SESSION I.

1921.

NEW ZEALAND.

NATIVE-LAND CLAIMS COMMISSION

(REPORTS OF).

Presented to both Houses of the General Assembly by Command of His Excellency.

COMMISSION.

LIVERPOOL, Governor-General.

To all to whom these presents shall come, and to ROBERT NOBLE JONES, Esquire, of Wellington, Chief Judge of the Native Land Court; JOHN STRAUCHON, Esquire, I.S.O., of Wellington; and JOHN ORMSBY, Esquire, of Otorohanga: Greeting.

WHEREAS it is expedient that inquiry should be made regarding the several matters hereinafter mentioned:

Now, therefore, I, Arthur William de Brito Savile, Earl of Liverpool, the Governor-General of the Dominion of New Zealand, in exercise of the powers conferred by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby constitute and appoint you, the said

ROBERT NOBLE JONES,
JOHN STRAUCHON, and
JOHN ORMSBY,

to be a Commission to inquire into and report upon the following matters:—

(1.) The prayer of the petitions of Te Aio Poutu and others to the House of Representatives with respect to the location of a certain reserve alleged to be part of Waipuku-Patea Block. (Petitions Nos. 426/1913, 312/1915, and 408/1917.)

(2.) The prayer of the petitions of Mehaka Watene and 168 others, Paku Eruera and 210 others, and Whareora Renata and others to the House of Representatives with respect to certain confiscated lands claimed by the Whakatohea Tribe. (Petitions Nos. 630/1914, 235/1915, and 336/1917.)

(3.) The request made to the Native Minister on the 9th January, 1920, by W. Nikora, of Gisborne, on behalf of Te Whakatohea Tribe, for land to be given by the Crown to their landless children.

(4.) The prayer of the petitions of Wi Pere and thirty-eight others, Haerepo Kahuroa and 177 others, and Winiata Moeau and forty-seven others to the House of Representatives with respect to a portion of Patutahi Block alleged to have been taken by the Government about the year 1866. (Petitions Nos. 616/1914, 332/1917, and 450/1914.)

(5.) The prayer of the petition of Tanguru Tuhua to the House of Representatives with respect to Te Aorangi Reserve. (Petition No. 232/1917.)

(6.) The prayer of the petition of Kereama Hoori and twenty others to the House of Representatives with respect to Kapowai Block. (Petition No. 204/1917.)

(7.) The prayer of the petition of Hone Peti and others to the House of Representatives with respect to the land known as Puketotara or Te Mataa No. 3169. (Petition No. 139/1918.)

(8.) The prayer of the petition of Mohi te Atahikoia and forty-seven others to the House of Representatives claiming a portion of the sea called Te Whanganui-o-Rotu and the land known as the Puketitiri Reserve. (Petition No. 365/1919.)

(9.) The prayer of the petition of Tieme Hipi and 916 others to the House of Representatives with respect to the purchase of the Ngaitahu Block by Mr. Kemp on behalf of the Crown in the year 1848. (Petition No. 454/1909.)

(10.) The prayer of the petition of Wi Taka and other Natives of the Koheriki Tribe to the Native Minister, dated the 24th July, 1919, that the Waikarakia Block be granted to the tribe in accordance with a promise alleged to have been made by Mr. George Wilkinson on behalf of the Crown.

(11.) Claim by Mimiha Ponui and others (as successors to Eruiti Ponui) and Wiremu Tauroa and others (as successors to Hori Tauroa) to the ownership of Lots 323 to 331 (both inclusive), Parish of Waipipi.

And, with the like advice and consent, I do further appoint you, the said

ROBERT NOBLE JONES,

to be the Chairman of the said Commission.

And you are hereby authorized to conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and to call before you and examine on oath or otherwise such persons as you think capable of affording you information as to the matters aforesaid, and to call for and examine all such documents as you deem likely to afford you the fullest information on any such matters.

And, using all due diligence, you are required to report to me, under your hands and seals, not later than the thirty-first day of July, one thousand nine hundred and twenty, your opinion on the aforesaid matters.

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose, save to me in pursuance of these presents or by my direction, the contents or purport of any report so made or to be made by you.

And it is hereby declared that these presents shall continue in full force although the inquiry is not regularly continued from time to time or from place to place.

And, lastly, it is hereby further declared that these presents are issued under and subject to the provisions of the Commissions of Inquiry Act, 1908.

Given under the hand of His Excellency the Right Honourable Arthur William de Brito Savile, Earl of Liverpool, Member of His Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of the Most Excellent Order of the British Empire, Member of the Royal Victorian Order, Knight of Justice of the Order of Saint John of Jerusalem, Governor-General and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the Seal of the said Dominion, at the Government House at Wellington, this eighth day of June, in the year of our Lord one thousand nine hundred and twenty.

W. H. HERRIES,
Native Minister.

Approved in Council.

F. D. THOMSON,
Clerk of the Executive Council.

EXTENDING TIME OF THE NATIVE COMMISSION.

ROBERT STOUT, Administrator of the Government.

To all to whom these presents shall come, and to ROBERT NOBLE JONES, Esquire, of Wellington, Chief Judge of the Native Land Court; JOHN STRAUCHON, Esquire, I.S.O., of Wellington; and JOHN ORMSBY, Esquire, of Otorohanga: Greeting.

WHEREAS by a Warrant dated the eighth day of June, one thousand nine hundred and twenty, and issued under the hand of the Governor-General and the Public Seal of the Dominion, you were appointed a Commission to inquire into and report on the several matters therein set forth, and you were directed and required to report to the Governor-General not later than the thirty-first day of July, one thousand nine hundred and twenty: And whereas it is expedient that the said period should be extended as hereinafter provided:

Now, therefore, I, Robert Stout, the Administrator of the Government of the Dominion of New Zealand, in exercise of the powers conferred by the Commissions of Inquiry Act, 1908, and all other powers and authorities enabling me in that behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby declare and appoint that the time at or before which you shall present to me your report aforesaid is hereby extended to the thirtieth day of September, one thousand nine hundred and twenty.

And, with the like advice and consent, and in further pursuance of the said powers and authorities, I do hereby confirm the said Commission except as herein varied.

Given under the hand of His Excellency the Administrator of the Government of the Dominion of New Zealand, and issued under the Seal of that Dominion, at the Government House at Wellington, this nineteenth day of July, one thousand nine hundred and twenty.

W. H. HERRIES,
Native Minister.

Approved in Executive Council,
F. D. THOMSON,
Clerk of the Executive Council.

FURTHER EXTENDING TIME OF THE NATIVE COMMISSION.

ROBERT STOUT, Administrator of the Government.

To all to whom these presents shall come, and to ROBERT NOBLE JONES, Esquire, of Wellington, Chief Judge of the Native Land Court; JOHN STRAUCHON, Esquire, I.S.O., of Wellington; and JOHN ORMSBY, Esquire, of Otorohanga: Greeting.

WHEREAS by a Warrant dated the eighth day of June, one thousand nine hundred and twenty, and issued under the hand of the Governor-General and the Public Seal of the Dominion, you were appointed a Commission to inquire into and report on the several matters therein set forth, and you were directed and required to report to the Governor-General not later than the thirty-first day of July, one thousand nine hundred and twenty: And whereas by a Warrant

dated the nineteenth day of July, one thousand nine hundred and twenty, the time at or before which you were required to present your report as aforesaid was extended to the thirtieth day of September, one thousand nine hundred and twenty: And whereas it is expedient that the said period should be further extended as hereinafter provided:

Now, therefore, I, Robert Stout, the Administrator of the Government of the Dominion of New Zealand, in exercise of the powers conferred by the Commissions of Inquiry Act, 1908, and all other powers and authorities enabling me in that behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby declare and appoint that the time at or before which you shall present to me your report aforesaid is hereby extended to the thirtieth day of November, one thousand nine hundred and twenty.

And, with the like advice and consent, and in further pursuance of the said powers and authorities, I do hereby confirm the said Commission except as herein varied.

Given under the hand of His Excellency the Administrator of the Government of the Dominion of New Zealand, and issued under the Seal of that Dominion, at the Government House at Wellington, this thirteenth day of September, one thousand nine hundred and twenty.

W. H. HERRIES,
Native Minister.

Approved in Executive Council,
F. D. THOMSON,
Clerk of the Executive Council.

REPORTS.

REPORT No. 1.

YOUR EXCELLENCY,— Wellington, 8th October, 1920.

Pursuant to the Commission issued to us on the 8th day of June last, authorizing us to inquire into and report upon various matters therein set forth, we have duly entered upon the duties assigned to us, held public sittings of the Commission at convenient times and places, and are now giving to the various matters our anxious consideration.

As, however, some time must elapse before a full report could be presented, we ask Your Excellency's permission to submit a report dealing with two of the matters which have become the subject of arrangement between the Natives affected and the representatives of the Crown. We do this in case Your Excellency's Advisers, after considering those agreements and our report, should deem it proper or expedient to seek legislative action to give effect to the arrangements come to.

KAPOWAI.

This refers to a piece of land situate in the Bay of Islands County and the Russell Survey District. The part now in dispute contains 2,075 acres. It has been a bone of contention between the officers of the Crown and the Natives for very many years, the former claiming that it became vested in the Crown by virtue of the Crown's dealings with various old land claims arising in and prior to the year 1840. The Natives on their side claimed that this portion of the land was not affected by such claims or purchases. The parties have now come to an agreement or settlement of the dispute. This has been reduced to writing, and a copy is annexed, marked "A." [Not printed.] Subsequently it was found that the Natives desired possession of another portion called Ohinereria, an old settlement of theirs, and it was arranged that 50 acres at that spot should be exchanged for 50 acres of the portion set apart by the written agreement. The fact that a settlement was arrived at will show that Your Excellency was justified in referring the matter for inquiry, and from knowledge gleaned during that inquiry we think the Crown representatives are but doing something towards simple justice in coming to the compromise. Seeing that the Natives have not had occupation of the portion, now agreed upon, for years, it would, in our opinion, be an act of grace to allow them to retain the 50 acres as an extra award instead of exchanging it for a portion of that already agreed to.

We, however, foresee some difficulty in carrying out the arrangement come to. If the land is Crown land we conceive the Crown officers cannot dispose of it without some statutory authority; and, similarly, if it is Native land it would appear that there must be some proper assurance of it to the Crown. As the title has never been investigated by the Native Land Court, a problem might arise as to how this could be effected.

Under these circumstances we suggest that legislation be passed to the following effect: That in order to settle a long-standing dispute between the officers of the Crown and certain aboriginal Natives as to the ownership of certain land situated in the Russell Survey District and known by the Native name of Kapowai Block, and to give effect to an arrangement of compromise come to on the 20th day of September, 1920, be it enacted—(1) That Section 3, Block X, and Sections 4, 5, and 6, Block VI, Russell Survey District, containing 1,099 acres 3 roods or thereabouts, shall be deemed to be Native land, and the title thereof may be investigated by the Native Land Court and otherwise dealt with as if it were and had always remained customary land; (2) that Sections 1 and 4, Block V, and Section 1, Block VI, shall, with the exception of 50 acres

at Ohinereria to be set aside for the Natives, the location of which to be decided by the Native Land Court in case of dispute, be deemed to be and to have been Crown land; (3) the 50-acres portion so set aside shall be deemed to be customary land subject to the jurisdiction of the Native Land Court.

The above form of legislation is intended only as a suggestion, and would probably require recasting. Its final shape would assumedly be framed by the Crown Drafting Office.

PUKETOTARA.

