate or interest in any land held by such applicant under memorial of ownership, or Crown grant, or award, or conveyance, and if it shall deem fit, to make an order vesting any part or portion of such land in such applicant." And further is it not a proper deduction to arrive at, that as the Court has such a power conferred on it, the person (European purchaser) applying to it must have had the right to purchase any estate or interest therein (less than the whole) otherwise what need for a partition?

Assuming section 120 to read thus: "A conveyance or lease of land held under 'Memorial of Ownership,' or Certificate of Title, or of any estate or interest therein (except, and until prohibited by law) shall be as effectual to vest in a grantee (meaning a purchaser) or lessee the estate purporting to be assured as it would if such land

were held by Crown grant." Then taking the words "except prohibited by law," and leaving out "until," raises the question – were any conveyances or leases prohibited by law? Apparently there is nothing in any repealed Act which prohibits the taking of a conveyance or lease of land held under a Memorial of Ownership, it is merely provided that all the ascertained native owners shall either sign or assent to such sale or lease. It may be asked, in what manner can a would-be purchaser or lessee ascertain whether all the owners, would execute or sign a conveyance or lease to him other than by getting as many signatures or assents as possible to such documents? And forsooth when he finally finds a few dissentients thereto, he is to lose his time and money (for he certainly would have to pay in full to all persons who executed the conveyance), and his title be deemed null and void, because the whole of those interested in the land did not assent thereto. Yet the present statute provides "for vesting any estate or interest therein in the purchaser (grantee) or lessee," as it would if such land were held under Crown grant. It may perhaps be argued that section 120 only applies to lands held under certificates of title issued in accordance with the Acts of 1862, 1865, and 1880, and not to memorials of ownership under the Act of 1873, or to certificates of title created by the seventeenth section of the Act of 1867, admitting that, why does not section 120 contain an exception in those cases? The only instrument of title derived through the Native Lands Act which is excluded is a Crown grant. The words "except

prohibited by law" are very vague. Can any person say clearly and without fear of contradiction, "What is the law respecting Memorials of Ownership?" Only one reply appears possible, viz, "That it is a network woven out of contradictions and conflicting enactments." The words, "and until prohibited by law" are easily understood. By "The Native Lands Administration Act, 1886," all private dealings with native lands are forbidden after it coming into operation on the first day of January, 1887, except incomplete transactions, which can be completed in the manner prescribed by the twenty-fourth section of that Act.

The only other section of "The Native Land Court Act, 1886," which it appears necessary to direct attention to is number thirty-five. "Where deeds intended to affect land divided under any Act; hereby repealed, or partitioned under this Act, have by any natives taking under any such partition or division as aforesaid been executed since the day when, as to the land divided or partitioned, the certificate of Native Land Court title or memorial of ownership therefor took effect, a Crown grant issued, or to be issued, for any parcel of such land shall, for the purpose of completing the title of parties under such deeds be deemed to have had effect on and from the day when the certificate or memorial took effect as aforesaid."

This apparently refers to cases where persons have acquired by deed undivided interests held under certificate of title or memorial of ownership, and which having been subdivided, provides for vesting the estate or interest in the native for one parcel and the purchaser for another, and for the purpose of completing the title of parties under such deeds shall have effect from the date of the making of the original certificate or memorial. This appears to be a further confirmation of the legality of purchasing individual or undivided shares held under "Memorial of Ownership," and making good incomplete titles.

It is perhaps expedient to show the definition of the word "Land" as set forth in the interpretation section (No. 3), it is, "Land" means land held under:

A Crown grant, or the subject of an order therefor under this Act or any Act hereby repealed.

A Memorial of Ownership.

A certificate of title under Land Transfer Act or any Act relating to native land. But only where such instruments were made or issued in favour of natives.

The other matters provided for in the above Act relate more to the method of procedure in Court and the general administration of the Department than to the transfer or demising of land. There are, however, no objectionable features at present apparent in that portion of it; and, in any case, it is not advisable to mix up those questions with that now under consideration.

"The Native Land Administration Act, 1886," is, as its title imports, a measure to control dealings with native lands. It is, however, not for facilitating the settlement of incomplete titles between natives and Europeans, as might be supposed, but to prohibit and make penal any direct negotiations by private persons for the acquisition of land held by natives, whether under Crown grant, certificate of title, memorial of ownership, or any other instrument of title derived through any order of the Native Land Court. The Crown takes to itself (with the exceptions mentioned in Section 24) the sole right of disposing of native lands the title to which has been investigated. by the Native Land Courts. This is irrespective of dealings with lands, the title to which has not been so investigated, which are entirely and absolutely forbidden. This Act came into operation on the first day of January, 1887, and "The Native Land Court Act, 1886," on the first day of October, 1886. Having thus briefly shown the purport of the Act, it will be necessary to refer to several sections of it, in order to completely understand its operation,

By section 2: The Act shall not apply to land –

Administrable by the Public Trustee, under "The Native Reserves Act, 1882."

Set apart as a reserve for natives under "The West Coast Settlement (North Island) Act, 1880."

While subject to "The Thermal Springs Districts Act, 1881."

Nor to land held by natives under their custom or usage, the title whereto has not been investigated and determined by the Native Land Court, except so far as is herein specially provided.

Only sections thirty-two and thirty-three of this Act shall apply to land now the subject of a lease for an outstanding term during the continuance of such term.

"The Railways Construction and Land Act, 1881," shall have effect as if this Act had not been passed."

3. – In this Act, If not inconsistent with the context,

"Commissioner" means a commissioner appointed under the Act, and "the" before commissioner means "either" or "any."

"Court" means the Native Land Court of New Zealand.

"Land" means land owned by natives, except land purchased by a native from the Crown or from Europeans, and held under Crown grant or conveyance to such owner individually.

"Disposable land" means land or any part of land becoming disposable under this Act.

"Native" means an aboriginal native of New Zealand, and includes half-castes and their descendants by natives.

"Owner" means any native owner of land, and includes persons registered under section seventeen of "The Native Land Act, 1867."

"Registration" means registration under any Act relating to registration of deeds or to land transfer.

"Sealed" means sealed with the seal of office.

It will be noticed that this section continues the injustice to the offspring of marriages between half-castes and Europeans.

4. "The Governor may from to time appoint such person or persons as he may think fit to be a Commissioner or Commissioners under this Act, and from time to time as he may think fit remove such Commissioner or Commissioners."

5. Provides for the appointment of Deputy Commissioners.

6. The Governor may define districts within which each Commissioner may exercise the powers vested in him under this Act.

The Native Minister shall provide the Commissioner with a seal of office, wherewith all deeds made by a Commissioner under this Act shall be sealed.

The sections following the above relate to the election of Committees, but this need not be given in detail, and can be summed up thus: –

A committee consisting of seven members may be elected from among the owners of any block of land, where such owners are more than seven in number. An election shall be by nomination in writing, signed by a majority of owners. Each owner can nominate seven owners or any less number, of whom he may be one. Attestation of nomination papers is provided for. Nomination papers are to be transmitted to the Commissioner. When not less than six of the owners of land owned by more than seven apply to the Commissioner in writing, he has to publish a notice in the Gazette and Kahiti that an election will be held, and that nomination papers will be received by him at any time not later than sixty days after the date of such notification. Names of elected owners to be "entered in the Committee Register." On registration the committee shall be duly constituted. Where the owners are less than eight in number, a majority of them can apply to the Commissioner, who, if satisfied, can constitute them a committee for that block of land. This committee can be less than seven in number. At the first meeting of the committee a chairman to be appointed, and his name to be inscribed in the committee register. Members may resign. If a vacancy occurs by death, &c, another owner may be elected, and his name entered in the committee register. Committee shall continue to act, although a vacancy exists. The Governor may dissolve a committee. A committee shall cease to be a committee when dissolved as aforesaid, or when its duties in relation to the land in respect whereof they were nominated, have been performed.

Section 16 "Owners desiring that their land shall not be dealt with under this Act, herein called 'objecting owners,' may give notice of such desire in writing, signed by them, and delivered to the Commissioner within thirty days after the inscription of the names of the committee as aforesaid. Owners not giving such notice shall be deemed to have assented to their land being dealt with under this Act."

17. "If owners have all assented as aforesaid, the land may be forthwith disposed of in manner hereinafter provided in that behalf. An assent to a sale or lease once given shall not be revoked."

18. Provides, in case of all the owners not assenting, that the Native Land Court can partition the land between the parties assenting, and those objecting to it being brought under the Act.

19. As to land where all the owners have assented, or where some have objected, then as to so much of such land as shall have been partitioned by the Court to those not objecting, the committee may by writing, signed by a majority of its members, make its direction whether such disposable land shall be sold or leased, or partly sold and partly leased, and may therein include such suggestions as to details of the proposed disposition, or as to parts of such disposable land to be reserved from disposition as it may think fit. Such writing shall be transmitted to the Commissioner, who, if satisfied that it is signed as prescribed, shall enter a minute thereof in the Committee Register aforesaid.

20. "Owner may convey or demise land to the Crown without or notwithstanding the appointment of a Committee. A Committee may convey or demise laud to the Crown. But it shall be a condition precedent to any such sale or lease that a meeting of the owners of the land the subject thereof shall have been convened by the Commissioners for the purpose of discussing the terms of such sale or lease, and that the time fixed for such meeting shall have passed."

21. Provides that owners of land not subject to restriction on alienation can sell and

convey their interests in the same to a native, but such native cannot dispose of it to any European except through the Commissioner.

22. Enacts that when a committee ceases to exist its previous acts are not prejudiced by its termination.

By section 23 minors cannot sign nomination papers for the election of a committee. Any person knowingly attesting the signature of a minor is liable to a penalty of not less than £5 or more than £50.

The Commissioners who have been appointed up to the present time, are the persons holding the office of Commissioners of Crown Lands in the provincial districts of Auckland, Hawke's Bay, Wellington, and Taranaki; and from the onerous duties they have to perform in their present departments, taken with their not being acquainted with Maori customs, it is utterly impossible for them to set the machinery of the Act in motion.

The provision in section 16 is likely to deal hardly with some persons. "Objecting owners" are to give a certain notice within thirty days of the inscription of the names of the Committee in the register. Owners not giving such notice shall be deemed to have assented to their land being dealt with under the Act. No exception is made in the case of any such owners being sick, unavoidably absent, or dead. In part of section 17 it is enacted that "an assent to a sale or lease once given shall not be revoked." This appears to be very arbitrary and might have been improved by adding the words, "unless good and sufficient reason is shown to the Commissioner for the revocation of such assent."

By section 19 it does not appear that the Committee have any voice in fixing the price for which their land is to be sold or the amount of annual rental to be paid. In the next section, where the Crown, either without or with the intervention of a Committee, can deal for land, a meeting of all the owners must be convened by the Commissioner for the purpose of discussing the terms of such sale or lease. The Crown, as usual, endeavour to maintain a pre-emptive right, and secure it to themselves by taking power to deal in a different manner with the natives for their lands than that prescribed for the general public. Another objectionable feature is that the Commissioner is to assume the functions of a Government land purchase agent, and apparently negotiate for the sale or lease of lands to the Crown, which would place him in a very false position.

In sales to private persons it is enacted by section 29: "That land to be disposed of by the Commissioner under this Act shall be so disposed of in accordance with the provisions of 'The Land Act, 1885,' or of any Act passed in substitution thereof, and he shall have all the powers of a Land Board. For this purpose the Governor may from time to time proclaim that any portion of the aforesaid Act shall apply to any disposable land."

The Commissioner appointed under this Act has more power than a Commissioner of Crown Lands – that officer has to act with the consent of a majority of the Land Board.

Why should not the section read thus: The Commissioner together with the Committee so appointed by the owners of any block of land shall have all the powers of a Land Board with regard to such land? The owners would thus have a voice in fixing the upset price of the sale or lease.

Section 30 validates any conveyance or lease, or contract for a conveyance or lease of disposable land made by the Commissioner, and such document shall be entitled to registration,

Section 31 confers on the Commissioner power to sue for, recover, receive, and give receipts for moneys accruing through purchases, leases, etc.

By section 37 moneys received by the Commissioner as purchase money or rent in respect of each parcel of disposable land shall so soon as convenient be paid to the owners after d ducting therefrom – Five pounds per centum towards the cost not otherwise provided for of giving effect to this Act; and a further sum sufficient to repay such costs of surveys and road making as may have been previously agreed on between the Commissioner and the committee.

Having thus shortly reviewed those portions of "The Native Land Administration Act, 1886," which relate to the duties of Commissioners and Committees, and the plan laid down for future dealings and dispositions of native lands, it is now expedient to turn to the important question of outstanding private purchases and leases, and the provisions contained in the Act for the completion thereof. The sections referring to that branch of the subject are given in "extenso," in order that their purport may be clear and intelligible to the reader.

24. "A person who may claim to have purchased or leased the share or interest of some, out of several owners of land (the title whereto was not at the time of such "purchase or lease subject to any restriction precluding such purchase or lease) may within three months after the coming into operation of this Act notify the fact of such purchase or lease to the Commissioner, and also the Chief Judge of the Native Land Court; and it shall thereupon be the duty of a Judge to inquire into the circumstances thereof, and who, if satisfied that there has been a purchase or lease as alleged, and that the transaction was bona fide, and that a fair value or rent was given or reserved, may give his certificate to that effect to the person alleging himself to be such purchaser or lessee, who shall transmit the same to the Commissioner."

25. "On the grant of such certificate the person therein named

"(a) If a purchaser shall be the owner of the share of his vendor in the land the subject of such purchase, and shall be entitled to have partitioned to him in severalty such part of the land as the Court may deem just.

"(b) Or he may within one month after the date of the certificate give notice to the Commissioner that he is desirous of purchasing the shares or interests which he has not already acquired, and in such case he may, on obtaining such certificate from a Judge,

that such Judge is satisfied that he had before the first day of July, 1886, obtained the signature of one or more owner or owners to a writing purporting or agreeing to convey the share or interests of the persons signing at any time within twelve months from the said first day of July, 1886, but not afterwards, purchase all or any of such shares or interests.

If all such outstanding shares or interests are not purchased he shall be entitled to have partitioned to him such part of the land as the Court may deem just."

Subsections (c) and {d) contain precisely similar provisions with respect to incomplete leases as those relating to purchases in (a) and (b).

27. "Where a person has acquired from owners a valid lease for a term one-third of which shall have expired on the first day of July, 1886, and such person is in actual beneficial occupation of the land demised, it shall be lawful for him to obtain a renewal of his lease for the whole or part of the land the subject thereof tor a further term not exceeding fourteen years, upon such terms as may be agreed upon between the owners and the lessee, and be approved by the Commissioner."

This would have been more explicit if after the words "it shall be lawful for him" there had been added the words, on the expiration of the first-mentioned term, to obtain,' &c.

Section 33. – "Save as provided by this Act no person shall by himself or his agent purchase or acquire, or contract or agree to purchase or acquire from any owner, except a person becoming an owner under section twenty-five, any land, whether or not title thereto may have been investigated and determined by the Court or any estate therein." (Note – The purchase under Section 25 is between one Native grantee and another of an interest in the same block.) "Any person so doing shall be liable to imprisonment for not less than three or more than twelve months, or to a penalty of not less than twenty or more than five hundred pounds, and any estate in land the subject of any such prohibited dealing which shall become vested in any such person by reason of any such dealing, shall be forfeited to the Crown."

Reverting to Section twenty four, it may be reasonably assumed that the words "the title whereto was not at the time of such purchase or lease subject to any restriction precluding such purchase or lease" refer to certain lands held under Crown grant, which cannot be dealt with by purchase or lease without the Governor's assent being first obtained to such purchase or lease, or to another class which cannot be dealt with, except by lease not exceeding twenty-one years, unless a similar assent is obtained. It would have been better and removed any ambiguity or doubt, if the particular kind of restriction alluded to had been defined.

The provision for completing outstanding purchases and leases is so absurd as to be almost laughable, but for the magnitude of the interests involved, and the prospective ruin of many a struggling settler on the eastern side of this island. A man has perhaps been striving for years, day and night, to procure all the signatures to his deeds, and has expended large amounts for the services of agents and interpreters in that behalf. The Memorial of Ownership or Certificate of Title contains the names of (we will say) eight hundred owners (no uncommon number either). Of these 600 have executed the deeds during the last four years, and the purchaser has made advances on account of purchase to some of the others who have not yet signed. Others are absent from the district, and some are unwilling to sell or lease. Now, this man duly applies to the Commissioner and Chief Judge within the three months (from 1st January to 31st March, 1887) specified in section 24. The Judge may have made the inquiry and granted a certificate, perhaps, by the end of March last. Next a notice has to be given to the Commissioner within one month after the granting of the Judge's certificate. Then, under the most favourable circumstances everything may have been settled and ready to proceed with the purchase or lease by the end of the first week in April last. Now, how is it possible to complete the title and get 200 signatures before the 30th June, 1887? The above case is not in any way exaggerated, there are documents of title issued by the Native Land Court, which contain more names than now mentioned. Let the case of the unfortunates who duly lodged their applications, and who have not yet received their certificates be next taken into consideration. This is nearly the end of May, and June alone remains to them, how can they hope to complete their title by that date? It is reported that between three and four hundred applications are now in the hands of the Chief Judge of the Native Land Court, and he is investigating the cases himself, only. It would surely have been justifiable under the circumstances to have suspended all the sittings of the Native Land Courts for the present, and employed the judges in adjudicating on these important claims only,

The only conceivable excuse that can be made for enacting such provisions as are contained in section 24 and its sub-sections is that the person who drafted them

must have been profoundly ignorant of everything connected with the purchase and lease of native lands, and the difficulties attendant in negotiating for them. If the Act is not repealed altogether, which it certainly ought to be, as it is detested by both natives and Europeans in the North Island, it certainly should be amended by allowing a further term of four years from the 30th June, 1887, to complete all unfinished transactions between private persons and the native owners. It will probably be argued that if the purchaser or lessee is not able to procure a complete title before the 30th June, 1887, that he is then entitled to have partitioned to him the shares or interests he may have acquired to that date. To which it may be replied that a person who has improved a property (which in numerous instances has been done) under the belief and impression, that he would eventually become the freeholder of it,

would be injuriously affected by being driven to apply for a sub-division under such circumstances.