This is a block of land situated in Block XVI, Kaeo Survey District, and Block X, Kerikeri Survey District, and is said to contain 4,644 acres or thereabouts. According to the evidence given before us this formed part of a much larger block sold by Ngai-Tawake Hapu of Natives to one Kemp about the year 1835. Included in this sale was land claimed by the Te Whiu Hapu. Kemp was approached with a view to his abandoning certain portions of the land purchased in favour of the rightful owners. He declined to give all that was asked, but is said to have given up his claim to the portion now called Puketotara. Kemp subsequently prosecuted his claim before the Land-claims Commission, and was awarded land, excluding the part in question, which it is assumed he did not claim. That part, however, had been included in his deed, and the Crown officers seem to have claimed it to belong to the Crown as surplus land—that is, land included in a deed but for some reason not included in the land confirmed to the purchaser under that deed. The Crown itself seemed to have had some doubt as to its position, while the Natives continued to claim it till portions were sold by the Crown. The parties have now entered into an arrangement of compromise, a copy of which is hereto annexed and marked "B." [Not printed.]

It will thus be seen that this also was a proper case for inquiry, and in our opinion it might well be settled by meeting the Natives as proposed. The same difficulty as in Kapowai about completing the title, however, arises in this case.

We therefore respectfully suggest that legislation be passed in this case to a similar effect as in the preceding one—that the portion on the western end bounded by the road which traverses the block shall be deemed to be customary land, and the part to the eastward be deemed Crown land.

A suggestion has been made that if the land turns out not to belong to the Te Whiu Tribe it shall practically revert to the Crown. In our opinion the land should be given to the Native owners, to be found by the Native Land Court. The naming of the Te Whiu Hapu might encourage claimants belonging to that section, but having no actual right to the land. The Commission understands the arrangement was intended for the benefit of the real owners, whoever they may be.

R. N. Jones,
John Strauchon,
John Orsmby,
} Commissioners

To His Excellency the Governor-General of New Zealand.

REPORT No. 2.

AORANGI.

This is a claim referring to a piece of land which, according to Mr. Mouat's survey of 1899, contains about 7,200 acres. It has long since been sold by the Crown, and is now in the hands of Europeans. It is situate between the Porangahau, Maharakeke, and Otakohe Streams. The grievance about this land has formed the subject of much correspondence and many petitions, inquiries, and reports, and has been before at least one previous Commission

(the Hawke's Bay Alienation Commission of 1873) under the name of Whenuahou. That Commission was divided in its opinion regarding the matter. The learned Chairman expressed the opinion that there was no valid ground of complaint. "The claim," he said, "seems to have been invented about the time of the first Land Courts, when Natives were looking round for every piece to which they could set up a title." 1873, G.-7, p. 38.

Mr. Commissioner Maning found the investigation of the matter difficult. His idea was that the Natives may have in some degree misunderstood the arrangement with Mr. McLean by which their opposition was removed. He came to the conclusion that, notwithstanding any trifling misunderstanding, the purchase was good, and the complaints were a reiteration of those formerly made and which had been virtually settled. 1873, G.-7, p. 51.

The two Native Commissioners were of opinion that an arrangement had been made with Mr. McLean as asserted by the Natives, and their finding was in favour of the latter. 1873, G.-7, p. 80

These and other disputes which arose in dealings between the Natives and the Crown, and developed later into grievances, seem to take their rise from the fact that the shortage of surveyors in the Hawke's Bay District at that time made it impracticable to properly survey the boundaries before sale. In many cases no plans were put on the deeds. Where surveys were made the system of recording them was not so complete as in later days, or if a correct record was kept we are now unable to trace the plans. The same difficulty also arises as to other records. It is scarcely conceivable that a careful man like Sir Donald McLean, the then Chief Land Purchase Commissioner, would have met the Natives about a difficulty arising over the sale of land, and issue instructions to a surveyor, without making some written record of it, but no such record was produced.

We have therefore to gather the history as best we can from the evidence given and the various published documents, and, although it may be slightly wearisome, it is necessary to state it at some length so as to make apparent the reasons why we arrive at our conclusions.

The history begins with the sale of a large block of land called Waipukurau in November, 1851. This seems to have been effectuated after many elaborate preparations, and, as it was signed by nearly four hundred persons, can be taken to have been widely known. This deed, in describing the boundary of the land sold, describes the southern boundary as starting at Parimahu, goes westward, and, after describing various points, including Ngahape, eventually reaches Pa-o-Rangitahia at its south-west corner, turns northward and follows the Maharakeke Stream and other streams as being its western boundary. It is important to notice that the Maharakeke Stream bounds the Aorangi Block on the east. If any confirmation of a stream starting the western boundary is required it will be found in the report of Mr. Park, surveyor, prior to the sale, where, although he leaves the name of the stream a blank, he evidently refers to Maharakeke Stream flowing northwards to the Tukituki River. 1861, C.-1, p. 314. 2 Turton, p. 487. 1862, C.-1, p. 313.

On the 15th December, 1851, reporting the completion of the matter, Mr. McLean mentions that he is proceeding with the surveyor to examine another block, and on the 29th of same month he writes that Hapuku "has freely granted and pointed out another block in extension of the former purchase." 1862, C.-1, p. 315.

About this time (December, 1851) there appears a line on the maps known as "Park's new line." This is situate somewhat to the westward of the boundary laid down in the Waipukurau deed. Why it was laid down cannot now be ascertained, but it appears by some persons to have been thought to extend or enlarge the western boundary of the Waipukurau purchase. There does not seem to be any unanimity as to its exact position, some sketches showing it as ending midway between Pa-o-Rangitahia and a place called Kiriwai. Before us the opinion was expressed it should run to Kiriwai. Its exact position is not, however, of any great importance as far as Aorangi Block is concerned, since it must be evident that no fresh line drawn by a surveyor could vary or

alter the boundaries shown in the deed and on the plan of the sale. It is, however, of some interest since in all the subsequent sales of land to west of it it is said to have been accepted or adopted as the eastern boundary of such blocks. The only block sold which north of Kiriwai touches Aorangi on the west is the Omarutairi, and the deed of this describes the boundary as going "to the Porangahau and runs in that stream till it reaches the old boundary and then it turns and follows the old boundary to the starting-point at Whakamaru" (to the north). From this it will be seen, since Aorangi is bounded by the Porangahau River on the north and west, that whether Park's line or Waipukurau boundary is taken that deed includes no part of Aorangi, and we have been unable to find any deed which included any part of Aorangi prior to 1854.

2 Turton, p. 539.

2 Turton, p. 499.

On the 6th January, 1854, a deed dealing with a portion of land sometimes described as Umuopua, south of the Kiriwai-Pa-o-Rangitahia line, was executed by four persons. The boundaries given by this deed are: "The boundary of the west commences on the boundary of the land sold by Te Hapuku—that is, at Kiriwai, and on to Waiaruhe, on to west of Korako, and on to Rangitoto; then going southward to Hakikino, and on to Waikopiro, and on to Kohiotahu; then on to the Raorao till it joins Ngahape, then on to the old boundary, then on till it joins Kiriwai." The apparent intention of the deed is to follow the old boundary and continue in a straight line to Kiriwai, from where that boundary ceased, at Pa-o-Rangitahia (a point midway between Ngahape and Kiriwai).

As soon as the general body of Natives heard of this sale they appear to have put in a very vigorous protest, and as a consequence Mr. McLean gave the matter his personal attention, and met the Natives to discuss it. The result of the meeting, according to the Native version, was that Mr. McLean promised to rectify the matter by excluding a portion of the land from the sale. He was to get a surveyor to mark off this portion, and, in consideration of the money paid to Hori Niania and others, a certain portion called Umuopua was to be retained by the Government. Probably this was the reason that the land contained in that deed was never surveyed. The Natives say that in accordance with the arrangement Mr. Pelichet, surveyor, was sent by Mr. McLean to survey the line of demarcation, and that some fifty Natives accompanied him on that occasion. Apparently there is no record of this survey, but there is evidence that the survey of Porangahau Block, which the Natives say included Umuopua, was made by Mr. Pelichet.

1862, C.-1, p. 329.

1861, C.-1, p. 269.

The opinion of the authorities upon such matters at the time may be gathered from the memorandum which Mr. McLean transmitted, on the 15th September, 1855, to Mr. Commissioner Cooper, containing the instructions of His Excellency the Governor that in all future arrangements for the purchase of land he was to "use the greatest possible caution in cases where the title was disputed, or a difference of opinion existed in the minds of the Native owners, and upon no account to enter into negotiations for the purchase until such differences have been amicably settled between the parties concerned."

2 Turton, p. 522.

We now come to the sale of the Porangahau Block, on the 10th March, 1858, by some eighty-three Natives, and which the Natives say carried out the arrangement entered into by Mr. McLean, by including in the Porangahau Block all the Umuopua Block which had been agreed to be given for the money advances to Hori Niania, and excluding from it the parts that they had objected to (including Aorangi).

1862, C.-1, p. 330.

That in 1857 there was still some feeling over Hori's sale is evident from the report of the District Commissioner, and it is reasonable to assume that this deed was to be a settlement of the grievances. At any rate the deed includes the greater portion of the land sold on the 6th January, 1854, so it has every appearance of being partly in confirmation of that deed. The Porangahau Block included a much greater area than the 1854 deed, for instead of extending only to Ngawhake on the east it went far beyond, stretching from the sea to the Maharakeke line, which the Natives say was the one arranged. On the north

its boundary is from the sea-coast at Parimahu to Pa-o-Rangitahia, following the old Waipukurau boundary; then it turns southwards along Maharakeke and Otakohe Streams, eventually striking the southern boundary at Waikopiro Stream, and leaving to the west of it the southern part of the Aorangi Block. This has a further significance, since it takes the north boundary only as far as Pa-o-Rangitahia (the south-west corner of the Waipukurau Block according to the sale-deed). As this Porangahau deed included the bulk of the land purported to be sold by the 1854 deed, the title to which had not been completed by any survey, and was signed by some at least of the opponents to the 1854 sale, it seems reasonable to suppose that before signing the Porangahau deed their former objections had been removed, otherwise their opposition would have been in vain. The Natives' suggestion is that the later deed was in substitution of the prior one, while Mr. Cooper, the District Commissioner, held the opinion that the Native opposition had been extinguished on a cash basis. If the latter view is correct it is extremely difficult to see why, as Mr. Justice Richmond pointed out, the confirming deed did not include the whole of the land in the former deed, and so confirm the title of the Crown to all the land. It is, however, necessary to keep the opinion (no doubt, honestly formed) of the District Commissioner in mind in view of the subsequent happenings.

Following the Porangahau deed of 1858, on the 14th July, 1859, the land contained in that deed was proclaimed to have been acquired from the Natives, and the Natives' title extinguished. If it was intended to still claim the boundaries of 1854 it is hard to understand why the whole of the land contained in the two deeds was not then proclaimed. *Gazette*, 1859, p. 161.

The next stage comes when, some time in 1861 or 1862, Mr. Locke, acting on behalf of the provincial authorities, desired to mark out certain portions of the land for sale. In order to do this he applied to the District Commissioner to assist him in defining the boundary between the Natives and the Crown, and they called in the assistance of Hori Niania. Mr. Cooper produced a copy of the 1854 deed, evidently believing that still prevailed, and they started accordingly. As, however, the land Mr. Locke was dealing with at that time was to the eastward of the line pointed out, it became unnecessary, in Mr Locke's opinion, to definitely define the boundary on that occasion. 1873, G.-7, p. 143.

About 1865, Mr. Johnston, who had originally held the land from the Natives, desiring to acquire the freehold of more land, it became necessary to finally fix the line; and Mr. Locke, believing that Hori Niania had previously deceived him as to one of the points on the boundary, applied to the local Natives to assist him. It is quite evident that he was still using the 1854 deed. As a matter of fact, he had never heard of the dispute and alleged settlement. He found some opposition, but naturally thought, in the face of the deed, that the Natives were endeavouring to benefit at the expense of the Crown—an impression that Hori Niania's conduct would tend to corroborate. After consultation with the Natives a line was fixed from Tatua-o-te-Ihunga slightly to the east of Kiriwai, and including within the Crown boundary the southern portion of Aorangi. Mr. Ellison, the surveyor who surveyed the line, does not appear to have seen Mr. Pelichet's survey. He found some slight objection by the Natives, but no serious opposition, and apparently thought he had satisfied them by moving the line so as to leave various bays outside the bush to the Natives, which would have been a large concession had the land really passed to the Crown. The Natives' explanation of the apparent want of opposition is that they understood Mr. Locke, in surveying the boundaries of the 1854 deed, had found that sale was valid. As already pointed out, Mr. Locke's version is that he knew nothing of the dispute. Whatever the opinion of the officers dealing with the Natives may have been, it is quite evident that the latter were not as a fact satisfied, since they seem to have approached the authorities on the subject, and their grievance was considered of sufficient importance to be included in the Act which referred various disputes between Natives and the Crown to the Hawke's Bay Alienation Commission of 1873. 1873, G.-7, p. 144.

Upon a careful review of the evidence and facts we can come to no other conclusion than that the Natives have been deprived of this particular land known as Aorangi by mistakes (honestly made) arising out of the various transactions which took place in the early days: firstly, as to the northern portion of the land, because it was never included in any deed of sale; secondly, as to the southern portion of the land, because, although included in a deed of sale, we have every reason to believe that that sale was not made with the consent of the whole of the Natives interested; that on the settlement of the dispute which had arisen out of this the Crown took another deed confirming its title to the greater part of the land, but expressly leaving out of such new deed the part which gave special rise to the dispute; and that this new contract was intended to supersede and take the place of the former contract, and carry out the arrangement which had been made to settle the dispute.

We are aware that this finding differs somewhat from that of the learned Chairman of the 1873 Commission, but we respectfully submit to Your Excellency that the facts and circumstances could not have appealed so strongly to him as they do to us, otherwise he would not have ventured the opinion that the claim was an afterthought or invention on the part of the Natives. Probably this was the fault of the Natives in not making the real position clear to that Commission; for instance, they would appear not to have mentioned the name Aorangi before that Commission, but used the general name Whenuahou, although boundaries then given by them show Aorangi was part of the land then claimed by them. On this occasion they have had the advantage of the assistance of learned counsel.

1873, G.-7, p. 37.

The learned Chairman of the 1873 Commission, after summing up the case put before that Commission for the Crown—viz., that the whole matter was settled by payment at the Porangahau sale to the Crown—expressed the opinion "if this were the real intention, it is certainly to be regretted that the boundary of the Porangahau Block was not carried back to Kiriwai, which would have been a clear confirmation of the title of the Crown to the whole of the Umuopua. We asked Mr. Cooper why this was not done, and he was unable to satisfy us upon the point." He then goes on to say that the non-inclusion of Whenuahou in the Porangahau deed was insufficient in itself (which is quite correct) to prove the Crown had abandoned its right over that piece of land, and lays great stress on the fact that the local Natives had not in 1865 obstructed the survey of the boundaries as laid down in the 1854 deed. In addition he says that for the past twelve years Mr. Johnston had been in undisputed possession of the disputed ground.

Assuming that the learned Chairman knew, and sufficiently appreciated the fact, that there were grave doubts as to the power of the four Natives to sell the land in the 1854 deed without the consent of (and also, as appears, in direct opposition to) the great body of owners, he does not seem to have been made aware of the fact that the land immediately to the north of the portion claimed to be excluded had not as a fact been included in any deed of sale, but by an unfortunate set of circumstances had been dealt with and treated as if it were so included. He would then have seen there was a strong reason for not extending the Porangahau deed or boundary to Kiriwai. Mr. McLean was present at the sale in 1858 of the Porangahau Block, and took possession of the deed. He knew of the former dispute and how it was settled. If that settlement included the validation or confirmation of the former deed he would, in our opinion, have taken care to have that land surveyed and included in the new deed. He was a gentleman well versed in Native custom and dealings, and knew the necessity for having such a position fully explained to the Natives. Moreover, he would understand, in view of the discussion and disputes that had taken place, that the Native mind would construe the omission of the portion as equivalent to "a returning of the land into their own hands." Also, while it does appear that it was called to the attention of the 1873 Commission that Mr. Johnston had paid to the Natives certain grazing-money, there is no indication that the Commission had been told that Mr. Johnston had originally been

1873, G.-7, p. 142.
1862, C.-1, p. 336.

in possession under the Natives. This might have put a different face on the apparent inaction of the Natives in the matter.

It is pretty conclusive that the real explanation of the whole matter is that Aorangi was dealt with by the officers of the Crown or the provincial authorities on a mistaken assumption that it had duly passed to the Crown by effective deeds of sale.

Dated the 20th day of October, 1920.

R. N. JONES,
JOHN STRAUCHON, Commissioners.
JOHN ORSMBY,

To His Excellency the Governor-General of New Zealand.

REPORT No. 3.

PUKETITIRI AND WHANGANUI-O-ROTU.

PUKETITIRI.

THIS is a claim to a piece of land known as Section 98, Block XIV, Pohui Survey District, and said to contain 508 acres, which the Natives allege is either identical with or represents the reserve referred to in the next paragraph.

The claim has its origin in a deed dated the 17th November, 1851, by which a large tract of country called Ahuriri was assured to the Crown. Certain reserves were provided for, including the following: "The third: 500 acres at the place called Puketitiri, with a right to snare birds throughout the whole of the Puketitiri Bush." Apparently nothing was done at that time towards defining the reserve except by marking a reference to its approximate position on the map. An attempt was made to define it in the year 1860, and on the 8th March, 1860, Mr. Commissioner Cooper reports the result: "I endeavoured to have the 500-acres reserve at Puketitiri marked off as agreed upon at the first purchase, but finding that the Natives wanted to get not only nearly the whole bush, but the best part of Mr. Dyson's run and all his improvements into the bargain, I declined to proceed in the matter, and left the Natives half-way under the impression that they would get no land at all there."

2 Turton, p. 491.

1862, C.-1, p. 349.

Again, on the 20th June, 1861, in response to a circular letter of the 20th May asking that any disputes with regard to reserves should be reported on with the cause or ground of dispute, Mr. Cooper writes: "The Puketitiri Reserve (in the Ahuriri Block) still remains unsettled. The Natives will not accept the 500 acres named in the deed, nor will three times that quantity satisfy them. I have asked the Provincial Government to withhold from sale all lands within the questionable limits until something is settled. If they would sell their rights to this bush, which is valuable, it would be the simplest way of getting rid of the difficulty." In a general return dated the 23rd January, 1862, regarding reserves for Natives, Puketitiri is mentioned as "No. 5 on map."

1862, C.-1, p. 353.

1862, E.-10, p. 9.

The next reference is another report by Mr. Cooper, of the 26th August, 1867, in which he speaks of Puketitiri (among other reserves) as having been sold to the Crown.

1867, A.-15, p. 13.

In a list of Native reserves published in 1871 Puketitiri appears, and under the heading "Grantee or Owners" appears "the Crown." This must refer to the party in whom the legal estate was presumed to be vested, because if it were Crown land free from a reserve it would not have been included in the return.

1871, F.-4, p. 62.

In Koch's map of the Hawke's Bay Province, published in 1874, there is marked a Native reserve in about the position that Puketitiri might be supposed to be.

In the years 1906 and 1907, the adjoining land having in the meantime been cut up, the land referred to, containing 508 acres, was permanently reserved as a forest reserve, and it is still in the hands of the Government.

Gazette, 1906, p. 2940; 1907, p. 449.

Upon the report of the 26th August, 1867, it is claimed that the Puketitiri Native Reserve must have been sold to the Crown, but no deed or document beyond that report has been submitted to us as evidence of such sale, and we are informed that none such can be found. It seems to have been the practice from 1856, when land was purchased from the Natives, to proclaim that the Native title thereto was extinguished, and to show in various returns what land had been so purchased from the Natives. We have searched diligently through the various *Gazettes*, but have not been able to find any entry which appears to refer to Puketitiri. Nor has it been explained to us why, when the adjoining land was cut up, a block of 508 acres was kept intact. It is so similar in area to the reserve, and so close to its approximate position, that probably it was retained owing to the warning of Mr. Cooper to the Provincial Council in 1867.

We have come to the conclusion that there has been no sale from the Natives to the Crown of the Puketitiri Reserve. The Crown in this case was a trustee for the Natives. Therefore, if the Crown purchased the land from the beneficiaries this should be proved beyond all doubt. It is probable that Mr. Cooper, having suggested the land should be purchased, was under the impression that this had been done. But, in addition to no deed of sale being produced, the Natives offered strong opposition to the proposed location and area of the reserve in 1860 and 1861, and are not likely to have lightly agreed to the proposal to sell. If they had so agreed the price must have been the subject of negotiation with the Natives and correspondence with the Department. There, too, would probably have been a difficulty in arranging who out of the three hundred signatories to the Ahuriri deed were capable of giving a good assurance of this comparatively small piece of land reserved for them all. In addition, the money payment must have appeared in the returns of money spent for Native-land purchase which were published from time to time, and were carefully scrutinized. At least it is surely reasonable to believe that some document recording or indicating the sale could have been discovered even if the deed of conveyance itself had been lost.

In our opinion there has always been a doubt in the minds of the authorities as to whether the land had really passed to the Crown, and that is why the 508 acres was originally kept intact. As it probably represents the reserve agreed to be made for the Natives, it should, if possible, be used for that purpose.

If Your Excellency's Advisers should, after a full consideration of the matter, come to a similar conclusion we would respectfully suggest that, in view of the various happenings, legislation should be passed to the effect that the land in question should be deemed to be set apart in full satisfaction of the claim of the Natives to 500 acres at Puketitiri, and the right to snare birds in the Puketitiri Bush mentioned in the deed of the 17th November, 1851; and that the Native Land Court be given jurisdiction, similar to that in the case of customary land, to ascertain the proper owners thereof.

WHANGANUI-O-ROTU.

This is a claim to the Inner Harbour at Napier. It is now vested, by statute and grant, in the Napier Harbour Board.

2 Turton, p. 491. By deed dated the 17th November, 1851, the Natives sold to the Government the land bordering on the harbour. The boundaries as shown in the deed skirt along the interior line of the harbour, but do not include it.

It was suggested before us that at the time of the sale to the Crown the harbour was a fresh-water lagoon which, through the forces of nature, occasionally broke into the sea. Whatever it may have been in earlier days, the suggestion that it was fresh water at the time of sale is, in our opinion, refuted by the report made by Mr. Robert Park on the 7th June, 1851, some

1861, C.-1, p. 314. months before the actual sale. He says: "The most valuable part, however, of the block is the harbour, consisting of a large sheet of water or lagoon about five miles long by two wide. . . . At the mouth of the lagoon is the harbour proper, being several channels cut into the sea with a depth of from 2 to $2\frac{1}{2}$

fathoms at low tide; there is no bar, and it is perfectly safe and easy of access at present for vessels of from 40 to 100 tons."