"The Native Land Administration Act, 1886," is in direct contravention of the provisions of "The Native Land Act, 1862." A statute which, by of one its sections, was specially reserved for Her Majesty's assent, and which enactment, when approved, waived the Crown's right of "preemption of purchasing such lands as the natives were willing to sell," which had been acquired by the "Treaty of Waitangi," and which further provided in section 17 that "the individual, person, or persons named in any certificate as the owner or owners thereof, or having any particular estate or interest therein, may dispose of the interest which he or they may have in the lands described in such certificate, by way of absolute sale or lease, or exchange for other lands, or otherwise, to any person or persons whomsoever." Here the power to deal with individual and undivided interests was clearly conferred on both natives and Europeans. This Act, as shown in the preamble, was intended to waive, and did relinquish the right of one of the contracting parties, under the Treaty of Waitangi, to a pre-emptive right to purchase such of the lands of the other contracting parties as they were willing to sell, and this not at the request of the latter, but by the desire of the former of the two. It may be therefore matter for consideration whether the New Zealand Legislature could properly enact a measure which to a certain extent authorises the Crown to resume rights which had been given back by it to the other contracting party (the Maoris) without their consent being first obtained to such resumption. If the Act of 1862 was deemed to be so important a measure, and one affecting Imperial interests, that it could not be brought into operation without Her Majesty's assent being specially obtained to it; and being subsequently specially proclaimed by the Governor in accordance with a provision contained in the Act, which was done on the 6th June, 1868 [note in margin, 1863]; may it not be reasonably assumed that a similar course might have been pursued with respect to the Statute now under consideration, it being an entire repeal of an Act which was substituted for a certain provision contained in a Treaty made between the Imperial Government and the natives.

"The Native Rights Act, 1865," which declared the Maoris to be the same as British born subjects, and conferred the same rights and disabilities on them as on the colonists of New Zealand, has not been repealed – and is still law – and "The Native Lands Administration Act, 1886," is in direct contradiction to its letter and spirit.

The Colonial Legislature almost appear to have regretted the concessions made, and the full and free permission given by the Act of 1862 to the natives, to deal with their lands in any way they pleased, without any restriction whatsoever, "and to sell or lease them to any person or persons whomsoever," except in the case of necessary reserves for their use, benefit, and maintenance, in which the Governor had the right to insert in the Crown grants restrictions on alienation. Unfortunately each succeeding statute relating to native lands has little by little, and step by step, by imposing restrictions of various kinds, been gradually lessening the powers conferred on the Maoris, to deal as to them seemed best with their own lands, until the culminating point has been reached by passing the present highly unpopular and ill advised law. The effect of all the enactments about native lands, since the repeal of the Act of 1862, has been to complicate dealings, and establish a want of confidence between natives and private persons, and by opening the door to uncertainty and repudiation, has caused a feeling of insecurity to be engendered in the minds of both colonial and foreign capitalists, who now decline to enter into any transactions connected with native lands, because of the flimsy nature of the titles given by the Native Land Court, which now has the power to annul the effect of some of the instruments of title created by itself (vide "The Native Equitable Owners Act, 1886"), and to this, among other causes, may be largely ascribed the financial depression which at present obtains throughout this colony.

Before concluding the consideration of the statutes affecting dealings with native lands, it may be expedient to draw attention to the question of the duties now payable to the Crown on such transactions under "The Stamps Act, 1882," and "The Stamps Act, 1882, Amendment Act, 1885." In the interpretation section of the Act of 1882, the words "executed" and "execution," with reference to instruments, mean signed and signature by any one or more of the parties thereto; or, in the case of a corporation, sealed with its seal. Section 137 of the same Act, subsection 1, sets forth, "Upon every first conveyance on sale to a person other than a native, a duty of ten pounds per centum on the amount or value of the consideration." This was repealed by "The Stamp Act, 1882, Amendment Act, 1885," which enacted that "Except when express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be stamped or further stamped by the Commissioner after the first execution thereof, on payment of the unpaid duty and fine, in addition to the duty, as follows:

"1. When such instrument is presented to be stamped more than one month and less than three months after execution, a fine of twenty-five per centum on the amount of duty payable.

"2. When such Instrument is presented to be stamped more than three months after execution, a fine of one hundred per centum on the amount of the duty payable; but in no case shall the last-mentioned fine be less than five pounds."

Section 17- There shall be charged for the use of Her Majesty, in addition to the other duties imposed by the preceding parts of the said Act (Act of 1882), and this Act, the duties following, that is to say: –

1. "Upon every conveyance on sale, or devise in fee, of native land first made to, or whereby the right to such land shall first

vest in a person other than a native, ten pounds per centum on the value of the land as such value may be estimated in any manner the Commissioner shall think fit. But, in case the purchaser under such conveyance shall have already paid any duties under this part of this Act or any enactment heretofore in force regarding similar duties in respect of the land dealt with in such conveyance, then the amount of such duties previously paid shall be deducted from the duties payable upon such conveyance, and only the amount of the net balance shall be paid under this Act on such conveyance."

2. "Upon every exchange of native land by a native with a person other than a native, ten pounds per centum on the value of the land, to he estimated as mentioned in the foregoing subsection one."

3. "Upon every lease of native land to a person other than a native, ten pounds per centum upon the amount or value of any consideration by way of premium in respect of which such lease is granted, and also ten pounds per centum upon the capitalised value of any rent payable thereunder."

The capitalisation of the rent is thus arrived at by section 138 of "The Stamp Act, 1882:" – "Where the lease is granted for a term certain, not exceeding ninety years, the capitalised value of the rent payable thereunder shall be the present value of an annuity or annuities of the same annual amount as the rent or rents, and payable

for the same periods; rent for the purposes of this part of this Act being deemed to be payable yearly and at the end of the year, and interest being calculated at the rate of five pounds per centum per annum."

Native Land Duties, as previously shown herein, were first imposed under "The Native Land Act, 1862," but the provisions therein contained were repealed by the "The Native Land Act, 1865." "The Native Land Duties Act, 1873" repealed the last-mentioned Act, and provided for the payment of a duty on the first disposal by sale, of ten pounds per centum on the consideration or purchase money, and in respect of a lease, a duty in each year equal to £10 per centum yearly upon the aggregate amount of rent payable for each and every year of the lease; and in cases where the duties payable were in arrears interest at £10 per centum per annum was chargeable. This Act was repealed by "The Stamp Act, 1875 Amendment Act, 1881," when the duties became leviable under the Stamp Acts. Those payable on conveyances remained the same until 1885, namely, ten per cent, on the consideration or purchase money as set forth in the deed. But no interest was chargeable on arrears of duty unpaid. The only fine was that payable on ordinary conveyances as between Europeans when not stamped by a certain date. In 1881 the duties payable on leases were for the first time capitalised, and have continued bo until the present time. In the case of conveyances in fee simple, a very material alteration was made by "The Stamp Act 1882, Amendment Act, 1885," the duty of ten pounds per centum heretofore payable on the amount of consideration or purchase money, was altered, and it was provided that it should be levied on the value of the land, which value the Commissioner was empowered to estimate.

The reason for herein noticing the subject of duties is that great hardship is inflicted on purchasers of native lands thereby. The Act provides that a deed shall be considered to be executed when signed "by any one or more of the parties thereto." This may be very well in the case of Europeans, where a bargain is made, and the terms of sale are fixed and understood by both parties; but turn to the position of a person purchasing land from natives, and observe the difference. In the transaction between Europeans only, the vendor or vendors at once give possession to the buyer; but in that with the Maoris the purchaser may be years before he can complete his conveyance. The meaning will be best illustrated by the example following: Mr. Smith wishes to acquire Te Wharau block by purchase. The certificate of title or memorial of ownership contains the names of one hundred and fifty native owners. He makes a bargain with two of them to sell their interests for £30 each, and they sign his conveyance. He then calculates that it will cost him at that rate £4500, and fills that sum into the deed. While the duty was payable under "The Stamp Act of 1882," on the amount of consideration or purchase money, he would have to disburse £450 for duty within three months of the first execution of his deed, or have a fine imposed of £100 per centum thereon. He consequently had to pay this £450 duty forthwith, on the conveyance of two interests, the consideration or purchase money of which amounted to £60 only. This conveyance might take ten years to complete, and Mr. Smith has not the full benefit of the land during that period, and his title is incomplete; yet he has been compelled to pay the duty in the same manner as if his deeds were fit to be registered. The Government have doubtless also been losers to a considerable extent by this system of levying native land duties. For instance, Mr. Smith has entered the sum of £4500 in the body of his conveyance on the assumption that the shares of the native owners were equal, and that he would be able to acquire all their interests for £30 each, but he finds to his cost during his ten years' negotiations that he has been mistaken, he having paid to some of the vendors £40, £50, £75, £100, £120, £150, or even £200 for their shares, respectively; and on the completion of his title discovers that the purchase money totals up to £11,500 and not £4500 as at first calculated. The Government have received £450, it is true, but had they waited until the final execution of the deed they would have been entitled to £1150. There are many cases in which the title to lands on which duties have been paid under the Act of 1882 are yet incomplete.

By "The Stamp Act, 1882. Amendment Act, 1885," the duty payable on conveyances of native lands is ten pounds per centum on the value thereof. Now, for an example, the case of Mr. Brown, a would-be purchaser of Te Horo block, is given. In this block there

are one hundred ascertained owners. Mr. Brown procures the signature of one native to his deed, to whom he pays £50, and he finds the others unwilling to sell at that rate; however, he must pay the Stamp and Native Land Duty within three months on the Commissioner's valuation of the land. That officer considers it to be worth £10,000. Mr. Brown had been calculating it as being only £5000, and is inclined to question the valuation, but having the fear of the £10 per centum fine before him, he hands over £1000 to the Commissioner. This plan is the best and easiest for the Government. But how about the purchaser? He has paid duty amounting to £1000 on that which assuming the interests of the native owners to be equal, and the Commissioner's assessment of value to be correct, is only equivalent to £100. In the first year after this Mr. Brown, in addition to the first execution, procures twenty-four signatures to his deeds, in the second year seven; third, four; fourth, five; fifth, eight; sixth, twenty-two; seventh, five; eighth, one; ninth, four; tenth, nine, making a total of ninety interests acquired, at a cost of (say) £6000, leaving ten owners who decline to sell at any price. He next applies to the Native Land Court for a subdivision, and finds that the non-sellers are larger owners than those he has dealt with, and the Court awards them one-fifth of the whole block, instead of one-tenth, as he had anticipated, and these natives probably pick out the most valuable and best improved portion of it, and say that "that part was their original holding before the Pakeha came on to it." The vendors do not trouble themselves about it, they have been paid for their shares, and there is an end of it as far as they are concerned. Now, according to the Commissioners' valuation the duty rightly payable on the portion thus awarded by the Court to Mr. Brown on the subdivision would be £800 only, but he has paid £1000, and laid out of it for ten years, he not only loses the proportional interest on the whole (his payments being irregular and made as he procures signatures to his deed), but, in addition, has given £200 for nothing, which he had no right whatsoever to have paid.

It is difficult how to find a remedy for this evil unless by making the duties payable on the complete execution of the deed of conveyance by all the owners, or when the Native Land Court has made a partition of the land between the purchaser and the dissentients from the sale; or, possibly, the following plan might be found to answer: when an incomplete deed was presented for assessment, the Commissioner might, in addition to valuing the land, the subject of such conveyance, ascertain the number of owners, and fix the amount of duty to be charged against each share or interest (for his purpose all the interests might be deemed to be equal), and then the purchaser should pay the proportion of duty equivalent to the number of interests he had acquired up to that time. Afterwards he might be permitted, at the end of each succeeding year, to pay the amount due on any further shares which may have been added to the conveyance during that period. In default of making a return of the signatures procured, and paying the duties due thereon within one month after the expiration of such year, then a fine of £25 per centum per month to be imposed until the Act was complied with.

Having made comments on the varied and conflicting legislation respecting native lands from 1840 to 1886, it may in conclusion be deemed advisable to shortly recapitulate some of the most important features thereof. In the first place the Crown had in 1840 acquired the pre-emptive right of purchasing such lands as the natives were willing to sell. By the enactment of "The Native Lands Act, 1862," the Crown waived and gave up this right, and the natives were empowered to sell their lands to any person whomsoever. By "The Native Lands Act, 1865," ten names only were placed in a certificate of title, and those persons named had the full right to dispose of the lands by sale or lease, without consulting the large body of owners, the names of whom were not included in the certificate, and who had as much right to the land as the ten whose names were entered therein. The ten persons as a rule generally pocketed the proceeds of a sale, or the rents derived from a lease, and ignored the existence of the outside owners. In 1867 the Act of 1865 was amended by making provision in section 17 for placing ten names on the face of the certificate, and endorsing the remainder on the back of it, and registering them in the Court books. This provision created ten "certificated owners," and made the others "registered owners." This section further provided that the land, comprised in such certificate, should not be alienable except by a lease not exceeding twenty-one years, and that no sale could be effected until the land was subdivided. The ten certificated owners had the right to lease the lands and draw the rents, and although the Legislature may have looked on them as trustees for the other owners whose names were registered, they, however, did not act as such, and

generally disregarded the rights of the others, and retained the rents for their own use. This section (17) further provided that a subdivision could be effected on an application being made to the Court by the whole, or a majority of the owners. In a subsequent statute "The Native Land Act, 1873," it was set forth that any of the persons interested inland held under the 17th section of the Act of 1867 could apply for a subdivision, but the land must be subdivided before any sale or lease (except a lease for 21 years) could be made of it, unless all the parties interested assented to such sale or lease. It certainly appears very extraordinary that the Acts of 1862 and 1865 permitted twenty and ten persons, respectively to dispose of the interests of hundreds of their co-owners without question, but when power is given for placing the names of all the persons interested, either in a certificate of title or a memorial of ownership, restrictions on alienation are immediately imposed by the statute. The Act of 1873 provided for the issue of memorials of ownership in which the names of all the ascertained owners were to be inserted, and the certificates of title under the seventeenth section of the Act of 1867, were to be dealt with

under the Act of 1873, in the same manner as memorials of ownership, where no dealings in the shape of sales, leases, or mortgages bad been effected with such lands. It was provided in the same Act (1873) that in any proposed sale or lease of land held under memorial of ownership that on the application of a majority of the owners a subdivision could be made. But no land could be sold or leased until subdivided, unless in the case of all assenting to such sale or lease, which would then be valid. Section 48 enacted that the persons named in the memorial of ownership could not deal with the land except by lease for twenty-one years. The next section lays down "Nothing, however, in the foregoing conditions annexed to any memorial of ownership shall be deemed to preclude any sale of the land comprised in such memorial where all the owners of such land agree to the sale thereof. In 1878 an Amendment Act was passed, and it again differed as to the manner in which subdivisions were to be applied for as follows: – "Notwithstanding anything to the contrary thereto in 'The Native Land Act, 1873,' or any amendment thereto, it shall be lawful for the Court in its discretion, on the application of any native owner, or other person interested therein, to hear and determine the value or extent of any estate in any land held by such applicant under memorial of ownership, or Crown grant, or award, or conveyance, and if it shall deem fit to make an order vesting any part or portion of such land in the applicant."

Any person reading this would naturally assume that, as there was power to hear and determine the value or extent of any estate or interest held under conveyance, and to make an order vesting any part of tue land in the applicant – that there must first have been the right to purchase the interests passing by such conveyance, or it would not have been lawful to subdivide them. Here the application by a majority of the owners for a subdivision is dropped, and it is competent for any native owner or other person (European) to make an application – and it is also clear that the section refers only to lands held under Memorial Ownership made under the Act of 1873, and to Certificates of Title issued under the seventeenth section of the Act of 1867 (which had in fact become Memorials of Ownership by the Act of 1873) as the section commences by alluding to the provisions of the Act of 1873, which only refer to those two classes of instruments of title. If the natives had no power to sell unless a subdivision first took place, or all the owners had assented to a sale, how can an European apply to have the value and extent of his estate and interest defined, and get an order made in his favour, vesting any part or portion of the land in him? This apparently indicates that the law permitted the purchase of individual shares, or interests less than those of all the owners, otherwise what occasion would there be to define the extent and value of the interest acquired by a conveyance to a European? If all assented and executed the conveyance, it would be a perfect instrument of title, and ready for the certificate of the Trust Commissioner, under "The Native Land Frauds Prevention Act." It appears to be intended to meet a case where the purchaser included the whole of a block in his conveyance, and not being able to procure the signatures of all the owners, comes to the Court to have defined the extent and value of what he has acquired under the deed.