Having settled this, the question then narrows itself down as to whether the Natives had any rights to the tidal waters, and, if so, whether or not in this instance they parted with them. That they had rights according to Maori custom is, we think, undeniable; in fact, Maori rights were not confined to the mainland, but extended as well to the sea. These rights were exercised principally for the procuration of food, and would have special significance in an inland sea of this nature; but they were no less applicable to the ocean. Deep-sea fishing-grounds were recognized by boundaries fixed by the Maoris in their own way; they were well known, and woe betide any alien who attempted to trespass upon them. The deep-sea fishing usually began with proper ceremonials and functions, and no one dared attempt to fish before the requisite steps had been taken by the proper authority to throw the fishing-grounds open. When the catch was made there were still further rules and regulations regarding its distribution to be observed; and numerous fights have taken place, many families have been scattered, and much land has changed hands over disputes arising out of real or fancied slights at the division. When by accident or design some great chief met his death at sea, fishing was often absolutely prohibited in certain places and for certain periods, especially in cases where the body had not been recovered. The inshore fishing seemed to have somewhat more restricted rights, and as time went on particular spots would be recognized as the sole privilege of a single family, just as eel-weirs in fresh-water rivers. In a place like the Ahuriri Harbour there would probably be several fishing-stations; and in addition the pipis and shell-fish, which covered the mud-flats at low tide, would, subject to mutual understandings, be the common property of all, to gather food where they would.

Such, then, were the rights which the Ahuriri Natives sought to retain for themselves when they parted with the land adjoining the harbour; and the correspondence shows that, fearful of being restricted in some way from the harbour, they tried to stipulate for reserves on its borders.

On the other hand, Mr. McLean, who negotiated the sale with a prophetic eye to the future, was most desirous to secure this harbour, which he had described as "the best—indeed, I may say, the only comparatively safe—harbour from the Port of Wellington to the 37th degree of latitude, on the north-east coast of the Island." The struggle that Mr. McLean had to do this may be judged from the following account given by him: "Tareha and other chiefs at Ahuriri were anxious to have several portions of valuable land reserved for them on both sides of the harbour, especially on Mataruahu, which they had always considerable reluctance in transferring, from a fear that they might be eventually deprived of the right of fishing, collecting pipis and other shell-fish which abound in the bay. These rights, so necessary for their subsistence, I assured them they could always freely exercise in common with the Europeans, and in order that they should be fully satisfied on their part a clause has been inserted in the deed to that effect." The interpretation of that clause runs as follows: "It is agreed that we shall have an equal right with the Europeans to the fish, cockles, mussels, and other production of the sea, and that our canoes shall be permitted to land at such portion of the town as shall be set apart by the Governor of New Zealand as a landing-place for our canoes."

1862, C.–1, p. 316.

1862, C.–1, p. 316.

2 Turton, p. 491.

This clause, as we understand it, merely reiterates the ordinary common law that all the King's subjects, whether European or Maori, have a right of passage over the sea, a common right of fishing, and a common (though perhaps restricted) right of landing on the foreshore; and does not appear to give the Natives any more rights than they would have had had no such clause been inserted in the deed. It is scarcely to be expected that the Natives would fully realize, or anticipate, how even this right would be affected in the future by harbour, drainage, and other public works; and, in fact, within ten years we find the chief Tareha, with whom Mr. McLean negotiated, actually setting up the claim that he was entitled to the land being reclaimed by the Harbour Board, since he had only sold to high-water mark.

We think, however, that, whether they appreciated the full effect of the dealing (of which there is some doubt) or not, it was made clear to the Natives that the Crown was buying the land and their interests in the harbour, and when in the sale of the land they included, according to the deed, "the sea [*moana*], and the rivers, and the waters, and the trees, and everything else appertaining to the said land," they intended to give over the use of the harbour, although perhaps in doing so they were not fully conscious of the effect it would have on those fishing-rights that they were so anxious to retain. It is only to the harbour that the reservation of fishing-rights and landing-places could apply.

Dated this 22nd day of October, 1920.

R. N. JONES,
JOHN STRAUCHON, } Commissioners.
JOHN ORSMBY,

To His Excellency the Governor-General of New Zealand.

REPORT No. 4.

PATUTAHI BLOCK.

THE Natives claim that by a mistake made by the Poverty Bay Commission, hereafter referred to, they have been deprived of a large area of land. The position leading up to the setting-up of that Commission is fairly set out in the preamble to the Poverty Bay Lands Title Act, 1874.

During the Hauhau troubles of 1865 certain disaffected Natives of Poverty Bay sided with the rebels. It was desired to punish the rebels by confiscating their land. For this purpose the East Coast Lands Investigation Acts of 1866 and 1867 were passed. These were repealed by the East Coast Act of 1868. All these Acts empowered the Native Land Court, on investigating the title to Native land, to inquire if any of the owners were rebels, and to vest the land of such rebels in the Crown. But the rights of loyalists and rebels were so interwoven as to make the carrying-out of this duty practically impossible.

6th January, 1867. Captain Biggs reports: "The claims of loyal and rebel Natives are so mixed up that it is next to impossible to point out a single spot that belongs exclusively to either; and when it is remembered that in the war on the East Coast the nearest relatives were fighting one against the other, it must be evident that the difficulty of separating loyalist from rebels' land will be very great, if indeed to be accomplished at all."

An endeavour was then made to get the Natives to agree upon a specific block of land to be set aside for the Government, but again Captain Biggs was

7th June, 1867. in difficulties with regard to it. In one letter he mentions that the Natives had offered 15,000 acres; but out of this there would be about 2,500 acres of reserves, 1,800 claimed by Europeans, and 3,000 acres of useless land. The endeavour to get the Natives to cede land voluntarily was therefore no more successful than would be proceedings under the Acts cited.

Then came the Poverty Bay massacre of 1868, which, in addition to calling for adequate punishment, also afforded the Poverty Bay loyalists a strong incentive to seek protection. Mr. Richmond, who then had charge of Native Affairs, met the Natives, and the latter agreed to cede a large extent of territory

6 *Hansard*, p. 681. for the sake of getting Government protection. "The Natives expressed themselves in bodily fear of Te Kooti," says Mr. Richmond. "He [Mr. Richmond] thought this was an opportunity of restoring to some extent the mana of the Government on the coast, and also of enabling the Government to fulfil its promises as made to the Defence Force raised in Hawke's Bay during 1864 or 1865, the men of which Force were most eligible settlers, and had been waiting for years to receive their land. Accordingly he proposed to the Natives that they should cede land on which the Defence Force men could be settled; the request, or demand, he made being for no more land than was absolutely

necessary for that purpose. But the Natives themselves—and he was speaking for the whole of the Natives of Poverty Bay, with one single exception, and he afterwards signed the deed—stated to him they desired, in order to simplify the arrangement, that the whole of the land belonging to the Poverty Bay tribes should be included in the arrangement. In compliance with the wish of the Natives—for such a thing was not suggested by himself or by any one on his behalf—a deed was drawn up, which the Natives all signed, by which they surrendered to the Crown all their lands, subject to the return of such portions of it as might be found by the Native Land Court to be the property of friendly Natives."

The deed or agreement of cession is dated the 18th December, 1868, and purports to be made between the loyal chiefs and men of the two tribes of Aitanga-a-Mahaki and Rongowhakaata, and the hapu of Ngaitahupo, of one part, and the Governor of the other part. After citing the causes which led up to it the deed purports to cede all the lands of those tribes, within certain outside boundaries, to the Governor, who in turn accepts the same on the condition that loyal Natives sending in their claims to lands within those boundaries within three months will have such claims adjudicated on by a Commission of Judges, and, if correct, will have Crown grants issued to them. "But," the deed continues, "the Governor shall have authority, before the adjudication by the Commission, to settle Europeans or Maoris, as guardians of the peace, upon some of the blocks hereby ceded, and to reserve such blocks, and out of them to give each settler, whether European or Maori, a piece of land for himself; and if the Commission shall decide that any pieces of the blocks so reserved belong to loyal Natives, pieces of land of the Hauhaus of equal value shall be awarded in place of the land so taken." 1 Turton, p. 698.

Pursuant to this deed a Commission of two Judges (generally known as the Poverty Bay Commission) was set up on the 10th February, 1869, to make inquiries as to the claims of loyalists, to ascertain if any claimants were rebels, and also to inquire into sales and gifts to Europeans, and report accordingly. *Gazette*, 1869, p. 59.

By a Proclamation, without date, but appearing in the *Gazette* of the 13th February, 1869, the Governor accepted the cession by the Natives, and proclaimed the Native title to be extinguished. It is not clear to us how the title of the rebel Natives became extinguished, but we assume it must have been done in some regular way, since the Attorney-General's opinion of the 16th August, 1869, was that "if the Crown is satisfied that those who dealt with it had title to cede the land, then the whole transaction is similar to previous dealings with Natives by the Crown, and the land becomes Crown lands; but the Crown is, of course, bound to perform the terms of the contract." *Gazette*, 1869, p. 60.

Mr. Richmond, in his recommendation to His Excellency the Governor advising him to sign the notification of the extinguishment of Native title, says, *inter alia*, "It will be seen that the effect of the deed, when its provisions are carried out, will not be to divest the ceders of any property. It operates mainly to give *prima facie* title in the rebel lands to the Crown, throwing the *onus probandi* on the other claimants. But the chief motive of the ceders was to enable the Government to afford them some protection against the rebel tribes, by allotting land to a body of men known as the 'Hawke's Bay Defence Force,' who have had a promise for years past of sections, and a hope held out they would be at Turanga (Gisborne). Blocks will at once be set apart for them if His Excellency issues the attached notification, and also for a small body of Ngatiporous who are anxious to emigrate to Turanga, and who will bring the weight of their tribal connection to the support of the place." 10th February, 1869.

It may be mentioned here that the Ngatiporou (East Cape) Tribe and sections of Ngatikahungunu (Hawke's Bay and Mahia) Tribe were assisting the Government in quelling the rebellion.

Mr. Richmond expressed a similar desire to Mr. W. S. Atkinson, who was instructed to act for the Crown before the Poverty Bay Commission. This reads (in part), "Saving always the right to occupy so much land as is requisite for fulfilling the engagements of the Government with the Defence Force and

Ngatiporou, the district should be dealt with as the Commissioners may think equitable"; and after directions as to his duties with regard to loyalists and rebels the instructions concluded, "generally the object and hope of the Government is, by means of the Commission, to settle promptly and amicably the long-agitated titles of the district, and to secure cordial loyalty as far as possible for the future."

It will thus be seen there was up to this time no desire to secure land to cover war expenses, or beyond that required to satisfy the Defence Forces of both races who had assisted in quelling the rebellion. Mr. Richmond, in his speech of the 24th August, 1869, to the House of Representatives, apparently without knowledge of Mr. Atkinson's report of the 7th July, 1869, but confident that "the clear instructions that the Government should not acquire more land than was absolutely necessary for the Defence Force" had been adhered to, anticipated that something like 20,000 acres in all would be reserved for the Government. It would almost seem as if Mr. Richmond, as a matter of fact, had at some time discussed the probable area required with the Natives, as Mr. E. F. Harris, in a letter of the 14th March, 1877, after mentioning that one of three blocks given by Rongowhakaata to the Government was Arai, estimated to contain 5,000 acres, for military settlement, says that "upon inspection of the block Mr. J. C. Richmond, the then Native Minister, decided there was no site available for the purpose indicated; and an additional piece at Tapatohotoho, containing 600 acres, was given by Rapata Whakapuhia."

6 *Hansard*, p. 681.

The Poverty Bay Commission duly sat at Gisborne on the 29th June, 1869 It does not appear that any block was, in terms of the deed, reserved by the Governor prior to the adjudication by the Commission, but at the opening of the Commission Mr. Atkinson stated he had good reason to expect that an arrangement between the Crown and the Native claimants might be satisfactorily arrived at. On the following day Mr. Atkinson stated he had succeeded in effecting an arrangement with Mr. W. Graham, who appeared on behalf of Aitanga-a-Mahaka and Rongowhakaata Tribes, by which a proportion of the ceded block should be given up to the Crown, in consideration of which he was willing to waive all claims to the remainder of the block. Mr. Graham then announced his acquiescence on behalf of the Natives, and stated that the three blocks following comprised the land over which the agreement was to extend. viz., Muhunga, Patutahi, and Te Arai.

Poverty Bay Commission, p. 1.

Poverty Bay Commission, p. 2.

We are not further concerned with Muhunga at present other than to state that its then area was assumed to be about 5,000 acres, more or less. The other blocks are described in the minute-book as follows:—

"Patutahi" [or, as it is named in margin, "Kaimoe"] "is described as situated on the west bank of the Waipaoa River, a block as yet unsurveyed; but the boundaries had been agreed upon, and were stated by Mr. Graham and pointed out upon the map produced. . . . The land was stated to be of very good quality, and in a position in the centre of the bay, and commanding all the main lines of access. The acreage is estimated at " [subsequently the blank was filled in "fifty-seven thousand acres, more or less"].

Poverty Bay Commission, p. 2.

"The Arai Block, adjoining the Patutahi Block on the western side, is also as yet unsurveyed, but the boundaries were stated and pointed out by Mr. Graham. This block was stated to command the sole other line of access into the district, except the coast road, which, however, is capable of a separate defence. Acreage estimated at " ["about 735 acres, more or less," subsequently filled in].

The claims preferred within these three blocks were to be adjusted as they arose. It will be noted that, though the boundaries of the unsurveyed land were stated and pointed out, no note of them was taken in the minute-book, nor does any record, as far as we can ascertain, appear to have been kept. The map used by the Commission was a general one of the district, upon which the various supposed tribal boundaries were plainly marked, but there is nothing on it beyond a colouring (apparently done either then or subsequently) to indicate the position of the 57,000 acres referred to by the Commission.

The Natives claim that an error was made in noting the areas, and that they should have read "Muhunga, 5,000 acres; Patutahi (or Kaimoe), 5,000 acres; and Te Arai, 5,000 acres."

It is quite evident that there was some confusion in the minds of the Commission, as well as other people, about the matter, and as to the respective areas. In a letter of the 6th July, 1869, the Commission says: "We beg further to inform you that an arrangement has been entered into between the Native claimants and the Crown agent by which the parties have mutually agreed that the claims of the members of the tribes who have been in rebellion shall be represented by three blocks, upon which we propose to report hereafter in a separate letter at such time as these lands shall have been regularly brought before the Court." From this it would almost appear as if the areas and position had not then been finally settled, but were to be subject to some further action by or before the Commission.

Mr. Atkinson, the Crown agent, writes (7th July, 1869), stating that he had reserved about 50,000 acres. A writer in the Press deplored the fact that only 40,000 acres had been secured, instead of the million voluntarily offered to McLean. The Commissioners themselves, who had noted in their minute-book 62,735 acres as the quantity reserved, in their report of the 23rd August, 1869, state it at 67,400 acres. Again, the Gisborne correspondent of the *Hawke's Bay Herald*, writing under date the 24th August, 1869, says: "The Land Court which has been sitting here for six weeks ended satisfactorily to all parties, the Natives having given up what land the Government asked (about 15,000 acres), the old claimants' claims being passed, and the Natives generally settling their own boundaries amicably."

Hawke's Bay Herald, 13th July, 1869.

Hawke's Bay Herald, 27th August, 1869.

In the minute-book we find two instances which bear out our impression that in some way the Commissioners had not, at the time, fully grasped the situation. Patutahi Block is stated to be of very good quality That would be a very fair description of Patutahi proper, not exceeding 5,000 acres, but could in no way apply to the greater proportion of the 57,000 acres (or 50,746 as found on survey). A memorandum of Mr. G. S. Cooper, of the 26th January, 1872, recommending the surveying of Patutahi Block, says: "The original dimensions might well be restricted in the back or south-western part of it, as the land in that part is of inferior value, and is so broken as to be difficult of survey."

Poverty Bay Commission, p. 3.

Then, Te Arai is said to adjoin Patutahi Block on the western side. If the restricted area, 735 acres, refers to Tapatohotoho, as assumed, then it nowhere adjoins Patutahi proper, and only adjoins the remaining 50,000 acres on the east.

When we remember the terms of the deed, and the strict instructions to the Crown agent to secure only sufficient for the military and Native settlers, with no indication that the Government was requiring a war indemnity, it is difficult to understand why the Natives should offer, or the Commission award, between 50,000 and 70,000 acres of land. The Government, under somewhat similar circumstances, had accepted from the Wairoa Natives about 30,000 acres of land, of value incomparable to that of the land of the Poverty Bay Natives. The only explanation we can offer is that the Poverty Bay Commission, in error, adopted at some later date the outside tribal boundaries of the Rongowhakaata Tribe as showing the boundary of the land arranged to be given by that section of the people. This is the only way we can account for them taking nearly 51,000 acres from one tribe, and only 5,395 from another tribe which, according to the records, contained an equal if not greater number of rebels, and owned a great deal more land than the first-named tribe. According to the Poverty Bay Titles Act, 1874, there was returned to Rongowhakaata 4,000 acres, and to Aitanga-a-Mahaki 185,000 acres, out of the lands ceded to the Governor on the 18th December, 1868. Such a proceeding would be in direct conflict to Mr. Richmond's assurance to His Excellency the Governor and his explicit instructions to Mr. Atkinson.

That there was some mistake made is evident from the evidence of Mr. Locke given before a Commission in 1882. Mr. Locke was present at the opening of

1884, G.-4, p. 8.

the Commission Court in 1869. In explaining why a piece called Arai-Matawai (or Waimata) was given back to the Natives by the Government, Mr. Locke said it was because it was above the Waimata, *the acknowledged highest point on the Arai River to which the Patutahi advances.* He further explains that the reason the back boundary was not surveyed was that the country was in a too disturbed condition at the time.

1884, G.–4, p. 15. The statement that Waimata River was the southern boundary of the land appropriated for the Government is corroborated by Wi Pere when he says: "The land ceded at Arai was bounded by the Waimata Stream, and went back to the creek named Mangaweka on Mr. Bousefield's plan of Patutahi, thence back by the road to the boundary of the land coloured yellow on the same plan." Curiously enough, along the boundary named by Wi Pere there are names of places and a stream marked on the original map which might well follow out the boundary as described by Wi Pere. This, too, if continued sufficiently far, would have had the advantage of making the Arai Block adjoin the Patutahi on the western side, as described in the minutes of the Commission.

The land was surveyed in 1871 or 1872, the boundary being disputed. That the Natives were not all satisfied with the proceedings of the Commission is very certain, since there was almost a riot at the reassembling of the Commission in

P.B.*Standard*, 16th August, 1873. August, 1873, and part of the complaint of the Natives was "the adjustment of the Patutahi and Muhunga Blocks, which they all disagreed with." At that sitting they seem to have been told that the matter was beyond the scope of the Commission.

It seems a great pity that the Government did not, in reserving the blocks for the settlers, as provided by the deed, do so by Proclamation or in some other public way; or that the Court, as it apparently proposed on the 6th July, 1869, and as was suggested to it by Mr. Sewell in his telegram of the 28th November, 1870, did not take some formal way of confirming the arrangement with the Natives. "The object," said Mr. Sewell, "is to get the arrangement of 1868 and everything done under it confirmed by the Court." This would at least have given an opportunity to have the matter properly investigated at the time, and, if an error had been made, to have corrected it. We cannot find that any

1871, C.–4. such formal steps were ever taken, and consequently the Departments dropped into various errors over the matter, such as when stating that the whole area

Gazette, 1877, p. 656. of the ceded land was only 200,000 acres, or in describing Patutahi as confiscated land and proclaiming it under the statutes affecting such land.

The Natives' contention, as we have pointed out, was that the three blocks were to be equal in area; and they have consistently held to that story both

Gisborne M.B. 3, p. 371 *et seq.* before the Native Land Court in 1877, when their statement was confirmed by a European witness—who may, however, have gained part of his information

1884, G.–4. from the Natives—and before Clarke's Commission some five years later. There is some evidence that Patutahi proper was only to be 5,000 acres. Patutahi (or Kaimoe) had originally contained 3,546 acres, and part of Rakaukaka was added, making it up to over 4,500 acres. It was said the balance was made up at Tapatohotoho. The person who owned Rakaukaka afterwards claimed and was awarded compensation for the part so taken. There must have been some special reason for increasing the flat land in that way. We can find no definite evidence that Te Arai, or the inland block, was to be so confined. To make it only 5,000 acres and join it to Patutahi, as the minutes proposed, would make a very awkward-shaped piece of land, and would by no means cover the boundaries which we understand to be pointed out by Wi Pere. We are therefore inclined to think that something larger than 15,000 acres in all was to be awarded, though the Natives may well have supposed that the boundaries as pointed out would not cover more than that.

The Government itself has fixed an area which, while it may be more or less than the area within the actual boundaries agreed upon, was evidently accepted by it in its dealings with the land. It will be remembered that

10th February, 1869. Mr. Richmond, in recommending the issue of the Proclamation extinguishing the Native title, had said the military and Native settlers had to be provided

for. Meantime the Government had changed and Mr. McLean had become Minister. The Ngatiporou had claimed they were entitled to the Patutahi lands, and had objected to the Commission dealing with those lands without their consent. Mr. McLean met the Natives, and on the 9th August, 1869, the following memorandum was drawn up :—

" At a meeting with the chiefs of Ngatikahungunu and Ngatiporou held at the Defence Office on the 9th August, 1869, it was arranged, after some discussion and protests on the part of the chiefs against the proceedings of the Court or Commission now sitting there, that the following proposal should be accepted as a settlement of the question : First, that the decisions of the Court should be considered binding as regards the claims of the resident Natives to their respective claims; that the land given up in three different blocks as payment for the offences of the Hauhaus should be divided into three equal portions—first to the Ngatiporou, second to the Ngatikahungunu, third to the Government. " DONALD MCLEAN.

" 9th August, 1869."

Mr. McLean confirmed this arrangement in his speech to the House of Representatives on the 24th August, 1869, where he said, " The object of the Government was not to get land, but to ensure an amicable and efficient settlement of the district; and, *whatever the extent of the country ceded, it would be divided into three equal portions*—a part for the Government on which to settle the Defence Force, and portions for the settlement of claims of certain Natives." 6 *Hansard*, p. 682.

The European Forces received their land at Muhunga (or Ormond); the Ngatiporou were, according to the evidence, to get theirs at Patutahi; while the sections of Ngatikahungunu were to be provided for out of the Te Arai Block. There was so much trouble with the Natives that eventually it was decided to buy out their interests, if possible; and the interests of the Ngatiporou, estimated at 10,000 acres, and so stated in the deed, were accordingly bought on the 30th September, 1873. 1 Turton, p. 705.

On the 29th November, 1873, Mr. McLean met the Ngatikahungunu Natives and their allies at Napier, when he stated the land had now been surveyed and the Ngatiporou share decided. He was asked what share Ngatikahungunu had, and he replied that if Ngatiporou had taken land they would have received 10,000 acres, and the Ngatikahungunu and those allied with them would receive the same. This clearly fixes the total area at 30,000—allowing equal portions, as Mr. McLean had stated, first to the Ngatiporou, second to Ngatikahungunu, third to the Government; unless, indeed (which is unthinkable), the Government was knowingly departing from its solemn engagement and was proposing to take 35,000 acres for itself, and leave the other two parties, who it had agreed should share equally with the Crown, not more than 10,000 acres each. 1874, C.–1, p. 1.