Again, in 1882, a "Native Land Act Amendment Act" was passed, which tends to show that the Act of 1873 had not been technically complied with in several respects, principally among them must have been the acquisition of undivided shares and interests, without the assent of all the owners being obtained to such sales and purchases, for it was specially enacted that "on the application of any person interested, either originally or derivatively, in any such land it shall be lawful for the Court to inquire into the matter, and make such order respecting the same as shall appear to the Court justly to remedy any mistake or any error in the proceedings." Then it farther provides that "An endorsement made by the Court on any such order or on any instrument of disposition shall be valid and effectual for effecting the objects specified in such order, and an entry shall be made in the Registry of the Land Transfer and the Registry of Deeds Offices to the effect that such orders have been made."

Now, firstly, the person applying who is derivatively interested, must almost invariably be a European. Secondly, it may be asked "what has the Court to inquire into?" The answer might be "the inquiry is about Mr. Smith's deeds; he cannot get them registered because he has only acquired some of the interests of the owners under a memorial of ownership, without any sub-division having been made, and without getting the assent of all the parties interested, to his conveyance." Then another question may be put: What are the mistakes or errors which are to be remedied in the proceedings, and what proceedings are alluded to? The errors and mistakes cannot be in the Court proceedings, but must be in some instrument of disposition, as the Court can make an endorsement on such, and notify such endorsement to the offices wherein registration of title is effected. It may therefore be reasonably assumed that the errors consisted in the land under the memorial of ownership not being subdivided before the conveyance was made; that the whole of the owners did not consent to the sale, that the conveyance was executed by a part of them only; and that the European purchaser was not able to understand the conflicting laws relating to the lease and sale of native lands. That he and a section of the owners of the land had in good faith entered into a contract for the sale and conveyance of it to him, and the Court was empowered to justly remedy such mistakes and errors. If the purchaser had acquired the whole of the interests he could have applied to the Court for an order in freehold tenure which would not necessitate any transactions with the Registry of the Land transfer and the Registry of Deeds offices. It, therefore, would seem to be clear that the instrument of disposition alluded to in the section of the Act

was a conveyance of certain interests in a block which had not been sab-divided.

"The Land Division Act" of 1882 also provides for "any person who, before the passing of that Act, has acquired an undivided share in any land granted to natives (this, mutatis mutandis, applies also to memorials of ownership, and certificates of title), or any estate or interest therein, may apply to have his estate or interest defined, and thereupon the Court may order a defined portion of the block to be granted to him proportionate to the value of the estate or interest acquired"

Now if a conveyance is invalid unless the land held under a memorial of ownership (which includes a certificate of title under the 17th section of the Act of 1867) has been subdivided before the purchase is effected; or unless all the owners assent to such conveyance, then why does the law sanction the application of a person who has acquired undivided shares, and a Court to sit and award to him a defined portion of the blocs: proportionate to the value of the estate or interest acquired? It cannot therefore be a matter for astonishment that ordinary persons, unacquainted with the law, should be puzzled and make mistakes; but that is no reason why the Statutes should not be amended, and the wrongs inflicted on innocent persons and hard working settlers, be set right, and that injustices and disabilities inflicted on the native land owners should also be removed.

Even higher authorities than mere land-purchasers sometimes differ in their judgments in these matters, as can be shown by referring to those delivered by Mr. Justice Richmond in the Kotarepaia case in 1884, and the Whangara case in 1887, respectively. In the first of these it was held that the taking a conveyance in the

first instance from those willing to sell, then procuring a subdivision, and a fresh title for a portion of the land proportionate to the interests sold (such fresh certificate of title to be issued to the natives who had executed the conveyance), the fresh title having been so ordered by the Court (Native Land Court), the conveyance previously executed by all the owners named in such new title was held to be a compliance with the Act. This was the question raised and settled in the Kotarepaia case. The judgment in the Whangara case is as follows: –

IN THE SUPREME COURT OP NEW ZEALAND, WELLINGTON DISTRICT.

SEYMOUR V. MACDONALD.

Judgment of Richmond, J. (Delivered 14th April, 1887.)

In this case the plaintiff claims to be the purchaser of the shares and interests of some of the native owners of a block of land at Poverty Bay, known as "Whangara." The block is held under a certificate of title issued under section 17 Of "The Native Lands Act, 1867." The order for a certificate bears date 2nd December, 1870; and on the same day the presiding Judge was ordered to report, and must be taken to have reported, the opinion of the Native Land Court that it was proper that the block should be inalienable by sale or mortgage or by lease (or a longer period than twenty-one years. from the date thereof. The plaintiff claims under a memorandum of transfer alleged to have been executed in accordance with the provisions of "Ihe Native Laud Act, 1873." The Commissioner appointed under "The Native Lands Frauds Prevention Act, 1881," has certified the transaction as not invalid under that Act; hut the certificate and declaration of a Judge of the Native Land Court required by sections 61 and 98 of "The Native Laud Act, 1873," have not been obtained. The conditions of a valid alienation under the latter Act cannot, it is obvious, have been complied with; for it is not pretended either that all the owners have signed the memorandum of transfer, or that there has been a subdivision under section 97 of the Act. The plaintiff has now made application to the Chief Judge of the Native Land Court for a certificate under section 21 of "The Native Land Administration Act, 1886;" and, upon the refusal of the Chief Judge to grant a certificate, comes to this Court for a writ of mandamus.

The 24th section expressly excepts cases where the title to the land in which a share or interest claimed was at the time of the purchase or lease – which must mean at the time of the pretended purchase or lease – subject to any restriction precluding such purchase or lease. The plaintiff is therefore driven to contend that this Whangara Block was not at the date of this purchase subject to any such restriction. Accordingly he argues that either the recommendation of the Native Land Court respecting the imposition of such a restriction was ultra vires and void or that it ought now to be disregarded by the Chief Judge.

In my opinion this contention cannot be sustained. Section 20 of the Act of 1867 requires the Native Land Court to append to every certificate issued either under the Act of 1865 or under the Act of 1867, a report, stating the opinion of the Court on the question whether it is or is not proper to restrain alienation; and if proper, then to what extent. It is argued that such a report must he inoperative as regards certificates under the 17th section, because under that section no Crown grant can issue; so that a recommendation to the Governor respecting conditions to be imposed by the grant is an absurdity. But it is consistent with the provisions of the 17th section that, after partition of a block comprised in a certificate issued under that section, Crown grants may be issued of the portions alloted in severalty to the different Native owners. Partition, under the name of subdivision, is contemplated by the section, and reference is made to the provisions for that purpose contained in the Act of 1865. The reference to the 15th section of the Act of 1865 is an evident misprint. The mistake is so plain that I have no hesitation in raying that for "15th" the Court must read "50th." Now the 50th section of the Act of 1865 makes provision for the issue of Crown grants of the allotted shares in a block, and these provisions are easily applicable to the case of holders under a certificate issued under section 17 of the Act of 1873. There is therefore no difficulty in supposing that the restraint on alienation, if adopted by the Governor, is to be inserted in the grants of the several allotments after partition. Meantime, it appears to me impossible to contend that the report can be treated as a nullity by the very Court which issued it. True, it is as yet only a recommendation, which the Governor may ultimately decline to act upon; but the Court having once made such a recommendation is functus officio in the matter. It would be clearly ultra vires in any Judge of the Court to pretend to anticipate the action of the Governor, and take the matter out of His Excellency's hands by allowing alienation. The land therefore muse be considered as subject to a restriction precluding alienation within the meaning of section 24.

But even setting aside the special restraint on alienation which existed in this case, and supposing the block to have been held under certificate without any such special restriction, I am of opinion that the plaintiff must fail. The alienation has never been approved by the Native Land Court under section 61 of "The Native Lands Act, 1873," nor could it properly have been so approved for the reason already stated. It has been decided over and over again that a memorandum of transfer under the Act of 1873 does not proprio vigore pass an estate to the purchaser The certificate and declaration mentioned in section 61 are essential parts of the conveyance, and nothing vests till they are obtained.

The Act of 1886 can have made no difference In this respect. Section 21 speaks of "a person who may claim to have heretofore purchased or leased the share or interest of some out of several owners of land;" and by the interpretation clause "owner" includes persons registered under section 17. Relying on this language, I understand counsel for the plaintiff to suggest that section 21 recognises transactions such as the plaintiff's alleged purchase, and does away with the necessity for the approval of the Native Land

Court. It is, however, quite possible to give effect to the language of section 24 without resorting to such a supposition. As regards leases the section may, no doubt, apply to lands held under certificate or memorial of ownership: but as regards absolute alienation the section does not in my opinion apply to lands so held, but only to purchases of shares held by natives in joint tenancies, or as tenants in common under Crown grants. Land so held is not within the exception from the definition of "land" contained in section 3, that is to say, it is not "land purchased by a native from the Crown or from Europeans, and held under Crown grant or conveyance to such owner individually." "Individually" must here mean the same thing as "solely;" for it appears from section 21 that land held under grants to more natives than one comes within the general prohibitory enactment of section 32. Therefore, in regard to purchases of shares so held which had been made, but not completed by conveyance, prior to the Act, some special provision was fair and proper; and I take it that to such purchasers, and to such purchasers only, sections 21 and 25 apply. Effect is thus allowed to those provisions without resorting to the supposition put forward on the part of the plaintiff. But in any case it cannot have been intended by those provisions to do away with the existing restrictions upon the acquisition by Europeans of partial interests held under certificates and memorials of ownership. The policy of the Act, as pointed out by Mr. Bell, is not to enable but to restrain the direct alienation of their lands by Natives to Europeans; and it cannot have been intended to give validity to transactions which, under the statutory provisions in force at the time of the passing of the new Act, would have been inoperative. Therefore, on this independent ground, my Opinion is against the present application.

The motion for the issue of a writ must be refused with costs.

As regards the above judgment in the Whangara case, it may be noted that section 61 of "The Native Land Act, 1873," applies to a complete purchase, where all the persons had signed the deed of conveyance, and the purchaser has applied for an order for freehold tenure. Now the case submitted to the Court arose out of section 24 of "The Native Land Administration Act, 1886," the part referring to the case being as follows: –

Section 24. "A person who may claim to have purchased or leased the share or interest of some out of several owners of land (the title whereto was not at the time of such purchase or lease, subject to any restriction precluding such purchase or lease), may notify, etc, and thereupon it shall be the duty of a Judge thereof, and if he is satisfied that there has been a purchase or lease, as alleged, and that the transaction was bona fide, and that a fair value or rent was given or received, may give his certificate to that effect to the person alleging himself to be such purchaser or lessee, who shall transmit the same to the Commissioner. By subsection (b) the purchaser may, within one month after the date of the certificate, give notice to the Commissioner that he is desirous of purchasing the shares or interests which

he has not already acquired, and in such case he may, on obtaining such certificate from a Judge, that such Judge is satisfied that he had before the 1st day of July, 1886, obtained the signature of one or more owner or owners to a writing purporting or agreeing to convey the share or interests of the persons signing at any time within twelve months from the said 1st day of July, 1886, but not afterwards, purchase all or any of such shares or interest." The case of Mr. Seymour is simply this: He leased the Whangara block for a term of years, and during the currency of his lease some of the owners sold and conveyed their interests to him. He applied to the Chief Judge of the Native Lands Court for a certificate under the 24th section above quoted. It appears that the land was held by a certificate of title made under the seventeenth section of "The Native Land Act. 1867," whereby the land was rendered inalienable except by lease for 21 years, unless it was subdivided, when, if so subdivided, a purchase could be made. The Chief Judge refused the application, on the ground that the land, the subject of it, came under the proviso of section 24 of being subject to a restriction precluding such purchase or lease. This was the issue tried by Mr. Justice Richmond. He decided that the land was subject to a restriction at the time Mr. Seymour purchased the interests. It may be urged, with all deference to the opinion of the most able authority on native land questions, who occupies the judicial bench in New Zealand, that there was nothing in any law in force within the colony preventing Mr. Seymour from entering into agreements with the owners of land held by certificate of title under the seventeenth section of the Act of 1867, but on the contrary, he might assert that he was proceeding to procure the assent of all the owners to such sale, until he was stopped in his negotiations by the passing of "The Native Land Administration Act, 1886;" that if he had been allowed to go on for another two or three years he might, although not being able to get all the owners to sign a conveyance to him, have procured the assent of the whole of them to a sale, when he would then have been in a position to have applied to the Court to give him an order for freehold tenure for the interests he had acquired, or the partition of the interest of the dissentients from those the subject of the proposed sale to him. Assuming that the sale was not good in law, then at least the documents would be evidence of a proposed sale or lease, and would come under the meaning of section 65 of the Act of 1873. Now, turning to section 98, referred to by the learned Judge, it is provided therein that "All lands comprised in any such certificate (the certificate alluded to is one under the seventeenth section of the Act of 1867) issued as last aforesaid respecting which no conveyance, lease, mortgage or contract has been made, may be dealt with in the like manner as land held under memorial of ownership under this Act. Provided that land comprised in any such certificate respecting which any dealings may have heretofore been had may be dealt with in like manner as land held under memorial of ownership under this Act, but only in the case that in every dealing for such land the parties to such transactions shall satisfy the Court that they have the assent of all the persons (not the signatures) of all the persons to a conveyance, whose names are indorsed on the certificate, as well as the assent of those named on the face of the certificate to any such transaction." "The Native Land Court Act of 1886," it is true, repealed "The Native Land Act, 1873," but it left very ample provision in section 117 for carrying out anything that had been commenced under any of the repealed Acts. Mr. Seymour might therefore have argued

thus with the Chief Judge of the Native Land Court at the time his application came before that officer. "I have not come before you for the purpose of asking for an order of freehold tenure for the interests alleged to have been acquired by me in the Whangara block; I only wish you to give me a certificate which will enable me to proceed in procuring the assent of all the owners to the sale of the interests of those who are willing to convey to me, or to procure the signatures of all of the owners to a conveyance. There is nothing prohibiting me from doing so; in fact, I am complying with the Act of 1873 in trying to obtain the assent of all to a sale, or the signatures of all to a conveyance; and at some future time I would have come before you, either with a complete conveyance, or a complete assent to a conveyance, and would have then applied to you in the one case for an order in freehold tenure under section 59, or in the other for a partition under sections 65 and 69 of the Act of 1873." Section 24 of "The Native Land Administration Act, 1886," refers to incomplete transactions only, and not to those that have been conducted to a conclusion with the native owners holding under a memorial of ownership. The judgment, however, sets forth "that the certificate and declaration of a Judge of the Native Land Court required by sections 61 and 98 of "The Native Land Act, 1873," have not been obtained. The condition of a valid alienation under the latter Act cannot, it is obvious, have been complied with, for it is not pretended either that all the owners have signed the memorandum of transfer, or there has been a subdivision under section 97 of the Act."

The question before the Supreme Court was whether the Chief Judge of the Native Land Court was not bound in law to issue a certificate to enable Mr. Seymour to proceed with an incomplete transaction, which in itself was not illegal, but only inchoate and incomplete, and had not arrived at the stage when it would require to receive the certificate and declaration of a Judge of the Native Land Court It was not forbidden by law to obtain the assent or signatures of any of the native owners to a deed of conveyance, but to validate that conveyance and procure the certificate and declaration of a Judge of the Native Land Court, it required the signatures of all the owners either to the conveyance or to an assent to the conveyance, that is, the non-sellers agreeing to the sale by the others but retaining their own shares. Mr. Seymour intended to procure these, and was proceeding to do so when he was stopped by the present law, and he merely asks for a certificate to enable him to complete what he had commenced. The Court was not asked to give its opinion as to the validity of Mr. Seymour's purchase, but whether Mr. Seymour had "obtained the signature of one or more owners to a writing purporting or agreeing to convey the share or interests of the persons signing it, the title whereto was not at the time of such purchase subject to any restriction precluding such purchase." The word "purchase' is in the commencement of section 24 somewhat at variance with the provisions of subsection (b) above quoted.

The one alludes to an absolute sale, and the other relates to a document purporting to agree to convey – not a conveyance. The question is whether Mr. Seymour's document, which he submitted to the Chief Judge of the Native Land Court, could not have been looked on in the light of an agreement to convey, which there was nothing in law to prevent him from completing, and which he could set up as being a proper conveyance whenever he either procured the signatures of all the owners thereto or the assent of all to the sale being made by the vendors. Section 48 of the Act of 1873 contained a provision providing for the following restriction on alienation: – "To every such memorial there shall be annexed the following condition: That the owners of the piece of land referred to in such memorial have not power to sell or make any other disposition of the said land, except that they may lease the same for any term not exceeding twenty-one years." The next section (49) provides that: "Nothing, however, in the foregoing conditions annexed shall be deemed to preclude any sale of the land comprised in such memorial where all the owners of such land agree to the sale thereof, or to prevent any partition of such land in manner hereinafter provided, if required." The only difference between this restriction and that contained in section 17 of the Act of 1867 is, that in the latter case, the land could not be dealt with otherwise than by lease not exceeding twenty-one years until subdivided. Now, by the Act of 1873, sections 97 and 98, it was clearly provided for that lands under such certificates could be dealt with the same as lands under memorial of ownership, consequently, the restrictions in such certificates were waived in so far as they differed from those imposed by section 48 above quoted; and by the next section (49) in despite of the restriction, it was enacted that a sale of the land comprised in such memorial where all the owners agree to the sale thereof was to be recognised. The words are not where all the owners have executed a conveyance thereof. Mr. Seymour might allege, "I am in the course of getting such agreement to a sale," and is there anything in the law which provides that he cannot endeavour to do so? The above appears to refer to all cases where a Crown grant of land under memorial of ownership has not been issued. It is true that the Act of 1867 provides for the insertion by the Governor of restrictions on alienation in any grant if the same shall have been recommended by a Judge of the Native Land Court, but a recommendation of a Judge is one thing, and the placing it in a grant is another matter. It seems to have been so in the Whangara case. In the certificate of title the Judge had recommended a restriction to be inserted in the grant, but it is well known that except in one or two instances where the grants were issued by an oversight (as in Grice and Benn's case), none were prepared for lands held under a certificate of title issued in accordance with the seventeenth section of the Native Land Act, 1867, consequently if the Crown grant never issued for the Whangara block, it was impossible for

it to contain a restriction on alienation, and the recommendation on the face of the certificate could not be considered as a restriction on alienation. If this is so, the only restrictions, therefore, which had any force or effect were the statutory restrictions imposed by the Acts of 1867 and 1873 in Certificates of Title and Memorials of Ownership, which could be set aside by complying with the provisions of section 49 of the Act of 1873" Further, with reference to Mr. Justice Richmond's remarks that section 50 of the Act of 1865 makes "provision for the issue of Crown grants of the allotted shares in a block, and these provisions are easily applicable to the case of holders under a certificate issued under section 17 of the Act of 1873. There is, therefore, no difficulty in supposing that the restraint on alienation, if adopted by the Governor, is to be inserted in the grants of the several allotments after partition." It may be urged that in the case of land held by Memorial of Ownership a grant could not be issued on the commutation of Native Title to more than ten persons (section 80, Act of 1873), and this may be taken to also apply to any case of lands held by certificate of title under section 17 of the Act of 1867, if not before, at any rate subsequent to the passing of the Act of 1873, therefore, it was impossible to issue a Crown grant for the Whangara block after that date, as there were more than ten certificated and registered owners in the certificate for the block, and the recommendation to impose a restriction on alienation would then be null and void. It is doubtless correct that a restriction on alienation could be inserted in the new certificates granted on a subdivision, but the Whangara block had never arrived at that stage, and it may therefore be justifiable to assume that the only bar to alienation was the statutory restriction imposed by section 17 of the Act of 1867, and section 48 of the Act of 1873. The judgment throughout appears to deal with what was not required from the Supreme Court, namely, as to the validity of the documents submitted by Mr. Seymour, whereas it would appear that all that was required to be determined was whether Mr. Seymour had obtained a writing purporting to agree to convey certain interests, and is he entitled to receive a certificate to enable him to complete his conveyance? The answer might have been Yes; he may go on with his arrangements; but when he completes his conveyance he must, to make it valid, if he does not purchase all the shares, either apply for a subdivision, as contemplated by the Act of 1873 and the Act of 1886, or shall in accordance with the Act of 1873, satisfy the Court that all the owners of such land either sold their interests, or that the non-sellers agreed to the sale by the others, but required a subdivision of their portion of the block.

The Judge and Mr. Bell agree that "the policy of the Act of 1886 is not to enable, but to restrain. the direct alienation of their lands by natives to Europeans;" and the Judge adds, "and it cannot have been intended to give validity to transactions which under the statutory provisions in force at the time of the passing of the new Act would have been inoperative. Therefore, on this independent ground, my opinion is against the present application." Doubtless "The Native Land Administration Act, 1886," was enacted with the above object; but it must be remembered that the Act of 1873 sets forth in the preamble thereto: That whereas it is highly desirable to establish a system by which natives shall be enabled at a less cost to have their surplus land surveyed, their titles thereto ascertained, and the transfer and dealings thereto facilitated, be it enacted, &c. The Judge had therefore to look at the position of the case as it stood under the Acts of 1865, 1867, and 1873, not through the light of the Act of 1886. It appears to have been entirely overlooked in the case that the Native Land Court never entirely complied with the provisions of the Act of 1873; that it made subdivisions of land under memorial of ownership when a majority of the owners had not applied for them. That Europeans purchased and obtained orders for freehold tenure when all the persons owning the land had not assented to the sale or executed the conveyance, and although the purchase of such interests was not strictly legal, that successive subsequent Acts allowed the subdivision of shares or interests so acquired, and that by inference the so doing, if it did not create the right to purchase them, facilitated the right to obtain a supposed legal title to them when so purchased.

Having so far endeavoured to place "our dealings with Maori lands," and the defects of our legislation thereon before the public, the author will be satisfied if what has been herein written in any way conduces to amended legislation, and the introduction of a better system of dealing with Native lands which will be beneficial to both races of Her Majesty's subjects in New Zealand, and assist in the progress of civilisation and settlement therein. With these objects he has drafted an Act proposing to deal with this important question, not under the impression that it will provide complete remedies for the evils now existing, but that it may be used as a part of the framework on which to construct a sound and satisfactory law, by which future transactions will be fairly and easily conducted, and those of the past may be brought to a satisfactory and honourable arrangement and conclusion, not overlooking the fact that these have been entered into under laws which could not be understood or entirely complied with. The writer, after submitting the draft of the proposed Act for the consideration of his readers, will make a few remarks on several of the new features contained in it. He, however, craves the indulgence of the legal profession, and hopes that they will not too severely criticise the opinions on points of law herein expressed, as they are those of a layman, and will not be too hard on any of the language of the draft Act now submitted for consideration, but that they will give the question that calm consideration which its importance demands, and suggest such alterations and amendments as may occur to them. He trusts that nothing herein contained will give offence to any person who has been engaged either in legislating on the native

land question, or in administering the several conflicting laws relating thereto, but that everything herein will be taken in the same spirit in which it is given and with the same object – namely, to promote discussion, and cause valuable suggestions to be made tending to the settlement of a question which is hardly second in importance to any other affecting the welfare of this colony. He would not have ventured to write at all on the subject, but no other person seemed to have the inclination or leisure to ventilate it, and he therefore gave his views of the matters which had come under his notice during an experience of twenty-nine years in native land purchase transactions, in the expectation that others, also acquainted with "our dealings with Maori lands," would contribute their quota of information for the public weal.

Auckland, 31st May, 1887.

[Page 32 is blank]

An Act to define and determine the title to lands held by Aboriginal Natives.

INTRODUCTORY.

THE difficulties and obstacles attendant on the acquisition of Native lands by Europeans having been fully entered into in the previous pages of this pamphlet, it may be expedient to here state succinctly the defects in previous legislation on, and proceedings relating to, the Native Land question, which it is proposed to remedy, and, if possible, remove by the provisions of the Draft Act now submitted for consideration, viz.: –

1st. – The peripatetic nature of the sittings of the Native Land Courts, caused by the Judges not being appointed to and permanently stationed in defined districts.

2nd. – The consequent ignorance of the Judges and Assessors of the natural features of the country, and the particular class of title prevailing in any district.

3rd. – The enormous expenses of executing surveys, caused by two or three surveys being made by contending parties for the same block.

4th. – The sittings of the Native Land Courts being frequently fixed to be held at long distances from the land the subject of investigation, thereby debarring large numbers of elderly claimants, and infirm people, from attending thereat; also entailing enormous expense and loss of time by taking the active members of a tribe away from their homes.

5th. – The method of procedure of the Native Land Court being so greatly assimilated to the practice of the Supreme and other English Courts of Law within the Colony, which is not understood or appreciated by large numbers of Natives, and the necessity of adopting such a course of proceedings as will be more in accordance with the Maori ideas of dealing with their land questions.

6th. – The frauds practised on large numbers of Natives (frequently on the majority) interested in lands, the title whereof had been investigated by the Native Lands Court, by the limited number of persons whose names were inserted in Certificates of Title and other instruments made by order of the Native Land Court.

7th. – The enormous expense of procuring the signatures of hundreds of Native owners (scattered all over the country) to conveyances and leases of single blocks of land.

8th. – The doubts as to the validity of the titles of Europeans through the conflicting legislation on Native land questions.

9th. – The unsatisfactory state of outstanding and incomplete purchases and leases.

10th. – The stagnation in all Native land transactions through the provisions of recent enactments, seriously affecting the position of the vendors, lessors, purchasers, and lessees of the same, and the consequent prevention of the investment of capital in that direction.

11th. – The extreme unpopularity of the "Native Land Administration Act, 1886," and the unwillingness of the Natives to bring their lands under its operation.

12th. – The urgent necessity for speedily ascertaining and determining the titles to Native Lands throughout the North Island, by which the necessity for special legislation on Native matters could be dispensed with, and the expense of the Native Minister's Department could be saved.

Title

AN ACT to define and determine the title to lands held by Aboriginal Natives under Maori Usage and Custom, and to make provision for regulating the sale and other disposition of Native Lands, and for validating and settling incomplete titles thereto.

Preamble

WHEREAS considerable discontent and dissatisfaction at present exists among the Aboriginal Natives of New Zealand with respect to the laws governing the sale and other dispositions of their lands; and it is expedient that their Proprietary Rights to and over all lands held by them according to Maori Usage and Custom, should be speedily ascertained, determined, finally settled, and clothed with a legal title, assimilated as nearly as possible to European ownership under the statutes in operation within the Colony. And it is further highly desirable that steps should be taken without delay for securing permanently, and irrevocably to the Maori Race ample Reserves of such lands for their use, maintenance, and benefit, and that provision shall be made for granting titles thereto. And whereas Agreements have from time to time been made between Europeans and Maoris for the sale and lease, or other disposition of Native Lands, and numerous Deeds of Conveyance and demise have been commenced and partly executed, and it is desirable for the well-being of both races of Her Majesty's subjects in the Colony of New Zealand, and for the encouragement of settlement and progress, that these incomplete and outstanding purchases and leases should be completed, and finally and legally settled with as little delay as possible. And whereas numerous disputes and expensive suits at law have arisen through defects in, and doubts as to the meaning and intent of, several of the statutes relating to Native Lands, and to dealings therewith, and doubts have arisen as to the validity of certain instruments of title intended and supposed to have been made in accordance with such enactments, and it is expedient that such disputes, lawsuits, and doubts should be removed and for ever set at rest, and that all acts done in good faith between the parties thereto should be set right, validated and confirmed:

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: –

Short Title

1. The Short Title of this Act is "The New Zealand Native Land Titles Settlement and Determination Act, 1887."

Repeal

2. "The Native Land Court Act, 1886," "The Native Land Administration Act, 1886," and "The Native Equitable Owners' Act, 1886," together with the Acts named in Schedule 1 hereto are hereby repealed.

Interpretation

3. In this Act, if not inconsistent with the context, –

"Chief Commissioner" means the person appointed to be Chief Commissioner and General Registrar of Native Land Titles under this Act.

"Commissioner" means a person appointed to be a Commissioner and District Registrar of Native Title for a district under this Act.

"Crown Grant" means a Crown Grant made under this Act, and includes a Certificate of Title under "The Land Transfer Act."

"Certificate of Title" means a Certificate of Title issued under this Act, and includes Certificates of Title made by the Native Land Court.

"Court" means a Commissioners' Court held under this Act.

"District" means a Native Land District constituted under this Act.

"District Register of Title" means a book or books kept in the office of a Commissioner, wherein all matters pertaining to Native Lands within a district are recorded.

"District Reference Map " means a map of each district compiled by the Surveyor General, and certified by him.

"District Surveyor" means the officer in charge of surveys in a district.

"Disposable Land" means land the title whereof has been determined under this Act and is available for sale or lease.

"General Register of Titles" means a book or books kept in the office of the Chief Commissioner, in which titles relating to all districts constituted under this Act are recorded.

"General Reference Map" means a map of the North Island of New Zealand showing each district constituted under this Act, compiled by the Surveyor General and certified by him.

"Hapu Boundary" means the boundary of lands held by a "hapu" (sept) of a tribe, within a Tribal boundary.

"Hereditaments" means lands held under a Crown Grant.

"Memorial of Ownership" means a Memorial of Ownership made by the Native Land Court.

"Native" means an aboriginal Native of New Zealand, and includes half-castes, and all descendants of half-castes whether by Maoris or Europeans.

"Native Land" means land held by Natives under Maori Usage or Custom.

"Non-seller" means a person dissenting to an incomplete sale of "Titled Lands."

"Non-lessor" means a person dissenting to an incomplete lease of "Titled Lands."

"Notice" means a notice published within a District only, in any way a Commissioner may deem fit to give publicity to the same.

"Owner" means the person the title of whom to any land has been ascertained and registered under this Act, or of any person found to be an owner by any repealed Act relating to Native land.

"Order" means an order made by a Commissioner under this Act, and includes an order made by the Native Land Court.

"Parcel of land" means a piece of land partitioned under this Act within any "hapu" holding.

"Partition Order" means any order for a partition of land made by a Commissioner.

"Person" means a person, whether Native or otherwise.

"Published" shall mean a notice published by a Commissioner in the New Zealand Gazette, the Maori Kahiti, and one local newspaper (if any is published) in a district.

"Registration" means registration in the General or District Register of Titles.

"Reserved Land" means a parcel of land owned by a "hapu" and set apart for their permanent use, maintenance, and benefit.

"Native Reserve" means any land heretofore reserved for Native purposes, and which the Governor may order to be administered under this Act, and includes lands reserved under "The West Coast Settlements Reserves Act, 1881," and the Amendments thereto.

"Succession Order" means an order made under this Act for a person to succeed to the "real estate" of a deceased person.

"Survey" means a survey ordered by a Commissioner.

"Sealed" means sealed with the seal of office.

"Titled Laud" means land belonging to Natives, the title whereof has been adjudicated on by the Native Land Court, or any other legally constituted tribunal having jurisdiction over any Native land, and applies to all such lands, whether held under an Order, a Certificate of Title, a Memorial of Ownership, or a Crown Grant, or any other instrument of title made under any Native Land Act repealed, and shall include land the title whereof may hereafter be determined under this Act.

"Tribal Boundary" means the external boundary of the lands owned by any tribe, or the boundary line dividing the lands of two or more tribes from that of another.

"Trustees" means Trustees elected by a "hapu" under this Act.

"Will" means a will made by a Native in accordance with this Act.

The Governor may make districts

4. The Governor may, by Order in Council, divide the North Island of New Zealand into districts to be styled "Native Land Districts," giving a distinctive name to every such district, and may at any time, as he may think fit, alter the boundaries of, or abolish any such district. In fixing the limits of such districts, in all cases where known tribal boundaries exist, these shall be adopted; in cases where tribal boundaries are not clearly defined, then the division line of districts to follow some natural feature of the country such as a river, or a range of hills, but in no case shall a straight line from one given point to another be allowed except where an actual survey line has been defined on the ground.

The Governor may appoint a Chief Commissioner and General Registrar of Titles

5. The Governor may from time to time appoint such person as he may think fit, to be a Chief Commissioner and General Registrar of Native Land Titles under this Act, and may from time to time, as he may think fit, remove such officer.

The Governor may appoint Commissioners and District Registrars

6. The Governor may from time to time appoint such persons as he may think fit to be Commissioners and District Registrars of Native Land Title, and may from time to time, as he may think fit, remove any or all of such officers. The Governor shall, on making any such appointment, specify the district within which the person so appointed shall exercise the powers vested in him under this Act.

The Governor may appoint Deputies

7. The Governor may also, during the absence or illness of the Chief, or other Commissioner, appoint a deputy Commissioner who shall, during the Governor's pleasure, have and exercise all the powers vested in a Chief, or other Commissioner, under this Act.

The Governor may appoint District Surveyors

8. The Governor may from time to time appoint such person as he may think fit to be a District Surveyor for any district constituted under this Act, and from time to time, as he may think fit, remove such District Surveyor.

The Governor may appoint other officers

9. The Governor may from time to time appoint such persons as he may think fit to be Assistant Surveyors, Clerks, Maori Interpreters, (the latter to be duly Licensed under this Act as hereinafter provided), or such other officers as may appear to him to be necessary for effectually carrying out the provisions of this Act, and from time to time, as he may think fit, to remove any or all of such persons.