We therefore think that, whether we take the 67,400 acres of the report of the 23rd August, 1869, the 62,735 acres mentioned in the Commission's minutes, or the 50,746 acres of Patutahi (plus Muhunga) found on survey, it was far more area than either the Natives or the Government intended should be reserved for the Crown. We also think that, while there is much to be said in favour of the Natives' claim that only 15,000 acres was intended to be reserved, there is no evidence sufficiently conclusive for us to find it to be so. Certainly, if the land was to reach to Waimata River and Mangaweka Stream, and adjoin Patutahi proper, it would appear to be of greater area. With that class of land the Natives are more likely to have described it by certain points or places on the boundaries than by area.

On the whole, therefore, we have come to the conclusion that, as there is some doubt, the proper measure to adopt is that fixed by the Government itself, of about 30,000 acres, including Muhunga and Tapatohotoho. This would coincide with Mr. Richmond's estimate of 20,000 for the Government and Ngatiporou only, and would cover all the land within the boundaries stated by Wi Pere, and partially corroborated by Mr. Locke.

Assuming, therefore, the survey of Patutahi—including Kaimoe and Tapatohotoho, at 50,746, and Muhunga, 5,415 (according to Clarke's Commission)—as being correct, the Government got 56,161 acres instead of 30,000, or a surplusage of 26,161 acres. Out of this the Government has returned to the Natives 4,214 acres of Arai-Matawai, 91 acres of Muhunga, and 500 acres of Patutahi (under Clarke's Commission); and have paid compensation to Pimia Aata for 1,019 acres of the Rakaukaka Block, included in Kaimoe: making in all 5,824 acres. Deducting this from the 26,161 acres leaves a balance of 20,337 acres which the Natives, according to our view, have been deprived of without their consent. We have adopted the acreages as they appear on the records, but actual surveys may slightly increase or decrease the areas.

1884, G.-4, p. 12.

It should be noted that the excess is not of the good flat land. That was specially set apart for reservation for the Crown, and clearly intended to be given up by the Natives. Any surplus area must have been in the hillier and less valuable land at the back (south and west) of Patutahi and Te Arai Blocks. That land has all been dealt with by the Government in years gone by.

Dated this 5th day of November, 1920.

R. N. Jones,
John Strauchon, } Commissioners.
John Orsmby,

To His Excellency the Governor-General of New Zealand.

REPORT No. 5.

WAIPIPI, SECTIONS 323–331.

The petitioners in this case claim that the sections referred to were set aside for them, and in corroboration they point to the fact that they had been in possession of them for a great length of time, and until very recently. They claim that they were entitled to the land by ancestry.

It seems to us that as they professed to be loyal Natives, and the whole of the surrounding lands were sold or ceded to the Government between the years 1864 and 1867 (with the exception of certain reserves), the only way they can claim title is either that the land now claimed formed part of one of the reserves, or that it was given to them as compensation for some of their land that was absorbed under the general confiscation of the district.

We have not been able to identify this land with any of the reserves named in the deed, nor can we, from the records placed at our disposal, find any record of its ever having been awarded to these particular Natives.

That the land was intended to be set aside for Native purposes we are quite certain, for on the 24th September, 1875, Mr. Marshall, the then Native officer in the Waikato, reported that this land had been surveyed for certain named ex-rebels, whose names appeared on the plan of the land but have since been erased therefrom. Later these Natives asked for an exchange, alleging that the land at Waipipi was wanting in wood. They asked for some of the Hauhau idle lands. The exchange was recommended, and eventually certain other sections—270, 272 to 279—were reserved for these Natives. The petitioners contend that they were then living at this place when the other Natives declined to take up their abode there.

Gazette, 1879, p. 1488.

It does appear that those represented by the petitioners have been allowed for a great many years to occupy the land in question, and that it has always been looked upon as a reserve for Native occupation. It may be that these Natives have some rights which the records do not show.

We therefore recommend that legislation be passed authorizing the Native Land Court to inquire whether the descendants of Hori Tauroa or Erueti Ponui are entitled in equity to any portion of the land, and, if so, how much; and, so far as they are not entitled, and there is any balance to allot, to apportion it,

as far as convenient, among such Natives of the Waikato as it shall find to be landless, such allotment to be within the discretion of the Court. The orders should vest the estate, but such estate should be inalienable without the consent of the Governor-General in Council.

WAIKARAKIA.

The Natives claim that this block, sometimes known by the alternative names of Ruato and Rataroa, from two settlements on it, was set aside for occupation by the Koheriki Tribe.

We have not been able, with the records at our command, to discern any specific proclamation of it as a reserve, but we have no hesitation in saying it was directed to be set aside for the Koheriki (or Ngatamatira) Natives.

The Koheriki people had sent in an application for land, and on the 4th December, 1882, Chief Judge Fenton, Mr. Percy Smith (Assistant Surveyor-General), and Mr. Wilkinson met the Natives near Mercer. The map was produced, and the spot desired by the Natives, known as Te Ruato, was approximately fixed upon. It was thought then the block would contain 5,200 acres. Some of the Natives had already commenced to make a clearing at Te Ruato and take up their abode there. The boundary of the land for them was temporarily fixed to run in the vicinity of the surveyed line of Gordon's lot, and from thence to Rataroa, on the confiscation and Piako line; and the list of names of the people—fifteen male and twenty female adults and nineteen children, fifty-four people in all—was fixed. One Native (Waitangi) had been, it was stated, awarded 550 acres by the Compensation Court some years previously, which he desired to surrender and to take up land in lieu thereof with his people at Te Ruato. Mr. Wilkinson's report, 20th January, 1883.

Nothing further was apparently done till the 26th September, 1885, when the Natives wrote saying they had been waiting for a surveyor to mark off the land. Consequently a surveyor was sent, who reported that he had discovered another settlement on the land, and that he thought the area would be on the large side for the number of individuals found.

Survey was made on the 26th January, 1886. The surveyor was instructed that it was unnecessary to make a complete survey, as the land was not to be granted at present. Map 4061 (blue) was prepared as of land set aside for Koheriki Tribe. This is said to be only a sketch-map. The block surveyed contains 3,429 acres.

In March, 1891, Mr. Percy Smith and Mr. Wilkinson went through the list of lands reserved for rebels to see what should be reserved from sale. Among the blocks noted as reserved was "No. 9, Parish of Koheroa, 3,429 acres, at Ruato" (noted "Already dealt with," and, on another list, "Already reserved—retain this"). This list was referred to the Minister of Lands, who in turn referred it to the Native Minister, who marked it, "Seen. I approve of this.—A. J. Cadman, 29/6/1891." The Surveyor-General instructed the Commissioner of Crown Lands at Auckland to withhold the blocks mentioned, including the one now in question, from sale, and have them appropriately coloured off on the map, but not so as to be confused with the Native reserves.

In 1894 300 acres of the block was cut off, under section 4 of No. 45 of 1894, for Hori Ngakapa Whanaunga, in lieu of land promised him elsewhere, leaving a balance of 3,129 acres. The block was again listed as a reserve for Natives, without title, on the 21st October, 1899. 1900, L.C. No. 20, p. 19.

The matter seems to have rested till 1901, when some inquiries were made, and it was suggested that the Natives were not living on the land. In 1903 it was proposed to resume it, as only three or four persons were apparently resident there, but on being referred to the Native Minister he advised keeping faith with the Maoris.

It is quite clear that some Natives have pretty continuously lived on the block, and that they never intended to abandon occupation thereof. They have had no title whatever beyond the promise which they have relied on for so many

years, while at times there have been suggestions to dispossess them of the whole or the greater part of it.

This is a case in which we think the promise made on behalf of the Government should be fulfilled. If it should be decided to give the Natives title, it should be in such a way that the land would remain inalienable except with the consent of the Governor-General in Council.

WAIPUKU-PATEA RESERVE.

In this matter the Natives complain that they have been injured by the alleged arbitrary action of the authorities in altering the location of a reserve set aside for them.

2 Turton, p. 77. By deed made on the 22nd May, 1874, certain Natives purported to sell to the Crown their interests in the Waipuku-Patea Block. That deed contained the following clause: "Mr. Parris (the Civil Commissioner) has agreed to give us 700 acres of this land." From the records it appears that the location of this reserve on the ground was agreed to between Mr. Parris and the Natives, and that it was accordingly marked off on the sketch-plans of the Department.

1880, G.–2, p. 61, para. 900, 901.

About two or three years later it was desired to lay out the Town of Stratford. It was found that the reserve would, if left intact, interfere with the proposed scheme. The authorities in Native affairs were therefore approached, and it was suggested that probably a reserve in another place could be found for the Natives. The then Civil Commissioner, believing that the Government had full power to do so, apprehended no difficulty, but first of all approached the Natives, offering them alternatively a 700-acre reserve in two separate portions, or a reserve of 2,000 acres in another block. The Natives strenuously objected to the proposed alteration. Eventually the reserve was what was called "turned over"—that is, it was shifted to one side adjoining the old reserve, a portion, say, 75 acres, of the original reserve still being retained. In the eyes of the Natives this would have the further objectionable phase that the greater portion of it would not be within the limits of the Waipuku-Patea Block. But whether they wished it or not the Natives had to be content with the substituted reserve, and herein arose the first grievance.

That grievance was dealt with by two Royal Commissions. The first—the Bell-Fox Commission, in 1880—reported that the changing of the reserve was unlawful. The second—that of Sir William Fox—followed up the former Commission's report, adopted its finding, and held that the transaction was one very injurious to the interests of the Natives. The latter Commissioner made an attempt to rectify the injustice. He found some difficulty in doing this. Part of the land had been cut up and sold as a town. He spoke of returning the balance, but here again he found the Natives had dealt with the substituted reserve by way of lease. Sir William found that there was a great disparity in value between the two reserves, and he endeavoured to do justice by effecting a compromise in the matter. "A long negotiation," he says, "ably conducted by Major Parris, ended in the Natives agreeing to retain the substituted area and to have 300 acres more. The Natives concerned appear perfectly satisfied with the conclusion arrived at, which it must be acknowledged is extremely favourable to the Government."

1882, G.–5, p. 15, App. III (2).

The Natives are not now seeking to repudiate the agreement so far as the changing of the reserve is concerned, but they contend that the settlement arrived at was not a fair one; that it was not agreed to by or with the authority of them all; and that the compensation offered, in the shape a 300-acre reserve in another place, was insufficient, when added to the substituted reserve, to make good the loss of the original reserve.

We have nothing to guide us as to what information Sir William Fox acted upon when he assumed that all the Natives were perfectly satisfied, but it is apparent that they could not all have been so, otherwise there would have been no further grievance. Whether the Natives consented or not, the fairness and justness of that adjustment is now questioned. The authorities having committed one injustice in the name of the Crown, its honour demanded that in

rectifying that injustice care should be taken that no further false step was made either by securing an advantage over the Natives in the settlement or by acting in any manner which would be really, or even apparently, inconsistent with good faith. Notwithstanding, therefore, that the Natives were apparently satisfied at the time, it seems open to us to consider whether or not such settlement was a just or equitable one.

No doubt the Natives were made aware of the statement in Sir William Fox's report that the value of the portion of the reserve then within the Town of Stratford was estimated by the Chief Surveyor at £7,792, or over £11 per acre, while that of the substituted reserve, which had various disadvantages as compared with the other, was only £2 per acre. Possibly, too, they believe that they are legitimately entitled to the difference; in fact, it was suggested before us that the proper measure of the loss or damage was the difference between the £7,792 and the values of the substituted and compensatory reserves. But, although Sir William Fox made the statement alluded to, he could not have thought that the Natives were entitled to £5,000 or £6,000 beyond the two reserves or he would never have accepted the proposal as the basis of a fair settlement. There is no doubt in our minds that he thought that the substituted and compensatory reserves would, in value, be somewhere in the vicinity of balancing the original reserve, but since he declared the settlement as extremely favourable to the Government he must have anticipated some margin in the latter's favour.