Judges and ex-Judges of the Native Land Court eligible for appointment

10. Provided that the person now holding the office of Chief Judge of the Native Land Court, shall be eligible for appointment as Chief Commissioner, and any person now holding the office of Judge of the Native Land Court, or any retired Judge thereof, who shall be willing to accept office under this Act, shall be eligible for appointment as a Commissioner. If it is found that there are not sufficient persons, who now hold or have heretofore held office as Judges of the Native Land Court, to provide a Commissioner for each district constituted under this Act, the Governor from time to time, from among fit and proper persons, skilled in the Maori language and conversant with

Native Land tenure according to Maori Usage and Custom, appoint such person or persons as he may think fit to be a Commissioner or Commissioners under this Act, and in like manner may fill up any appointment rendered vacant, by the death, retirement, or removal of any Chief or other Commissioner.

Seal of office to be provided

11. The Minister for Lands shall furnish the Chief Commissioner with a seal of office and every Commissioner with a similar seal, but showing thereon the District for which it is issued.

The Governor may appoint Court for district

12. The Governor shall constitute a Court for each district, which shall be presided over by the Commissioner of the district, with power, when necessary, to sit with the Chief, or any other Commissioner or Commissioners, as hereinafter provided.

DUTIES OF CHIEF COMMISSIONER.

Chief Commissioner to have control of Native Land Titles Department

13. The person holding the office of Chief Commissioner and General Registrar of Native Land Titles shall have control of the "Native Land Titles Department" throughout the Colony of New Zealand.

General Register of Titles to be kept by Chief Commissioner

14. The Chief Commissioner shall keep in his office a book or books to be named "The General Register of Native Titles," in which shall be entered all Certificates of Title or orders made by any Commissioner appointed under this Act, also copies of any orders or Certificates of Title or Memorials of Ownership heretofore made by the Native Land Court, where the land or any part thereof the subject of such instrument has not been dealt with by sale or lease. The title relating to each District constituted under this Act shall be kept separate from that of any other District. There shall also be entered in a separate book, to be named the "Record of Native Grants," a duplicate of all Crown Grants prepared for the Governor's signature, and. when so signed, if any alterations or amendments have been made in any Grant, such alterations or amendments shall be inscribed in such duplicate.

Preparation of Crown Grants

15. The Chief Commissioner, on the receipt from any Commissioner of a Certificate of Title made under this Act, as hereinafter provided, shall forthwith prepare or cause to be prepared (except in the case of a certificate granted to a hapu under section 37 of this Act) a Crown grant in triplicate for the land the subject of such Certificate: One of such to be signed by the Governor, which shall be delivered to the owners mentioned therein; one copy to be deposited in the Registry of Deeds Office in the Provincial District within which the land comprised in such grant is situated; and the third to be transmitted to the Minister of Lands for the time being, for record in his Department. Provided also where Crown Grants are incomplete or have not been prepared in respect of any Order, Certificate of Title, or Memorial of Ownership heretofore made by the Native Land Court, it shall be lawful for the Chief Commissioner to cause the same to be completed or prepared in the manner above provided.

General Reference Map to be provided, also District Reference Maps, etc.

16. The Surveyor-General shall, immediately after the coming into operation of this Act, prepare or cause to be prepared, on a large scale, a Map of the North Island of New Zealand, to be known as the '* General Reference Map, " on which shall be shown all Districts constituted under this Act. Provided also that any Tribal boundary or boundaries which shall from time to time be fixed and determined by any Commissioner, as hereinafter provided, shall be entered thereon by some duly authorised surveyor. Hapu boundaries, when so fixed and determined, shall also be entered on such " General Reference Map " in like manner as above enacted.

The Surveyor-General shall in like manner prepare, on a large scale, a Map of each Provincial District in the Middle Island, to be

known as the "Middle Island Reference Map," showing thereon all lands held by Natives under Crown Grant, or reserved for the use, maintenance, or benefit of Natives, within each such Provincial District. This shall be lodged in the Office of the Chief Commissioner.

The Surveyor-General shall in like manner prepare, or cause to be prepared, on a large scale, in duplicate, maps to be known by the name of "District Reference Maps" of each district constituted under this Act, and two certified copies thereof. One of such duplicate maps shall be filed of record in the Office of the Chief Commissioner, and the other shall be filed in the Office of the Commissioner of the District to which it relates. The copies thereof hereinbefore mentioned shall be used as office and working plans by the Chief and District Surveyor.

Every such "District Reference Map" shall contain the information and particulars following, viz.: –

(a.) The position of all natural features which have been ascertained and fixed within any district, such as mountains, ranges of hills, rivers, streams, lakes, and forests; also any known villages or settlements now occupied, or burial grounds now used by Natives, or any ancient settlements, fortifications, or burial grounds therein situate.

(b.) Such map shall show accurately all major and minor trigonometrical stations which have been established within each district, and the bearings and distances between the same; also where any surveyed Crown or other lands adjoin or abut on any "Native Land," the bearings and distances of all survey lines forming the boundary or boundaries thereof.

(c.) All Crown Lands which have bean sold, leased, or otherwise disposed of. Provided that only the external boundaries thereof require to be shown on such map.

(d.) Crown Lands remaining unsold or unappropriated for any purposes. If it shall be deemed expedient for Public information and reference in any district, the Surveyor General may, in his discretion, indicate on such map the allotments or sections into which this class of land has been laid off or divided.

(e.) "Titled Lands" the title whereof has been ascertained and determined by the Native Land Court, or other tribunal.

(f.) "Titled Lands" which have been alienated by the owners by sale, lease, or otherwise, to persons other than the Government.

(g.) "Titled Lands" held by the owners, and not alienated to any person.

(h.) " Native Lands " held by Natives under Maori Usage and Custom, the title whereof has not been investigated, ascertained, and determined.

Such District Reference Maps shall be certified to as being correct, and shall be signed by the Surveyor General personally.

Additions to be made to General and District Reference Maps

17. The Chief Commissioner shall from time to time cause to be added to such General and District Reference Maps, such additional matters as shall be transmitted to him by any Commissioner, as hereinafter provided, and shall place on such map his certificate of such entry therein.

District Reference Map to be admissable in evidence

18. Any District Reference Map so prepared, certified, and filed in the office of the Chief, or any Commissioner shall be admissable in evidence in any proceedings under this Act, or in any Court of Law within the Colony of Now Zealand, and anything contained therein

so far as it refers to the matter under adjudication, or to any issue to be tried, shall be deemed to be conclusive evidence therein, and shall not be called into question.

Chief Commissioner may assist Commissioner in difficult cases

19. The Chief Commissioner may, in difficult or disputed cases, on the application of any Commissioner, proceed to any district to aid and assist such Commissioner in determining the question at issue or in dispute.

Regulations to be made

20. The Chief Commissioner may from time to time frame Rules and Regulations for the general conduct of business in his own department. And in like manner, at a meeting of Commissioners to be convened by him for that purpose, shall, with their assistance, frame Rules and Regulations for the general conduct of business in all the Districts constituted under this Act. Provided that no such Rules or Regulations shall come into operation until the assent of the Governor in Council shall have been first obtained thereto. Such Rules and Regulations may from time to time be annulled, altered, or amended, in such manner as may appear to be necessary.

Register of Titles to be kept by Chief Commissioner

21. The Commissioner shall keep in his office a book or books to be styled the "General Register of Titles," in which shall be entered all matters affecting Native Title within the district to which it relates. And copies of all Orders, Certificates, and Certificates of Title, as from time to time made by a Commissioner, shall be inscribed therein.

DUTIES OF COMMISSIONERS AND DISTRICT REGISTRARS OF NATIVE TITLE WITH RESPECT TO " TITLED LANDS. "

Commissioner to publish a notice respecting incomplete purchases and leases

22. Every Commissioner appointed to any district under this Act, shall forthwith issue a notice in English and Maori, which shall be published in the New Zealand Gazette and the Maori Kahiti and in one local newspaper (if any) in circulation within any Native Land District, calling upon all persons who have outstanding or incomplete transactions for the sale or lease of any land with any owners within such district, to forward the particulars of their claims to him within three months from the date of such notice.

Commissioner to appoint a day for hearing applications respecting incomplete transactions

23. As soon as may be convenient after the expiration of the above period of three months, the Commissioner shall, by notice to be published in the manner aforesaid, appoint a day (not less than one month from the date of such notice) for hearing and determining the justice and validity of such claims, when, if satisfied that any such transaction is bona fide and fair to all the parties concerned, he shall issue a Certificate under seal to that effect to the applicant; which Certificate shall show on the face thereof the number of sellers or lessors, and the number of non-sellers or non-lessors, giving the name of each person respectively. Such Certificate shall be given to the applicant, and a copy thereof shall be inscribed in the District Register of Title, and the General Register of Titles.

Proceedings when a Commissioner refuses to make a certificate

24. If on such hearing, as aforesaid, the Commissioner shall refuse to make a Certificate in respect of any claim, he shall make an order to that effect, and, if requested, shall give to the claimant his reasons therefor in writing, and shall forward copies of the evidence given in the case, and the reason of such refusal to the Chief Commissioner and to the Minister for Lands for their information. The Minister for Lands may, if he shall deem fit, on an application in that behalf being made to him by the claimant, order the case to be re-heard before the Chief Commissioner and the Commissioner for the District within which it originated. If on such re-hearing the claimant shall be found to be entitled to a Certificate, it shall be issued to him and dealt with as provided for in the next previous sections. If on a re-hearing the claimant shall be found not to be entitled to receive a Certificate, an order to that effect shall be made and shall be signed

by the Chief Commissioner, and the Commissioner for the District, the orders so made, whether by the Commissioner in the first instance or by the Chief Commissioner and the Commissioner as above enacted, shall be final and conclusive, and the legality thereof shall not be called in question in any Court of Law in the Colony of New Zealand. Any applicant for a Certificate may appear before the Commissioner by counsel or agent. A copy of any such order shall be inscribed in the District Register of Titles and the General Register of Titles.

Effect of certificate

25. Any certificate so made and sealed, as far as the interests which have been acquired by purchase or lease are concerned, and not otherwise, shall have the effect of a Certificate made by a Trust Commissioner appointed under "The Native Land Frauds Prevention Act, 1881," and it shall also confer on the person named therein the right to complete the purchase or lease of the land the subject of such Certificate, and to acquire any outstanding interests therein, during a period of three years from the date thereof. And such Certificate, during the time it shall be in force, shall effectually bar the right of any person whomsoever, other than the first purchaser or lessee, from dealing with the land comprised in such Certificate. Unless it shall in the meanwhile be cancelled by the holder thereof applying for and obtaining a Partition Order under this Act, in which case the lands awarded to the non-sellers or non-lessors shall be classed as "Disposable Lands," and be open for dealing with in manner hereinafter provided

Certificate may be transferred

26. Such Certificate may, by permission of the Commissioner, be transferred by the holder thereof to any other person; but a copy of such transfer must be inscribed in the District Register of Title.

Partition maybe made if required, etc.

27. At the time when a Commissioner shall order a Certificate to issue to an applicant to enable him to continue his purchase or lease, it shall be lawful for such person to then apply to the Commissioner to partition the interests which have been acquired by him from those of the non-sellers or non-lessors. Whereupon the Commissioner shall direct the applicant to endeavour to make an arrangement with the owners for the partition of the land in question, and shall fix a day for the further hearing of the matter. On the day so fixed, if the Commissioner is satisfied that all the parties concerned have agreed to a partition of the land the subject of the claim, he shall then proceed in the manner prescribed in the next following section. Failing any such arrangement the Commissioner may, if convenient and all the parties are present, proceed to hear the case forthwith, but, if otherwise, he shall appoint a day for hearing the claim of the applicant, of which a notice of at least one month shall be published as hereinbefore provided. On the day so fixed the Commissioner shall sit in open Court and proceed to hear and determine the case in the manner hereinafter provided in Section 35, for hearing cases of disputed Tribal boundaries inside districts.

On arrangement being made in respect of an incomplete purchase

28. On an arrangement being arrived at between the parties in the matter of any incomplete purchase, for the partition of the interests acquired by the purchaser from those retained by non-sellers, the Commissioner having satisfied himself that such agreement is fair and is understood by the parties thereto, shall forthwith cancel the original muniment of title and shall make two Partition Orders, one in favour of the purchaser, and the other in favour of the non-sellers, for the respective parcels of land as arranged between them, and a Certificate of Title shall be issued for each of such parcels of land in lieu of such orders, on the production to the Commissioner of a proper survey map thereof, prepared in -the manner hereinafter prescribed for the making of surveys. Such sub-divisional survey shall be made at the expense of the purchaser.

The Certificates of Title, when completed, shall be transmitted to the Chief Commissioner, and a copy thereof shall be inscribed in the District Register of Title, together with a copy of the Partition Order.

In an arrangement being made in respect of an incomplete lease

29. On an arrangement being arrived at between the parties in the matter of any incomplete lease, for the partition of the interests held by the lessee from those of the owners dissenting to such lease, the Commissioner, having satisfied himself that such agreement is fair and is understood by the parties thereto, shall forthwith cancel the original muniment of title and shall make two Partition Orders, one in favour of the lessors, and one in favour of the non-lessors, for the respective parcels of land as arranged between them; and a Certificate of Title shall be issued for each of such parcels of land in lieu of such orders, on the production to the Commissioner of a proper survey map thereof, prepared in the manner hereinafter prescribed for the making of surveys. Such sub-divisional survey shall be made at the joint cost of the lessors and the lessee. The lessee may, at the time of the making of the Partition Orders aforesaid, make application to the Commissioner for a Leasing Order for the parcel of land allotted to the lessors; the Commissioner shall thereupon order that a Leasing Order shall issue for the parcel of land to which it refers. The effect of such Leasing Order shall be to confirm the original lease over the land forming the subject of such order; and the rent reserved by such lease shall be diminished in proportion to the area of the parcel of land which has been cut off from the original lease; or if the lessors and the lessee shall elect to dispense with a Leasing Order, and make a new lease for such rent and for such term as may be agreed on between them, it shall be competent for them to do so. Such new lease shall be executed in the presence of the Commissioner, and shall be attested and sealed by him.

Copies of such Partition Orders, Certificates of Title, and Leasing Orders, or of the new lease, if made in lieu of the Leasing Order, shall be inscribed in the District Register of Title, and the Certificate of Title made for each of the parcels of land shall be transmitted to the Chief Commissioner.

Holder of a Certificate may at any time apply for a partition

30. The holder of any certificate ordered or issued in respect of any incomplete purchase, in accordance with the provisions hereinbefore made, may at any time during the three years within which the same is in operation, or at any time thereafter, make application to the Commissioner for a partition of the land the subject of such certificate. And the application for such partition shall be heard and a Partition Order made in the manner previously sot forth in sections 27, 28, and 29 hereof.

REGARDING NATIVE LANDS.

Arranging tribal boundaries

31. Immediately after taking charge of the District allotted to him, the Commissioner shall arrange with the Commissioners of the adjoining Districts for the laying off and defining of any Tribal boundary dividing their Districts, or which may be near to the boundary of such districts, as proclaimed by the Governor under this Act. Notice of the times when the respective boundaries of adjoining Districts will be arranged shall be published for at least one month before the convening of a meeting of the Tribes interested therein. On the day so fixed the tribes interested in the boundary which shall have been agreed on to be first dealt with, shall meet at the place named in the notice, which shall be as convenient to the boundary as circumstances will admit. The question shall be publicly discussed in the presence of the two Commissioners concerned therein. If the tribes disagree as to the boundary or boundaries, each Commissioner shall cause the tribes belonging to his District to select seven of the experienced and elder men of each such tribe who, with the two Commissioners, shall proceed, accompanied by the District Surveyors of each

District, to personally inspect the disputed boundary on the ground. The District Surveyors shall note such portions of the boundary or division line which are mutually agreed on as being correct, and where such line is disputed he shall note the position of the portion disputed. On completion of the inspection of the first boundary, the next shall be taken in the same order as published in the notice and dealt with in a similar manner to the first boundary, and so on until all the sides bounded by other districts shall have been so inspected and noted. The District Surveyors of the adjoining Districts, and of the District the boundaries of which are the subject of settlement, shall forthwith proceed to cut, define, mark, a ad accurately survey the boundary claimed by each of the parties; if more than two lines have been claimed at any of the places so disputed, then such other lines shall be similarly dealt with. On the completion of the survey maps of the the same the Commissioners concerned therein shall fix the day or days on which the claim of each of the parties shall be heard.

Hearing in case of disputed boundary

32. On the day so appointed for hearing, the two Commissioners concerned in the first portion of the boundary shall point out on the Survey Map to the tribes interested therein the position of the lines agreed on, and of those disputed, and shall give the disputants three days to endeavour to amicably arrange the questions at issue. During the adjournment, the Commissioners of the respective districts affected thereby shall in like manner deal with all the other portions of the boundary. On the day appointed, the Natives interested having assembled, they shall be asked if they have come to any arrangement with respect to the matters in dispute. If a settlement has been arrived at by mutual consent the Commissioners shall give effect thereto, and shall make an order defining the boundary accordingly, which order, when so made, shall be irrevocable.