It stands to reason that it would not be fair to take the full value of the land laid out as a town as a fair measure of the compensation to which the Natives were entitled. What it appears to us, in this case, they would have been entitled to was the fair market value of the land at the time they were deprived of it, assuming it to have been sold in one lot or in parcels, as might be most advantageous for the owners. The fact that it was taken without the Natives' assent should ensure a liberal estimate, nor should the prospective value arising from its suitability or probability of being some part of a future town-site be lost sight of.

Sir William Fox had no tangible figures on which he could estimate the value of the original reserve, and any estimate he made could only be speculative at the best. We have actual figures to go upon, and if we are using them rightly they seem to us to give a fair basis for judging of the respective values. The actual amount realized for the sale of the land in the reserve, according to the Commissioner of Crown Lands, was £5,205 14s. 7d., or an average, for 625 acres, of nearly £8 7s. per acre. To attain this certain portions had to be sacrificed for roads and reserves. Then there has to be taken into account the cost and expenses of laying out the town and preparing it for sale, of which each part of the town should pay its fair share. This land, too, was sold after the whole town was marked out, when there would be no doubt of its value being increased. On the whole, we think that the balance, after deducting 33⅓ per cent. off the amount actually realized, would be a fair value to have assessed the portion of the reserve, taken at a time and in the state it then was. On the other hand, it is clear the substituted reserve was not worth more than £2 per acre. Sir William Fox was very emphatic about this. He says, "the value of the entire substituted reserve, which is heavy bush land, removed from the main road of the country, was certainly not more than £2 per acre, or £1,400." We have allowed the 75 acres, which still forms part of the original reserve, to remain as it is. As that is closest to the town, it would probably affect the average value of the residue. So that in accepting Sir William Fox's figures there is no chance of our undervaluing it. With regard to the compensatory reserve, we have no guide of the value at that time, except the valuations of the unimproved value made since. Sometimes it has been valued more, acre per acre, than the substituted reserve, sometimes less. The latest Government value, of July, 1920, shows the compensatory reserve at about £24 16s. per acre, and the substituted one at about £27 12s. 6d. per acre (unimproved). We have adopted what we think a safe medium, and put the

Report, 20th November, 1910.

300 acres down at £3 per acre. It was probably less valuable per acre than the original reserve, and more valuable per acre than the substituted reserve. We then have this result :—

	£	£
625 acres of original reserve taken		3,470
Less—705 acres (less 75 acres still in original reserve) of substitute reserve = 630 acres at £2 per acre	1,260	
300 acres compensatory reserve at £3 per acre ...	900	2,160
		£1,310

To this extent, then, it appears to us, the settlement was not just to the Natives; and this, to our minds, represents the loss the Natives made at the time by having the position of the reserve changed against their will. Probably at that date they would have taken less, and been satisfied, as the future values were then unknown. If our figures are correct they are, in addition, entitled to simple interest at the rate of £5 per cent., which since 1876, when the land was taken, totals forty-four years. The Native owners of the original reserve are therefore entitled, for their forced deprivation, to the following compensation: Loss sustained by Natives, £1,310; forty-four years' interest at £5 per cent., £2,882: total, £4,192.

In addition to their actual loss, the Natives also have been put to considerable expense in endeavouring to have the wrong righted. It is not possible to allow all such expense, but we think that they are entitled to some allowance, which we fix at 10 per cent. on the principal they were entitled to, or a sum of £131. This, then, makes the total compensation payable £4,323, and we therefore recommend Your Excellency accordingly.

As some of the original grantees are dead, and there may be disputes as to the present persons entitled should any compensation become payable in respect of the matter, the Native Land Court should be authorized to settle the list of beneficiaries and their respective interests.

WHAKATOHEA CONFISCATION.

This is a complaint from the Whakatohea Native Tribe, who belonged to Opotiki. They say that when their lands were confiscated in 1866, for the murder of the Rev. Mr. Volkner on the 2nd March, 1865, they were unduly punished by the deprivation of so much of their lands.

The facts which led up to the confiscation were shortly as follows: The people of the place had sympathized with the Natives engaged in the Waikato War, and some of them had taken part in that war. When the wave of Hauhau fanaticism passed over the Native race it is said that no spot was more prepared to receive it than Opotiki. "Their cultivations," it was said, "had been neglected, and a low fever caused by lack of food had carried off more than one hundred and fifty persons." It was in these circumstances that Rev. Mr. Volkner, who was not altogether in favour among the Natives, and despite warnings, resolved to leave Auckland and to revisit them, carrying with him wine and quinine, though he considered it doubtful whether they would take such things from his hands. Meantime, towards the end of February, 1865, the Hauhau apostles under Kereopa and Patara arrived from Taranaki and Taupo, carrying with them the head of Captain Lloyd. At Whakatane they expressed their intention of giving Mr. Volkner orders to leave, and if he refused he would be killed. The Hauhaus arrived at Opotiki about the 28th February, 1865, and Mr. Volkner about the 1st March; and on the 2nd March he was, after what may be termed a mock trial, murdered under most revolting circumstances. The actual murder was committed, it is said, by Kereopa, but there is no doubt others, partially influenced by the frenzy of their new religion, were concerned in it. Three of the perpetrators were sentenced to death in March, 1866, and another suffered imprisonment; and Kereopa himself was tried, convicted, and hanged in 1871, and died acknowledging the justice of his sentence.

1866, A.–1, p. 68.

1865, E.–5, p. 1.

Owing to the disturbed state of the district no immediate attempt was made to punish the murderers, although a skirmish took place about the 21st May, 1865, by an expedition under Captain Freemantle in an attempt to seize one of those implicated. On the 27th July, 1865, Mr. Fulloon and others were murdered at Whakatane by another tribe, and it was decided to despatch a punitive expedition. In the Proclamation of Peace of the previous war, dated the 2nd September, 1865, the following reference is made: "The Governor is sending an expedition to the Bay of Plenty to arrest the murderers of Mr. Volkner and Mr. Fulloon. If they are given up to justice the Governor will be satisfied; if not, the Governor will seize a part of the lands of the tribes who conceal these murderers, and will use them for the purpose of maintaining peace in that part of the country and for providing for the widows and relatives of the murdered people." Two days later martial law was proclaimed throughout the Opotiki and Whakatane districts. *Gazette*, 1865, p. 279.

An expedition followed, assisted by the officers and men of H.M.S. "Brisk," and some of the murderers of Mr. Fulloon and Mr. Volkner were secured; and on the 30th December, 1865, Mr. Stafford decided they should be tried by the Civil Courts, which event took place a few months later. 1866, A.–1, p. 85.

On the 17th January, 1866, an Order in Council was issued confiscating all the lands within the Bay of Plenty district as defined in the schedule; and this was later amended, on the 1st September, 1866, by altering the boundaries and dating the taking as from that date. *Gazette*, 1866, p. 17. *Gazette*, 1866, p. 347.

On the 23rd March, 1866, the Governor reported that he had visited Opotiki among other places, and found the Hauhau fanatics entirely subdued, and tranquility fully established. Any defect in the Proclamation was apparently relieved by the Act of 1866, passed later, which expressly validated all Proclamations theretofore made.

Further than to reiterate that all the principal parties concerned were tried, convicted, and punished, and that a reserve of just over 20,000 acres was set aside for the rebels, it is unnecessary to follow the history further, since the confiscation could only be based on the preceding occurrences, and once peace was restored and an amnesty granted it forgave all intermediate offences. The Whakatohea, however, claim that, in addition to doing nothing to aggravate their crime, they actually assisted in bringing the arch-offender to justice.

To arrive at an understanding of whether the confiscation was based upon justice it is necessary to refer now to the circumstances under which such a confiscation could take place. The Proclamation is based on the New Zealand Settlement Act of 1863. By the 1864 Act the former statute was confined in its operation to two years. By the 1865 Act it was made perpetual, save that no more land could be taken after the 3rd December, 1867, making that portion of it operative for four years in all.

Prior to 1863 the colony was in a continual ferment with Native risings, and it was suggested, as a means to prevent their recurrence, the lands of the Natives might be seized (see Sir Frederick Whitaker's memorandum). Therefore the New Zealand Settlement Act of 1863 was passed, authorizing the Governor to reserve and set aside land for military and other purposes, while providing compensation for loyal owners whose possessions might be so seized. The Act was reserved for Her Majesty's pleasure, and disapproval was withheld subject to certain reservations, which, as the Governor would exercise the power, the Imperial authorities evidently expected he would see observed. These reservations or conditions are summed up as follows: "They considered that the duration of the Act should be limited to a definite period, and suggested the period of two years from its enactment. They desired that the aggregate amount of forfeiture should be at once made known, and the exact position as soon as possible; that an independent Commission, not removable with the Ministry of the day, should be appointed to inquire what land should be forfeited; that you yourself should be personally party to any confiscation, satisfying yourself that it was just and moderate; and that the lands of innocent persons should not be appropriated without their consent merely because it was in the same district as rebel property, and because it was required 1864, A.–1, p. 1. 1864, E.–2, App. II, p. 20. 1866, A.–1, p. 53.

for European settlement, but only in case they had a joint interest with some guilty person, and in case of some public necessity, as of defence or communication. Her Majesty's Government desired further that the proposed Courts should have the power of compensating not only persons absolutely innocent, but those whose guilt was not of such a character as to justify the penalty imposed on them. . . . With such observations as these, and subject to the requirements which I have described, the Act was allowed to remain in operation (though still subject to disallowance) because Her Majesty's Government greatly relied on your own desire to guard the Natives from any unnecessary severity; and on the conviction expressed by your Ministers that as this would be the first, so it would be the last occasion on which any aboriginal inhabitant of New Zealand would be deprived of land against his will."

The true construction of the Act and the instructions from the Imperial Government seems to have been the subject of a struggle between the Governor and his Advisers for many months. The position of the Government was, as summed up by Sir William Fox on the 4th July, 1864, as follows: "The intentions of the Government are precisely those indicated in the Governor's Speech, to which you refer. They have four objects in view in confiscating rebel lands —first, permanently to impress the Natives with the folly and wretchedness of rebellion; second, to establish a defensive frontier; third, to find a location for the European population, which may balance the preponderance of the Natives who occupy the rebel districts; fourth, in part to pay off the cost of a war forced by the Natives upon the colony. While achieving these ends, they would reserve for the future use of the Natives so large a portion of the confiscated land as would enable them to live in independence and comfort, and they would secure it to them by such individual titles under the Crown as might tend to elevate them above that communal system (or no system) of life which lies at the root of their present unsettled state."

1864, E.-2, p. 77.

In the reply of the Ministers to the Aborigines Society, of the 5th May, 1864, it is said the chief object of the Government in confiscation is "neither punishment nor retaliation, but simply to provide a material guarantee against the recurrence of these uprisings against the authority of the law and the legitimate progress of colonization which are certain to occur if the rebel is allowed to retain his lands after involving the colony in so much peril, disaster, and loss. . . . But it is not and never has been proposed to leave them without an ample quantity of land for their future occupation. A quantity much larger per head than the average occupation of Europeans in this Island is proposed to be set apart for them, on a graduated scale according to rank and other circumstances."

1864, E.-2, p. 20.

A careful review of the different standpoints seems to indicate that the Home authorities, while admitting the principle of confiscation, sought to confine it within prescribed bounds, which were not, owing to the peculiar nature of the tribal ownership of land, altogether applicable to the circumstances of New Zealand. The New Zealand Government apparently claimed the right to confiscate all lands (if all or some of the tribe rebelled), paying those who were not rebels compensation either in land or money, and to utilize the remainder of the land for public purposes.