If any such disputed boundary cannot be fixed by mutual arrangements, a Court shall be formed consisting of the whole of the Commissioners then present, who, after taking all evidence brought before them, shall give such judgment as to them, or the majority of them, shall seem just and fair to all parties. If any case is very difficult to decide, the Commissioners may, if they think fit, during the course of the hearing or before the delivery of the judgment, but not afterwards, suggest a basis for a settlement of the matters in dispute, and may adjourn the case for such time as they may deem proper, to allow the Natives interested therein to consider their suggestions. On such suggestions being adopted, or any arrangement being made, or if the judgment of the Court shall be given, it shall make an order defining the boundary in accordance with such arrangement or judgment, which shall be signed by all the Commissioners present at the Court, which order, when so made shall be irrevocable. The District Surveyors shall forthwith proceed to survey the boundaries in accordance with such orders. On completion of the survey map, as hereinafter provided, the District Surveyors shall enter the whole of the boundaries on the District Reference Maps of their respective districts affected thereby, and on the working plans in their custody, and the Commissioners shall transmit to the Chief Commissioner accurate certified copies of such surveys for the purpose of defining the same and having them entered in the General Reference Map.

The Governor may alter boundaries of districts in conformity with tribal boundaries

33. On the completion of the external tribal boundaries of any district, the Chief Commissioner may recommend that the limits of such district, as fixed by the first proclamation by the Governor, shall be altered and amended, by substituting in lieu thereof the tribal boundaries as ordered by the Commissioners' Court. The Governor may if he shall deem fit, by Order in Council, make such alterations and amendments. Notwithstanding such alterations and amend-

ments in the boundaries of any district it shall not be necessary to alter the appointment, or re-appoint the person holding the office of Commissioner

therein.

Commissioners to compile lists of all persons in each hapu

34. On completion of the external boundaries of his district, the Commissioner shall with all convenient speed proceed to form a list showing the names of all the persons residing therein (men, women, and children), and the divisions thereof into tribes, hapus, and families within hapus. And shall make himself acquainted with the settlements occupied by each tribe, and of each hapu of a tribe, and shall make a preliminary inspection of the boundaries claimed by each.

Commissioner to arrange boundaries between tribes occupying his district

35. The Commissioner having thus obtained sufficient information for his guidance, shall forthwith make and publish a notice fixing days (not less than one month from the date of such notice), setting forth the times and places where the meetings of the several tribes within his district shall be held, commencing on one side of the district and extending to the boundary opposite thereto. On the tribes interested in any internal sub-division of a district meeting at the place appointed by such notice, the Commissioner shall proceed in like manner as is set forth in sections 31 and 32 respecting external tribal boundaries. In cases of dispute necessitating a hearing, the Commissioner of the district shall sit alone in open Court and take evidence and give judgment therein. Provided that in any very difficult question he may adjourn the meeting thereof, and request the Chief Commissioner to appoint two other Commissioners to sit with him and adjudicate thereon. On delivery of their judgment, the Commissioners shall make an order defining such tribal boundary, which order shall be irrevocable. On completion of the necessary surveys a Certificate of Title shall then be issued to such tribe by name, which shall be registered in manner hereinbefore provided. The same procedure shall be adopted in the cases of all the tribes residing within the district, until the whole of the boundaries have been arranged.

Commissioner to fix hapu boundaries

36. Having finally completed all the tribal boundaries within his district, the Commissioner shall in like manner proceed to deal with the lands of the several hapus of the tribes residing therein. These subdivisions shall be dealt with as hereinbefore prescribed by sections 31, 32, and 35 hereof.

Certificates of title to be issued to hapus

37. After hearing and determining the questions relating to the boundaries of the lands held by the several hapus within his District, the Commissioner shall next cancel the Certificates of Title which had been made for the several tribes within the District, and on completion of the survey of the lands allotted to each hapu, as hereinafter provided, he shall issue a Certificate of Title for the lands held by each of such hapus. In every such certificate shall be set forth the name of the hapu, and the names of all the persons composing it, grouped in their respective families. Such Certificate shall be registered in the manner hereinbefore provided, and a copy thereof shall be transmitted to the Chief Commissioner for entry in the General Register of Titles only, but no Crown Grant shall be prepared or issued in respect of such Certificate.

Hapu lands to be divided into "reserved lands," and "disposable lands"

38. After the granting of the several Certificates to the hapus within the district, the Commissioner shall next proceed with the District Surveyor to the settlements of each hapu, and with the consent of the whole, or a majority of the adult members thereof, shall divide the lands of such hapu into two classes: One to be styled "Reserved Lands," which term includes all lands to be set apart for the permanent use, maintenance, and benefit of the people of such hapu; the second class to be styled "Disposable Lands," which term includes all the lands which it is considered to be desirable to alienate by sale

or lease. On these being finally arranged, the District Surveyor shall forthwith survey the several parcels, and on proper maps thereof being completed, copies thereof shall be drawn on the Working Plan, District Reference Map, and the General Reference Map.

Certificates of Title to be issued for hapu reserved lands when surveyed

39. On completion of the survey as aforesaid of the lands so reserved for any hapu, the Commissioner shall next proceed to prepare and issue Certificates of Title for the several parcels of land so set aside, which Certificates shall have written within them the names of the hapu, and the names of all the persons composing it, grouped in their respective families; and such Certificate shall contain a proviso that the whole of the lands comprised therein shall be inalienable by sale, lease, or otherwise. Such Certificate shall be registered in the District Register of Title, and a copy thereof shall be transmitted to the Chief Commissioner, who shall prepare a Crown Grant, containing all the names appearing in the Certificate and in the same order of families, for the signature of the Governor; such grant shall contain a proviso making the land the subject thereof inalienable by sale, lease, or otherwise.

Certificates of Title to issue for disposable lands

40. The boundaries of the parcel or parcels of lands to be available for sale or lease having been surveyed, the Commissioner shall ascertain whether the adult members of the hapu desire to have any subdivisions made thereof, or whether they prefer one certificate for the whole in an undivided block, or for each block. Certificates of Title may then be made for each block or blocks as so arranged. If a partition is required, the Commissioner, with the District Surveyor and the owners, shall go on to the land and arrange the position and boundaries of each parcel which is to be partitioned and when such partition is effected, then a Certificate of Title shall be made for each of the several parcels so partitioned. If there is no application to the contrary, the whole of the names of the persons comprising the hapu shall be entered in the certificate in manner hereinbefore provided, or if an application is made to the Commissioner to insert the names of certain persons only in any of the certificates for such parcels in accordance with any arrangement arrived at between the owners, and if he shall be satisfied that the arrangement is fair to all the parties interested he shall give effect thereto, and issue the certificate accordingly. Such certificates shall bear on the face of them a proviso that the lands the subject of such certificates are alienable by sale and lease only, and are not disposable in any manner other than that which is hereinafter provided. At the time of making any Certificate of Title for any Disposable Land, the Commissioner shall ascertain if any of the owners are minors, or under other disability, in which case two Trustees shall be forthwith appointed for each case, the names of whom shall be entered in the District Register of Title.

Trustees to be appointed

41. In any case where the owners named in the Certificate of Title to be made for any parcel of "Disposable Land" shall exceed seven in number, the Commissioner, at a meeting to be specially convened for that purpose, shall call on the owners (male and female) then present to nominate seven adult male owners from among those to whom any parcel of land has been allotted to act as Trustees in respect of the land comprised in such certificate. If the number nominated, shall not exceed seven, the Commissioner shall then declare the persons so nominated to be duly elected. If the number nominated shall exceed seven, the Commissioner shall then

publicly fix a day for taking a Poll of the adult owners and of ono of the persons in each case who have been appointed to be Trustees for any person under disability. The Commissioner shall preside at the Poll, which shall be open from the hour of 9 a. m. to 5 p. m. The polling shall be by ballot, and the Commissioner shall declare the seven persons having the largest number of votes respectively to be duly elected. No female, or any person who

has been convicted of any infamous crime shall be eligible for election as a Trustee, or any person who is infirm, imbecile, or of unsound mind. No minor shall vote at any election or be eligible for the office of Trustee.

After election of Trustees Certificate of Title to be issued

42. After such Trustees shall have been elected the Commissioner shall issue Certificates of Title for such disposable lands, in accordance with the arrangements made, as provided in section 40 hereof, and in addition to the proviso therein contained, which is to be inserted in the certificate in respect of alienability, there shall be entered therein that the land comprised in such certificate is to be held in Trust by the Trustees (naming them) for themselves and the persons who have been found entitled and named in the certificate, under the arrangements provided in the said section 40, with the power to dispose of the same by absolute sale or by lease only, and to execute conveyances and leases of the same, subject to the provisions hereinafter contained respecting the sale and lease of disposable lands.

Such Certificates when completed shall be entered on record in the District Register of Titles, and a copy thereof shall be transmitted to the Chief Commissioner, who shall prepare a Crown Grant for the Governor's signature, on which shall be shown the names of all the owners of the parcel of land the subject of such Grant, as set forth in the Certificate, together with the Trust thereby created and the names of the Trustees who have been elected, also the other provisions as enacted by section 40 hereof.

Election of fresh Trustee on vacancy occurring

43. In case of a vacancy arising through the resignation or death of any Trustee, the Commissioner shall convene a meeting of the owners of the lands affected thereby, and shall cause a Successor to be elected in the manner hereinbefore provided in section 41 hereof.

Powers of Trustees

44. The Trustees so appointed shall have all the powers and the same rights and liabilities as are now conferred by law on Trustees of Estates, excepting as hereinafter provided, and that all moneys payable under any sale or lease of land shall be paid to the Commissioner in the first instance, and be by him lodged to the credit of a public account to be styled the "Native Land Fund Account," such money to be drawn by cheque only, as it may from time to time be required, as hereinafter provided.

Persons may arrange with the Trustees for the purchase or lease of disposable land

45. If any person desires to purchase or lease any lands vested in such Trustees, he may enter into arrangements with them for the sale or lease thereof. But it shall not be lawful for any Trustee to enter into any arrangement for the mortgage of any disposable land, or for any person to pay any sum of money by way of mortgage on any land held by such Trustees, and any money so paid shall be forfeited to the person to whom it may have been advanced or paid, and shall not be recoverable back by the person paying the same. The Trustees shall thereupon convene a meeting of the adult owners of the land the subject of such negotiations, and shall ascertain if the whole of them assent to the proposed sale or lease. They shall then signify their assent by signing a document in the form A in Schedule 2 hereunto annexed, which document shall have two columns in it for signatures, one for the names of the assenting, and the other for those of the dissenting parties.

The Trustees may thereupon request the District Surveyor to survey the land the subject of such negotiation, and on their exhibiting to him the document of assent, he may proceed to make a survey of the same. If there are any dissentients to any such proposed sale or lease, they shall sign their names in the column set apart for that purpose, and no survey of such land shall be made until the matter has been referred to the Commissioner for his decision thereon. The Commissioner shall forthwith convene a meeting of both the assenters and dissenters; and he may partition an area equivalent to the shares or interests of the dissenters to the sale or lease for them, and an area

equal to the shares or interests of the assenters, from within the block vested in the Trustees, and shall issue new Certificates for each of such parcels, copies of which shall be entered in the District Register of Title and forwarded to the Chief Commissioner. The Trustees may then proceed with their negotiations and the survey of the parcel of land to be sold or leased; and the dissenters may likewise cause a survey to be made of the parcel of land allotted to them.

Interests to be deemed to be equal, unless contrary proved

46. For the purposes of this Act, unless a special partition shall have been made thereof, with the assent of the family to which an owner belongs, there shall be no assumption of individual rights or ownership to land, and the right, shares, and interests of each family composing a hapu shall be deemed to be equal, unless valid reason to the contrary shall be shown to the satisfaction of the Commissioner, who may then sit in Court to ascertain, define, and determine the extent of such larger right, share, and interest. All minors or persons under disability shall be represented in Court by their Trustees.

Execution of a conveyance by Trustees

47. When the survey has been made of any parcel of land which has been so arranged to be sold, the Trustees and the purchaser shall appear before the Commissioner, and they shall duly execute the conveyance in his presence. The purchaser shall then pay over to the Commissioner the full price set forth in the conveyance as the consideration for the land, and the Commissioner shall then direct the purchaser to pay all duties leviable under "The Stamp Act, 1882, Amendment Act, 1885." On the return of the conveyance to the Commissioner, duly stamped, that officer shall then certify that the transaction was just and fair, and the deed was duly executed in his presence, to which he shall sign his name and affix his seal of office. A copy of the conveyance shall then be inscribed in the District Register of Title and the General Register of Titles. Any conveyance so executed and registered shall be entitled to registration in any Deeds Registry Office, and if the purchaser or his heirs or assigns shall so desire, a Land Transfer Certificate may be granted therefor

Execution of a lease

48. A lease of any parcel of land which has been so arranged for shall be executed in the same manner as provided for the execution of conveyances in the next previous section, and shall be stamped and registered in like manner as therein provided for conveyances in fee simple. When completed the lease shall be given to the lessee, and the duplicate thereof shall be held by the Trustees. The rents, as they from time to time become due, shall be payable to the Commissioner, and his receipt to the lessee for such payment shall be a full discharge and acquittance of all demands in that behalf.

DISPOSITION OF MONEYS.

Moneys received by Commissioner to be paid to an official account

49. All moneys accruing under the provisions of this Act from sales or leases of disposable lands or otherwise shall be paid to the Commissioner, who shall day by day, or at such times as rules may prescribe, pay the same into such bank as the Governor directs, to the credit of an official account of the Commissioner therein, to be called the "Native Land Fund Account."

Money to be drawn by cheque only

50. Such account shall be operated on only by cheque, signed by the Commissioner, or in such manner as rules may prescribe.

Money to be deemed public moneys

51. Such moneys shall be deemed to be public moneys within the meaning of " The Public Revenues Act, 1878" and the Acts amending the same, and all the provisions of the said Acts in relation to public money and persons dealing therewith, except as otherwise provided by this Act, shall apply to moneys accruing under this Act, and to persons dealing with the same.

Accounts to be kept by Commissioner

52. The Commissioner shall keep full accounts of the receipts and payments of such moneys in such form as the Controller and Auditor-General directs, and shall show therein separately the receipts and payments in respect of each parcel of disposable land dealt with under this Act, and shall, at the end of every month, send to the Audit Office a copy or abstract of such accounts in such form as the Controller and Auditor-General directs.

Payment of moneys to owners, etc.

53. Moneys received by the Commissioner as purchase money or rent in respect of each parcel of disposable land, shall, so soon as convenient, be paid to the owners in the manner following: –

(a.) On the payment to the Commissioner of the proceeds of any sale or lease, he shall hand to the Trustees a document in the form B in Schedule 2 hereto, which shall contain, in the first column, the names of each family having a claim to a share of such money, and a second column ruled for the entry of money, and a third column for the signatures of the persons entitled to receive such moneys. The Trustees shall forthwith proceed to convene a meeting of all the families interested in the division of such money, and shall submit a scheme of sub-division to them. If this is agreed to, the families so agreeing shall have the amount payable to each placed opposite their respective names, and shall signify their assent thereto by signing their names in the third column, and in the case of there being any dissentients they shall sign their names in a fourth column; such document, when completed, shall be given by the Trustees to the Commissioner who shall fix a day for the payment of the money, if all have agreed to the division thereof, or to hear and determine the matter in dispute between the families entitled to receive such money. On the question being finally arranged, the Commissioner shall enter in the fifth column the amount of money payable to each family, and in the sixth column shall take the receipts of the members of each family for the amount paid to them. If any dispute shall then occur between the members of any family as to their individual shares in such money, the Commissioner shall forthwith divide the money equally among them. An arrangement once made for the division of rents shall be irrevocable during the continuance of the lease under which they accrue.

(b.) There shall be deducted from all purchase money so payable to the owners under this Act a sum equal to ten pounds per centum, and which shall be paid to Her Majesty towards the costs of surveys, and other necessary expenses for giving effect to this Act.

(c.) There shall be deducted from all rents so payable to the owners under this Act the sum of five pounds per centum on the capitalised value of any lease thereunder. For the purpose of capitalising the value of the rent so payable, every lease made under this Act shall, whether it be for a shorter or a longer term, be deemed to be a lease for twenty-one years, and the value thereof, when capitalised, shall be the present value of an annuity or annuities of the same annual amount as the rent or rents, and payable for the same periods. Rent, for the purposes of this Act, being deemed to be payable yearly, and at the end of the year, and interest being calculated at the rate of five pounds per centum per annum. On the expiration of the first term for which any lease shall have been made, no further deductions from the rents payable to the owners

shall be made on behalf of the Crown on any renewal of such lease, or any further demise of the lands comprised in the original lease.

Moneys deducted to be paid to Consolidated Fund

54. The Commissioner shall pay all moneys so deducted into the Public Account to the credit of the Consolidated Fund.

Moneys belonging to persons under disability, how disposed of

55. Moneys accruing to owners, and other Natives having estate in disposable land, respectively, under disability, may be apportioned by the Commissioner, with the assistance of the Trustees of such persons under disability: firstly, to provide necessary clothing and maintenance for the cestue que trust; secondly, for the investment of the balance of such moneys in Government, or such other securities as may be agreed on between the Commissioner and the Trustees in every such case.

Moneys retained to be invested

56. Moneys retained by the Commissioner by reason of his being unable to distribute them to the persons entitled thereto, shall be, without delay, invested by him in Government securities until they can be distributed, together with all interest accrued in respect thereof.

At request of owner money may be invested

57. The whole or any portion of the proceeds of any disposable land dealt with under this Act, payable to the owners, may, upon a request made to the Commissioner in writing by any owner or owners of any such disposable land, be invested by him to the best advantage for the benefit of the owner or owners signing such request, in such proportion as may be determined on, or the share of proceeds accruing to any owner may at his request be expended in the purchase of an annuity for such owner, or the Commissioner may, at the request in writing of any owner or owners, deal with his or their share or shares of the proceeds of

any disposable land as may be otherwise desired by such owner.

Investments to be approved by Controller and Auditor General

58. All moneys authorized to be invested by the Commissioner shall be invested in such manner as the Controller and Auditor-General may approve generally, or specially in any particular case, and shall be invested in the joint names of the said Commissioner and Controller.

Commissioner to furnish annual report

59. The Commissioner, on the thirty-first day of March in every year, shall furnish to the Minister of Lands a report giving a full statement and account showing as to each parcel of disposable land all dealings had therewith, and all moneys received and disposed of by him under this Act in relation to such disposable land.

Copy to be laid before Parliament

60. A copy of such report shall be laid before each House of the General Assembly, as soon as may be after its receipt by the Minister.

Respecting lands subject of certificate under section 17, Act of 1867

61. Any land the subject of a Certificate of Title, made under the seventeenth section of "The Native Land Act, 1867," or under a Crown Grant issued in lieu of such certificate, where it still remains the property of Natives, and is not subject to any agreement of sale, or to a current lease, may be dealt with in the manner following.

Other names may be added to certificate or grant on the application of owner

62. If any owner (or owners) of any such land shall be desirous of giving out of his share thereof any interest therein, to any person or persons who he maybe of opinion were excluded owing to only ten names being permitted to be entered in such certificate, as aforesaid, it shall be lawful for him to apply to the Commissioner for a Partition Order in respect of such land. The Commissioner shall proceed as hereinbefore provided to make a partition of such lands, and shall cancel the original muniment of title, and shall issue a Certificate of Title under this Act for each of the parcels into which the original block of land shall have been divided, and shall enter therein the name of the person mentioned in the original certificate or grant, together with such further names as may be agreed on between the parties to be inserted therein. The new certificate or certificates so made shall be

entered in the District Register of Title and in the General Register of Titles, and shall have the same force and effect as the original muniment of title. Such land so dealt with shall thereupon become disposable land under this Act, and may be dealt with accordingly.

Leased lands may be similarly dealt with

63. Any such land now the subject of a lease may, on the expiration of the term of such lease, if not renewed, be dealt with in the manner prescribed in the previous section.

To remove doubts as to validity of certain conveyances and leases heretofore made

64. Doubts having arisen as to the validity of certain conveyances and leases and documents purporting to be agreements for sales or leases heretofore made of lands, held by Certificate of Title under the seventeenth section of "The Native Land Act, 1867," and by Memorial of Ownership under the provisions of "The Native Land Act, 1873," because some of such conveyances, leases, and agreements were not executed by, or assented to, by all the persons holding interests therein as provided by the above recited Acts. It shall be lawful for the person claiming under such conveyances, or leases, or agreements, to submit the same to the Commissioner within three months from the passing of this Act, who shall make inquiries similar to those which a Trust Commissioner under "The Native Land Frauds Prevention Act" is empowered to make. If, on such inquiry, the Commissioner shall be satisfied of the bona fides of the transactions, and of the sufficiency of the consideration or rent set forth in such instruments of title, he shall thereupon endorse a certificate on such conveyance, or lease, or agreement, that he has made the necessary inquiries under this Act, and is satisfied with the result thereof, and shall sign his name and affix his seal thereto, whereupon the purchaser or lessee shall be at liberty to register such deeds in any office for the registry of deeds or land transfers.

On Commissioner refusing to certify further action may be taken

65. If a Commissioner shall refuse to grant a certificate for any such land the same proceedings may be taken as provided in section 24 hereof with respect to incomplete titles.

Respecting removal of restrictions

66. Where any Crown Grant which has been issued for any land the Title whereof was derived through the Native Lands Court, or through any other duly constituted tribunal authorised to deal with Native or Confiscated Lands, is subject to any restriction on alienation by sale or lease, the owner, or any of the owners thereof, may apply to the Commissioner to have such restriction removed. Whereupon the Commissioner shall make inquiry into the circumstances of the case. If he considers that it would be expedient, and for the benefit of the owners to remove such restriction, he shall transmit the application, together with his recommendation thereon, to the Chief Commissioner for his approval. On such approval being made, the application shall be forwarded to the Minister for Lands, who, if he shall deem fit, may recommend the Governor to remove the restriction. On the removal of any such restriction, the land forming the subject thereof shall become disposable land under this Act. If the Commissioner shall object to recommend the removal of the restriction, or if the Chief Commissioner shall disapprove of it, the application shall be dismissed.

Providing for arrangements made before the passing of the "Native Land Laws Amendment Act, 1883."

67. And whereas, before the passing of "The Native Land Laws Amendment Act, 1883," persons other than Natives had entered into agreements in good faith for the purchase and lease of lands claimed by Natives, the title whereof had not been investigated, ascertained, and determined by the Native Land Court, and such persons, in pursuance of such agreements entered upon, occupied and improved the lands comprised therein. It shall be lawful for such persons having been in occupation before the above mentioned Act of 1883 came into operation, and being still in peaceable possession thereof, to make application to the Commissioner to enquire into the circumstances of the case, and if the Natives interested in such land desire to confirm

the original agreement, and right to occupy the same, the Commissioner shall forward all the particulars of such case to the Chief Commissioner. The Chief Commissioner (although such dealings and occupation are not valid in law) may, if he deems the claim to be an equitable one, direct the Commissioner to allow the occupier to complete his title whensoever the land so occupied shall become disposable land under this Act.

GOVERNMENT EIGHTS AND DEALINGS WITH LAND.

Manner of dealing with incomplete Government purchases and leases

68. In case of any outstanding and incomplete purchase or lease of Titled Land heretofore made by or on behalf of the Government, it shall be lawful for any Government Native Land Purchase Agent, to apply to the Commissioner in the manner hereinbefore provided for dealing with outstanding and incomplete purchases or leases, made by private persons, and the Commissioner shall then proceed to ascertain and determine the same in the manner provided for in sections 23, 24, 25, 27, 28, 29, and 30 hereof.

Future proceeding to be similar those of private persons

69. The Government shall not hereafter enter into any dealings for Native Lands, and shall not acquire any other land whatsoever, in any manner different to that prescribed for dealings therewith by persons other than the Crown.

Lands required for roads

70. Lines of road surveyed by any District Surveyor through or over any "reserved" or "disposable land" which may be required now or hereafter, shall be vested in the Crown, but in return for the cession of such lands for public roads by the Native owners, free of charge, no highway or other rates shall be levied on any reserved land

Lands may be take for public purposes

71. If it shall appear to the Governor to be desirable that any land should be reserved for railways, or for any other public purposes (other than ordinary public roads) within any district, whether such land be classed as Reserved Land or as Disposable Land, it shall be lawful for the Governor to take the same under the provisions of "The Public Works Act," and the amount of compensation to be given to the owners shall be ascertained, determined, and paid in the manner prescribed in the last-mentioned Act.

The Governor may order Native Reserves to be dealt with under this Act

72. The Governor may order that any Native Reserve heretofore made within the Colony of New Zealand, under any repealed Ordinance or Act, or under "The West Coast Settlements Reserves Act, 1881," may be dealt with under this Act, instead of by the Public Trustee, and the Commissioner appointed to administer the same shall have all the powers held by the Public Trustee in that behalf.

SUCCESSION AND WILLS.

Succession to land of deceased intestate owner

73. In case any Native has died, or shall die, entitled to any estate, share, or interest in any Native land, or Titled land, whether held under Native usage or custom, or in severalty, or as tenant in common or joint tenant, without having made any valid disposition thereof by will, the Commissioner, on the application of any Native claiming to be interested therein, shall inquire and ascertain who ought to succeed to such estate, share, or interest in such Native or Titled lands.

Hearing of application

74. The Commissioner shall, by notice, to be published as hereinbefore provided, appoint a time and place for the hearing of such application.

Inquiries to be made by Commissioner

75. If, on any such hearing, any document purporting to be a will is produced, the Commissioner shall, after proof of death, make the inquiries following: –

(a.) Whether at the time of executing such document the devisor was in a fit state, mentally or bodily, to make such will?

(b.) Whether the document was duly attested by two disinterested persons, having no interest directly or indirectly in the real estate thereby intended to be devised?

(c.) Whether the real estate has been devised out of the right line of descent, according to Maori Usage and Custom, and if there are any children, grandchildren, or great-grandchildren of the deceased person living?

Will invalid in certain cases

76. After the passing of this Act, no document purporting to be a will or devise of the real estate of any Native shall be valid unless

(a.) Properly attested by two disinterested persons having no interest directly or indirectly in the estate thereby devised, such witnesses to be, where possible, of the European race. (If necessary, the Commissioner may summon the attesting persons to prove the execution of the document.)

(b.) Which devises any real estate out of, or away from the direct lineal descendants (that is to say living children, grandchildren, or great-grandchildren) of the devisor, who, according to Maori usage and custom, are the proper persons to succeed to such real estate.

(c.) Where the person, on executing such will, shall be proved to the satisfaction of the Commissioner to have been in an unfit state, mentally or bodily, to understand the purport thereof.

(d.) With the above exceptions, a Native may devise his real estate to any person whomsoever he may deem fit.

Person other than a Native to pay a duty on bequest under will

77. In the case of any devise of real estate to a person other than a Native (as the term Native is defined in the interpretation section hereof), the Commissioner having made the inquiries as hereinbefore directed, shall order that the person so found to be entitled under the will shall pay to Her Majesty the Queen a duty of ten pounds per centum of the value of the estate so devised to him or her, and such other stamp duty as may be imposed on any will under the provisions of the Stamp Act for the time being in force within the Colony.

Manner in which decision to be made

78. After making the inquiries hereinbefore required to be made, the Commissioner shall decide thereon.

(a.) In respect of Native Land (where no valid will has been produced), in accordance with Native usage and custom.

(b.) In respect of Titled Land (where no valid will has been produced), in accordance with the law of New Zealand (where it does not conflict with the provisions of this Act), as nearly as it can be reconciled with Native usage and custom.

(c.) In respect of a devise under a will where not repugnant to the provisions of this Act, to the person or persons entitled to succeed under the will, and in the best manner calculated to give effect thereto.

Commissioner to make Succession Order

79. The Commissioner thereupon shall make an order, in duplicate, called a Succession Order, which shall be signed by him and sealed in favour of the person or persons found to be entitled to succeed to such Native Land or Titled land, and shall set forth therein the death, and if proved the date of the death of the owner, a description of the land, and the name and place of abode, and occupation of the person or persons entitled to succeed. If any person found to be entitled to succeed to any share or interest shall be a minor or other person under disability, the Commissioner shall order the estate of such minor or other person under disability to vest in Trustees then to be appointed. The age of such minor, as nearly as it can be ascertained, shall be entered in such Succession Order. A

Succession Order shall be given to each of the persons mentioned therein as Successors, and the duplicate thereof shall be filed of record in the office of the Chief Commissioner, and a copy thereof shall be inscribed in the District and General Register of Titles.

Effect of Succession Order

80. The Succession Order so made shall have the same force and effect in favour of the successor as the instrument (if any) under which the deceased Native owner was entitled had in his favour at the time of his decease, and as regards land held under Crown Grant shall be entitled to registration under the Land Transfer Act, or the Deeds Registration Act, in like manner as a valid will.

Providing for succession in cases of joint tenancy

81. Whensoever any Native claims to succeed to the estate, share, or interest of any deceased person (which is not the subject of any valid will), who shall have died possessed of any estate held under "The East Coast Native Land Act, 1868," and "The East Coast District Land Titles Validation Act, 1871," or any certificate or Crown Grant made under the authority thereof or any other Act referring to Native lands in which the estate created thereby is one of "joint tenancy" and not of "tenancy in common." For the purpose of this Act and notwithstanding any Act now in force, or the making of any such certificate or Crown Grant under the authority thereof, all Native owners of such lands (where the fee simple thereof has not been disposed of by conveyance) shall, after the passing of this Act, be, and be deemed to be, "tenants in common," and shall be entitled to succeed to any real estate as such; and a Succession Order shall be issued to such person or persons as hereinbefore provided, and such order shall show on the face thereof that it was made for land the subject of a title in "joint tenancy."

Re-hearing of Succession Claims

82. If any person shall feel himself aggrieved by any decision of a Commissioner in any matter of succession, he may apply to the Chief Commissioner for a re-hearing thereof, which shall be dealt with in the manner prescribed herein in section 24 in cases of incomplete title. A decision on a re-hearing shall be final and conclusive.

DUTIES OF DISTRICT SURVEYORS.

District Surveyor to be answerable for surveys

83. Every person holding an appointment as a District Surveyor, shall have charge of all surveys within the district for which he has been appointed, and shall be answerable for the proper execution thereof. And he shall, from time to time, make such surveys as the Commissioner may direct.

Roads and lands for public works to be laid off

84. The District Surveyor shall, from time to time, lay off within the District such lines of Road as may appear to him to be necessary either for present or future requirements. And he is further required, to ascertain approximately the position and area of any lands which may hereafter be taken for railways or other purposes within the meaning of "The Public Works Act."

Maps to be approved by Surveyor General's Department

85. All maps of surveys made within any district, shall be transmitted to the Surveyor General's department for inspection and approval.

Approved Maps to be entered on Official Maps

86. On the return of any such map to the District Surveyor, and it having been approved, he shall thereupon draw the same on the Working Plan of the District, and on the District Reference Map, and shall forward a copy of such entry to the Chief Commissioner for insertion in the maps kept in his department.

Surveys to be executed in accordance with Regulations

87. All surveys made under this Act shall be done in compliance with Rules and Regulations to be from time to time prescribed by the Surveyor General.

INTERPRETERS AND NATIVE LAND AGENTS.

Interpreter's Licenses cancelled

88. Any license heretofore issued to any person under the Acts hereby repealed, authorising him to act as an interpreter of the Maori language, is hereby revoked and cancelled.

Chief Commissioner to examine applicant for Interpreter's Licenses, etc.

89. Any person desirous of obtaining a license authorising him to act as a Maori Interpreter, or as Maori Interpreter and Land Agent, shall make application in that behalf to the Chief Commissioner. It shall be the duty of such Chief Commissioner to forthwith inquire into the character of the applicant, and to personally examine him as to his knowledge of both the English and Moari languages, and his ability to translate and re-translate the same in writing; also whether he sufficiently understands the legal effect of any instrument of title which he may be called upon to interpret or translate.

Chief Commissioner may recommend the Governor to issue a License

90. If on completion of such inquiry, the Chief Commissioner shall be satisfied that the applicant is a fit and proper person, and is competent to act as a Maori Interpreter, or as a Maori Interpreter and Land Agent, he may recommend the Governor to issue a license under his hand authorising such person to act in either one or both of such capacities, in accordance with the recommendation of the Chief Commissioner. The Chief Commissioner may, if he shall deem fit, decline to make any recommendation to the Governor on any application.

Effect of License

91. On such license being signed by the Governor and delivered to the applicant, the holder thereof shall be entitled to act as a Maori Interpreter, in the Supreme, or any other Court of Law within the Colony of New Zealand, or in any Court established under this Act. And any document written in the English language and requisite for any process of law[r], or any Bill of Exchange or Promissory Note, shall be invalid, and null and void if not translated in the Maori language and written on or annexed to such document by a duly licensed interpreter, and thereon shall also be endorsed a certificate signed by such interpreter as to the correctness of such translation.

(a.) Any person licensed as a Maori Interpreter and Land Agent shall be authorised to negotiate for a proposed sale or lease of any Disposable or Titled land as between the Trustees appointed under this Act, and any person other than a Native.

(b.) A Maori Interpreter, not being the holder of a license to act as a Land Agent, shall not enter into any negotiation respecting Titled or Disposable lands, or he shall be liable to the penalty hereinafter imposed on persons acting without a license.

Fees on issue of License

92. Every Maori Interpreter shall pay to the Chief Commissioner or Commissioner, on the delivery of his license, a fee of two pounds, and every person licensed as a Maori Interpreter and Land Agent a fee of ten pounds. Such fees shall be used towards defraying the expenses of compiling and publishing any dictionary of the Maori language, or any history of the Maori race which shall hereafter be made under the authority of the Government.

Interpreters and Land Agents may be suspended or removed

93. The Governor may, at his discretion, suspend or remove any Maori Interpreter or Maori Interpreter and Land Agent appointed or acting under this Act A Commissioner may suspend any such Interpreter, or Interpreter and Land Agent, but shall forthwith report such suspension to the Governor, with the reason therefor.

Penalties

94. Any person acting as a Maori Interpreter, or as a Maori Interpreter and Land Agent, who shall act during the suspension of his license by any Commissioner as aforesaid, and until the Governor shall have renewed such suspension, shall be liable to a penalty of not less than one pound or more than ten pounds, to be recovered in a summary way as hereinafter provided.

(a.) Any person acting as, or pretending to be, a Licensed Interpreter, or a Licensed Interpreter and Land Agent under this Act, and who is not the holder of a license duly empowering him in that behalf, shall be liable to a penalty of not less than ten pounds or more than one hundred pounds, to be recovered in a summary way as hereinafter provided.

(b.) Any person licensed as a Maori Interpreter, or as a Maori Interpreter and Land Agent, who shall deal or negotiate for any sale or lease of any Native Land (as the same is defined in the Interpretation section of this Act), shall, on conviction thereof, forfeit his license, and shall thereafter be for ever incapable of holding a license, and shall be liable to a penalty of not less than twenty pounds or more than one hundred pounds, to be recovered in a summary way before any Resident Magistrate or any two Justices of the Peace.

Chief Commissioner to furnish lists of Licensed Interpreters

95. All licenses issued to any persons as above provided, shall be recorded in the office of the Chief Commissioner, who, in addition to the Gazette notice of such appointment, shall furnish to every Commissioner appointed under this Act, and to the Judges of the Supreme Court, District Judges, and Resident Magistrates throughout the Colony, a correct list of the names of all persons licensed to act as Maori Interpreters under this Act, and from time to time to alter and correct such list. And no Judicial Officer or Commissioner shall allow any person to act before him as an interpreter in any matter affecting Natives, unless he is satisfied that such interpreter is the holder of a license empowering him so to act.

MISCELLANEOUS.

The Governor may make rules to give effect to Act

96. The Governor may from time to time make such rules as he may think fit for the better enabling this Act to be given effect to, and for regulating the procedure of

persons engaged under it, and such rules from time to time revoke or alter.

Rules to have same effect as if part of Act

97. Such rules and altered rules, when gazetted, shall have like effect as if the matter thereof had been enacted herein.

The Governor may make temporary provision for matters not provided for herein

98. The Governor may from time to time, by Order in Council, make temporary provision for anything not provided for in this Act, and which may appear to him to be necessary for carrying into effect the provisions thereof. Provided that ail such Orders in Council so made, shall, at the next Session of Parliament after the making thereof, be laid before each House of the General Assembly within fourteen days subsequent to the meeting thereof. And if the same shall be approved by Parliament, shall be incorporated with, and read, as if forming a part of this Act.

The Governor may order a Commissioner to have jurisdiction in certain cases

99. As to any matter or question which may arise in relation to any Titled or Native Land or the title thereto, or in relation to any improvement thereon, over which no jurisdiction is given heretofore, but as to which it may be convenient that such jurisdiction should be possessed by a Commissioner, the Governor in Council may by order declare that any such matter or question which shall be specified in such order, shall be within the jurisdiction of a Commissioner, and thereupon each Commissioner, in his Court, shall have full jurisdiction and power to decide and make such order as he may deem fit, and which decision or order shall be valid and binding in law.

The Governor may advance moneys to Commissioner

100. The Governor may from time to time, out of moneys appropriated by the General Assembly, advance to a Commissioner such moneys as the Governor may deem necessary for use by him in executing his duties under this Act, and all moneys received by such Commissioner, and payable by him into the Public Account, shall be credited to the advances hereby authorised.

Salaries to be voted by General Assembly

101. Such salaries shall be paid to the several persons appointed or employed under this Act, as shall be from time to time appropriated for the purpose by the General Assembly.

Commissioner forbidden to negotiate for land

102. No person holding office as a Commissioner shall, on behalf of himself or any private person, or of the Government, engage in any negotiation for the purchase, lease, or acquisition of land or any interest therein, and any Commissioner acting in contravention of this section shall be deprived of his office, and be liable in addition to a fine of not less than twenty pounds or more than one hundred pounds, to be recovered in a summary way.

Deeds not made under Act invalid

103. Save as made under, or authorized by, this Act, every deed or writing from and after the coming into operation of this Act, signed and intended to affect Titled Land or Native Land other than subleases, assignments, or assurances of existing leases or mortgages, shall be illegal.

Dealings with any Native or disposable land forbidden except made under this Act

104. Save as provided by this Act no person shall hereafter, by himself or his agent, purchase or acquire, or contract or agree to purchase or acquire from any owner (except as between one Native owner and another Native owner) any land whether the same is "disposable land" or "Native land" or any estate or interest therein.

Penalty for unauthorised dealings with disposable lands

105. Any person dealing with any "disposable land," unless in the manner authorised by this Act, shall be liable to a penalty of not less than twenty pounds or more than one hundred pounds, to be recovered in a summary way.

Penalty for dealing with any Native land

106. Any person dealing with any "Native Land" shall be liable to a penalty of not less than twenty pounds or more than two hundred pounds, or in default of payment, imprisonment for any term not less than one month or more than six months, and any estate in land the subject of any such prohibited dealing, which shall become vested in any such person by reason of any such dealing, shall be forfeited to the Crown.

SCHEDULES.

SCHEDULE I.

ACTS REPEALED.

"The Government Native Land Purchase Act, 1877."
"The Government Native Land Purchase Act Amendment Act, 1878."
"The Native Land Frauds Prevention Act, 1881."
" The Native Committees Act, 1883."
" The Tauranga District Lands Act, 1867."
"The Tauranga District Lands Act, 1868."
"The Poverty Bay Land Titles Act, 1874."
"The East Coast Native Lands Act, 1868."
"The East Coast District Land Titles Validation Act, 1871."
"The Gisborne Courts' Proceedings Validation Act, 1883."

Block, owned by hapu

District of Provincial District of

Area proposed to be sold or leased

Names of Owners grouped in families.	Assentients.	Dissentients.	

SCHEDULE II.—Form B.

Block, owned by hapu

District of Provincial District of

Area proposed to be sold or leased

Names of owners grouped in families.	Amount proposed by Trustees.	Assentients.	Dissentients.	Amount finally paid.	We, the undersigned, acknowledge to have received the sums set opposite our respective names, being payment in full of all our claims to the block sold to Mr.

Comments on Draft Act.

COMMENTS ON DRAFT ACT.

IT will be noticed that one of the principal features of the proposed measure is the throwing a large portion of the administration of its provisions on the Natives themselves, which will have a tendency to make it popular among them; it being a very prominent objection made to "The Native Laud Administration Act, 1886," that the Natives have no voice in fixing the price of their disposable lands. The appointment of Commissioners to defined districts, and their ! constant residence therein, would also be conducive to the establishment of greater confidence in the minds of the Natives than at present exists towards the Native Land Court officials, who are never resident in any district for a sufficient time to become acquainted with its natural features or its inhabitants.

The scheme of the Act is to permanently define and finally settle the Native Title to lands throughout the North Island. In order to accomplish this, the Commissioner to be appointed under the proposed Act would, in the first instance, have to fix the external tribal boundaries of his district with respect to other tribes and districts. On this question being completed, attention would be next directed to determining the position and extent of the lands claimed by each tribe within the district. Simultaneously with these operations would be carried out one of the most important duties devolving on a Commissioner, that is, the eliminating from the lands of each tribe the portions forming the subject of outstanding and incomplete purchases and leases between the Native owners and Europeans, or the Government, and bringing these to a satisfactory and just settlement; it being absolutely necessary to effect this in order to clear the way for sub-dividing the estates of each tribe into hapu holdings, and for the further classification of these under the heads of "reserved" and "disposable lands." It is contemplated to conduct all outstanding and incomplete land purchases and leases to an equitable conclusion by giving certificates to the purchasers and lessees in all cases where the transactions have been bona fide and fair as between the parties concerned, which will enable them to proceed with their negotiations, protect them therein, and, if required, partition the interests of the vendors and lessors from those of the dissentients to sales and leases. And as the law relating to such transactions has been of such a conflicting nature as to render it impossible to be carried out, or its provisions understood, it is intended, as far as possible, to clear up the difficulties and validate all agreements which have been made in good faith, whether the law has been strictly complied with or not.

As regards future dealings with Native Lands, the intention is to make these clear, safe, satisfactory to all parties, speedy, and final, and impossible to call into question on any point. Reserved Lands are, for the present, intended to be absolutely inalienable by sale or lease, and no power is given to remove these restrictions; and this has been done for several reasons, which it may be as well to allude to.

If Europeans and Natives are placed closely together on land, the result is invariably very unsatisfactory to both parties. Reserves ought therefore to be selected in as few and as compact blocks as possible, and the nearer they can be grouped together the better; and in determining the area, it should be borne in mind that Native cultivations are not as a rule permanent in their nature, but are made and occupied for a few years only, and are continued in one place until the soil becomes impoverished, when a fresh clearing is made; consequently the area of uncultivated land adjacent to Native setlements is always considerable, but, as they own large numbers of horses, cattle, and pigs, these "commons" are of advantage to them. It is possible, but not probable, that in another generation the Natives, having become more civilized, may adopt European methods of husbandry, and so require more land for that purpose than at present. Another reason for rendering reserved land inalienable by sale or lease is that there are instances where Natives owning large reserves have not sufficient land for their own cultivation and support, and although the extent of their property, which has been leased by the Commissioner, is large, the rents accruing therefrom are so small as to produce no adequate income. The history of the Native Reserves at Porirua, near Wellington, would be instructive in this respect.

In dealing with lands disposable by sale or lease, it must be remembered that this question has been heretofore beset with several difficulties. Numerous complaints are made by Natives that they have been great losers by the omission of their names from Certificates of Title, Memorials of Ownership, and Crown Grants, that, although acknowledged as owners of land, they have been deprived of their proper shares of purchase moneys and rents received by the vendors and lessors of it. The Europeans, on the other hand, complain of the insecurity of their titles and the enormous expenses they are put to in obtaining the signatures of Natives to deeds of conveyance and lease, and the constant dread, after the supposed proper execution of those Instruments of Title, that some defect or flaw will be searched out and taken advantage of by some unscrupulous person (Native or European), the outcome of which will be costly and protracted litigation. It is purposed to obviate these difficulties by promptly ascertaining and registering the titles of all the persons in each hapu owning land, vesting the same in Trustees, who have the power themselves to contract for the sale or lease of the land to any person, and to give an indefeasible title to it through a Commissioner. The interests of the whole of the Native owners are protected, as the money receivable on a sale or for rent, is payable to

the Commissioner only, and can only emerge from the public account, when the Trustees have arranged for the equitable division of it among the various claimants. The European can enter into possession of the land from the moment he pays his money to the Commissioner. The Natives will have to submit to a reasonable deduction from the proceeds of any sale or lease for the purpose of defraying the expense of surveying their lands, and other costs of administration under the proposed Act. Both Native owners and European purchasers will be saved the enormous, and frequently unnecessary, outlay which has been heretofore incurred for surveys, as it is proposed to execute the surveys of the lands of each tribe and hapu as a whole, and not piecemeal or two or three times over, which has been customary in the past. The same applies to the proceedings of the Native Land Court, it only adjudicated on the Titles to a few blocks at a time, leaving large tracts untouched for future investigation, whereby the cost to the Colony, the Natives, and all concerned was materially increased without any corresponding advantage arising therefrom.

It will doubtless be argued by the opponents to the proposed scheme, that because the Government are intended to be placed on precisely the same footing as private persons in their dealings with Native Lands, the North Island will be deprived of its Land Revenue. In reply to this it may be stated, without fear of contradiction, that if the total public expenditure in the purchase of Native Lands, the payment of Land Purchase Officers, Surveyors, Crown Lands Departments, and Contingent, War, and Defence Expenditure were placed on the one side of the account, and the receipts from the disposal of Crown Lands in the North Island on the other side, the balance would be on the wrong side of the ledger. In the South Island, which cost a very inconsiderable amount to purchase from the Natives, very large revenues did accrue from Crown sales and leases of lands, especially in the Provinces of Canterbury and Otago, but such can never be the case here, the Natives now knowing the value of their lands quite as well as we do. Another point which will probably be raised is that disposable lands will get into the hands of speculators. There is, however, nothing to prevent the extent of any purchase being limited to a reasonable area, but in any case it is preferable for the land to pass into the hands of Europeans, who will utilise it, than to allow it to remain idle and unproductive in the possession of the Maoris. Again, it may be said, "it is stated that 'The Native Land Administration Act, 1886,' is very unpopular with both Natives and Europeans, how do we know that the proposed measure will be popular among the Natives, or be workable at all, and if it is feasible the expense will be too great?"

To this the writer replies that he has for several years past discussed this scheme with many of the most intelligent and influential Native chiefs in various parts of

the Colony, and it has invariably been pronounced as being satisfactory and right in principle. As regards the practicable working of it, there can be no doubt so far as determining the tribal and intertribal boundaries is concerned. In 1867 the Hauraki district, extending from Cape Colville on the north to Te Aroha on the south, was a sealed book as far as acquiring Native land was concerned, and this was aggravated by the introduction of Hauhau fanaticism. Gold was discovered at the Thames in July of that year. The writer was then Civil Commissioner in charge of Native Affairs in this Province; it became his duty to enter into agreements with the Natives for the cession of their lands for gold mining purposes. There were four tribes (the Ngatitamatera, Ngatiwhanaunga, Ngatimaru, and Ngatipaoa) holding the lands, their possessions were mixed up and intermingled in every direction. Between Cape Colville and Te Aroha there were upwards of fifty disputed boundaries which all had to be arranged, before the lands could be thrown open for gold mining. Yet, although there were numerous other duties to perform in connection with a new goldfield, the whole of these disputes were thoroughly settled within less than eighteen months, without the intervention of the Native Land Court, and by one person only. It is true it took a much longer period to acquire and open up the country for gold mining on account of the land league and Hauhau proclivities of the Natives, but the fact remains that the boundaries were then finally fixed, and no question has since arisen about any of them. The Native Land Court has subsequently held numerous sittings, but these related to holdings within tribal boundaries. As to the expense of carrying the proposed Act into effect, it would probably require a Chief Commissioner and ten Commissioners for a period of two years to settle the whole of the Native titles in the North Island, when the number of such officers could be reduced to three. And, as an inducement to the speedy completion of the work, those who accomplished it with the greatest celerity, combined with efficiency, should receive the permanent Commissionerships.

If the title of the Natives to their lands was fairly and permanently defined and determined, and the present incomplete and outstanding transactions between the Government and the Natives, and the latter and private persons, were amicably and justly arranged, it would conduce to the settlement and prosperity of the whole colony, as it would give security for the investment of capital in the purchase and utilisation of Native Lands, and restore that confidence outside the Colony which has of late been so rudely shaken by our conflicting and deterrent legislature in that respect. And the Maoris, feeling that their real interests are consulted and conserved by allowing them the right to sell and lease their disposable lands according to their own pleasure, subject only to such restrictions as will be beneficial to themselves, and that their homes and cultivations are for ever secured to them and their families, would naturally cease from the excitement and state of unrest which has prevailed among them for the last thirty years, and become reconciled to us, and to the justice of our laws.

The problem of dealing with uncivilized races in such a manner as to win their confidence is very difficult, and with the very best intentions civilized people may offend them from want of knowledge of their habits, customs, and prejudices, and in no way easier than in dealing with, or for their lands; and it

is impossible, in one or two generations, to bring them to conform to our views on those subjects. We are always too prone to consider our own methods are the best, and that we cannot learn anything from foreigners, but in dealing with Maori lands it might have been of service to all parties if we had taken the Natives into our confidence and conjointly arranged a system which would have been more consistent with their ideas, and not trammelled and hampered with formal Courts and conflicting legal enactments. As Great Britain and her Colonies are entering on extensive enterprises in various places in the South Pacific, it is to be hoped that the experience we have acquired in our dealings with Maori lands will not be thrown away or lost sight of in similar proceedings with those of the aborigines of Fiji, New Guinea, etc., and that the troubles and difficulties which have arisen in New Zealand, may, in a great measure, be provided against if not entirely averted.

WILSONS AND HORTON, PRINTERS, QUEEN AND WYNDHAM STREETS, AUCKLAND.

Conditions of Use

By their use of these ebooks, texts and images, users agree to follow these conditions of use:

- These ebooks, texts and images may not be used for any commercial purpose without permission from the University of Auckland Library.
- These ebooks, texts and images may not be re-published in print or electronic form without permission from the University of Auckland Library. However, educators are welcome to print out items and hand them to their students.
- Users are not permitted to download our ebooks, texts, and images in order to mount them on their own servers for public use or for use by a set of subscribers. Individuals and institutions can, of course, make a link to the copies at ENZB, subject to our conditions of use. It is not in our interest or that of our users to have uncontrolled subsets of our holdings available elsewhere on the Internet. We make corrections, add tags, add images, etc. on a continual basis, and we want the most current text to be the only one generally available to all Internet users.
- These texts can potentially be used as the basis for additional TEI tagging or for some other etext or ebook project, but we ask that you let us know before you start, so that we can coordinate work on that text and make sure that we are not working on it simultaneously. We would like a copy of the improved text for our collections.

Request for permission form