To any one acquainted with Native tenure it must be apparent that an indiscriminate confiscation within a certain boundary, although practically the only one that would answer for settlement purposes, must work injustice in the case of many individuals, since their shares in the ownership of the land taken would be by no means equal. Similarly, where the lands of two rebel tribes adjoin, although both might be equally culpable, the exigencies of the situation might require more to be taken from one tribe than another: and it seems altogether impossible to work out in practice those estimable principles laid down by the Home Government, in which it required that the confiscation of territory was "not to be carried further than was consistent with the permanent pacification of the Island and the honour of the English name." There is, however, no guide as to what set of circumstances will make the confiscation just or moderate.

1864, E.-2, App. II, p. 21.

In this case, as far as we can gather, about 440,000 acres in all were taken from the Whakatane and the Opotiki Natives. The latter are the Whakatohea Tribe. In the first Proclamation about 87,000 acres, as we understand it, belonging to the Arawa Tribe, were erroneously included, and were restored to them; and about 40,832 acres at the eastern end were abandoned. This left about 312,168 acres, out of which 3,832 acres were absorbed by old land claims, leaving 308,336 acres. From the information supplied us we have reason to believe that the area taken within Whakatohea Block was 173,000 acres, or about half their total possessions, and all the flat and useful land. Out of both blocks there was required for the military settlers an area of 25,461 acres, and apparently 201,213 acres, including 96,261 acres awarded to loyal Natives, were returned to Natives. As far as we can learn, only the Opape Block, 20,326 acres according to survey, and about 2,000 acres of other lands, or 22,000-odd acres in all, were returned to Whakatohea. The consequence is that, after various sales to the Crown, the Whakatohea have, including the land returned to them, a total area of 35,449 acres. The Government is not, of course, responsible for the sales, but the land sold was the inland portion of the land left, and which was not so useful to the Natives as the former settlements from which they had been removed to Opape.

Colonel St. John's report, 1872, G.-4, p. 5.

Stout-Ngata, 1908, G.-1M, p. 1.

Judging by later events it would appear that, as far as Whakatohea was concerned, the confiscation of such a large area came very close to that punishment or retaliation that in 1864 the Government avowed was not its principal object. The strong feeling at the time may be gathered from Mr. Stafford's speech in the House on the 19th August, 1868: "The honourable member possibly alluded to the confiscation of from 400,000 to 500,000 acres. He was prepared to say, if there ever was a confiscation which was deserved, it was that at Opotiki. If there were ever atrocities unprovoked and utterly wanton and diabolical in their character, they were to be found in connection with the murders of Mr. Volkner and Mr. Fulloon, which led to the confiscation. Those atrocities were committed upon unoffending men by a people whose lands had never been invaded, who had been left in peace, and against whom no threat had been held out. They were committed without the slightest provocation, by persons amongst whom Mr. Volkner had lived peacefully for a series of years, labouring solely for the benefit of the very people by whom he was barbarously murdered. If those acts did not call for confiscation, how could previous confiscations be justified?"

1864, E.-1, p. 20.

Hansard, 1868, Vol. 2, p. 521.

It would seem to us that righteous indignation at a very diabolical murder partly swayed the judgment of those who advised and authorized the confiscation of such a large area. The punishment of the actual perpetrators was an after-event, and could not have been taken into account in assessing the amount of land that should be confiscated. Nor, apparently, was the fact sufficiently considered that the arch-criminal was of another tribe altogether. No doubt the Whakatohea Tribe was carried away by fanaticism, and was equally responsible.

In our opinion the fact that punishment was inflicted on the Whakatohea by a punitive expedition in 1865, and that the actual offenders were captured and dealt with according to the civil law, should have had some effect in lightening the punishment that was imposed on the tribe by confiscating so much of their land. But as a fact the lands were actually cut up and partly sold and dealt with before the principal offender (Kereopa) was brought to justice. We have not sufficient material before us to say what would have been a fair and just area to confiscate, nor do we think it wise for us to go into that question. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea Tribe, great as was their offence, was heavier than their deserts.

SOUTH ISLAND CLAIMS.—KEMP'S PURCHASE.

This is a matter which arises out of a transaction entered into some seventy-two years ago.

In the year 1848 the New Zealand Company was anxious to form a settlement on that part of the east coast of the South (or, as it was then known,

"Middle") Island now mostly included in Canterbury. Being by law debarred from dealing directly for the land with the Native owners, they approached the Governor-in-Chief, who in turn gave instructions to the Lieutenant-Governor of New Munster (which included the land in question) to promote the purchase from the Maori owners. That the New Zealand Company was the moving spirit in the matter seems clear from Lieutenant-Governor Eyre's letter of the 25th April, 1848, in which he acknowledges receipt of Colonel Wakefield's letter, on behalf of the New Zealand Company, "with respect to the contemplated purchase of lands in the Middle Island; and stating the limits within which you are willing to undertake payments in extinguishment of the Native title to the land referred to." So, in the instructions to Mr. Kemp of even date the latter is referred to as "Commissioner to negotiate the purchase from the Natives of certain lands required by the New Zealand Company"; while Mr. Kemp himself in his report of the 19th June, 1848, ventures "to hope that the arrangements I have made will meet with His Excellency's approbation, and at the same time prove satisfactory to the principal agent of the New Zealand Company, on whose behalf the land has been acquired." In addition, it is quite clear that the New Zealand Company found the money required for this and adjoining purchases.

1888, I.–8, p. 8.

1888, I.–8, p. 8.

1888, I.–8, p. 9.

The question of whether the Company or the Crown acquired the land is not now of much moment as far as the actual ownership of the land is concerned, since the Crown adopted and treated the contract as its own. But it does have considerable bearing on the question of how much land the Natives thought they were selling. They claim that they were told that it was a sale of, and they were only treated with for, the eastern seaboard between two former purchases, and that the consideration was never intended for more than that. Some colour is given to this view by Lieutenant-Governor Eyre's strongly expressed indignation at Mr. Kemp's action in recognizing Native rights over a large area, after being specially warned in a personal interview to guard against the "error of acknowledging a validity of title in the few resident Natives to vast tracts the larger portion of which had probably never even been seen, and certainly never had been made use of, by them; and that he [Lieutenant-Governor Eyre] repeatedly and distinctly enunciated to you that it was only rights or titles of the Natives, to the extent these might be found to exist, to the tract of country referred to which were to be purchased"—evidently referring to the theory (afterwards abandoned) that all land not actually occupied by the aboriginals belonged to the Crown. Whatever may have been intended, it is quite evident that the conveyance was drawn and executed so as to cover all the land lying between the former purchases on the north and south, and the east and west coasts of the South Island, except Banks Peninsula—somewhere about 20,000,000 acres in all.

1888, I.–8, p. 10.

1 MacKay, p. 208.

From the records we gather the following history of the events leading up to the sale: Somewhere before the 17th March, 1848, Governor Sir George Grey visited the South Island, and there "found, upon conversing with the principal chiefs of that Island, that they had all acquiesced in the propriety of an immediate settlement of their claims to land upon the following basis: that the requisite reserves for their present and reasonable future wants should be set apart for themselves and their descendants, and should be registered as reserves for such purposes, and that they should then relinquish all other claims whatever to any lands lying between the Nelson and Otago Blocks, receiving for so doing such sums as might be arranged, in four annual payments. Upon considering the number of Natives between whom the payment agreed upon was to be divided, it appeared to me that a total sum of £2,000, in four annual payments of £500 each, would be as large an amount as they could profitably spend, or was likely to be of any real benefit to them." On his return to Wellington he communicated verbally with the Lieutenant-Governor, promising to send down the Surveyor-General to conduct the purchase. Finding, however, that officer could not be dispensed with, he subsequently (8th April, 1848) sent word to Lieutenant-Governor Eyre that he found that the services of the Surveyor-General could not be spared, and instructed the Lieutenant-Governor to appoint some other person, stipulating it should be Mr. Kemp—or, at least, he should be the

1888, I.–8, p. 7.

interpreter—to conduct the purchase of the tract of country between the Ngatitoa purchase and that of the New Zealand Company at Otago.

"The mode," he writes, "in which I propose that this arrangement should be concluded is by reserving to the Natives ample portions for their present and prospective wants; and then, after the boundaries of these reserves have been marked, to purchase from the Natives their right to the whole of the remainder of their claims to land in the Middle Island. The payment to be made to the Natives should be an annual one, and should be spread over a period of four or five years. An arrangement of this nature will remove all possibility of the occurrence of any future disputes or difficulties regarding Native claims to land in that part of the Middle Island."

Lieutenant-Governor Eyre, after conferring or communicating with Mr. Wakefield, transmitted instructions to Mr. Kemp on the 25th April, 1848, to take the necessary steps for extinguishing the Native title, repeating, as to reserves and payment, the exact words used in Sir George Grey's despatch to him. He also enclosed a letter from Mr. Wakefield which apparently gave information as to the amount to be offered, as he is told that if any difficulty is found in concluding the negotiation within the limit of the amount sanctioned by Mr. Wakefield he is to report the most favourable terms it is practicable to offer. He was to depart on H.M.S. "Fly," and at Otago he was to pick up one of the Company's surveyors, who was, by Colonel Wakefield's directions, to survey and mark out the Native reserves considered requisite. 1888, I.–8, p. 8.

Mr. Kemp left as instructed, and on the 12th June, 1848, a deed was signed, of the material parts of which the following is a copy:—

[*Translation of Kemp's Deed.*]

"Hear, O ye people! We, the chiefs and people of Ngaitahu, who have signed our names and marks to this deed on the twelfth day of June, in the year of our Lord one thousand eight hundred and forty-eight, consent to surrender for ever to William Wakefield, the agent of the New Zealand Company established in London—that is to say, their directors—our lands, and all our territorial possessions lying along the shores of this sea commencing at Kaiapoi, at the lands sold by Ngatitoa, and at the boundary of Whakatu, and thence on to Otakou, and on till it joins the boundary of the block purchased by Mr. Symonds; running from this sea to the mountains of Kaihiku and on till it comes out at the other sea at Whakatipu Waitai (Milford Haven). But the land is more accurately defined on the plan. Our places of residence and our cultivations are to be reserved for us and our children after us; and it shall be for the Governor hereafter to set apart some portion for us, when the land is surveyed by the surveyors; but the greater part of the land is unreservedly given up to the Europeans for ever. The payment made to us is two thousand pounds, to be paid to us in four instalments. Paid to us this day, five hundred; in the next instalment, five hundred; in the next, five hundred; and in the last, five hundred; making a total of two thousand pounds.

"And the signing of our names and marks, being the token of our full consent, is done at this place at Akaroa, on the twelfth of June, 1848.

"JOHN TIKAO AND OTHERS."

On the 19th June, 1848, Mr. Kemp, having arrived back in Wellington with the deed, reported the result of his endeavours. He states that the deed of the district referred to, extending over to the West Coast, was duly executed by the Native chiefs on the 12th instant, in the presence of and with the consent of the people, and he had every reason to believe that the whole of the proceedings gave them general satisfaction. 1888, I.–8, p. 9.

On the 20th June, 1848, Mr. Kemp referred to the reserves intended for the Natives, and reported that "in obedience to the Lieutenant-Governor's instructions their pas and cultivations have been guaranteed to them, as expressed in the deed of sale; they are, generally speaking, of comparatively small extent. Beyond these I have not felt myself authorized in making any guarantee, and, with the consent of the people, have thought it better to leave the subject to be considered and decided upon between the Government and the Company as 1888, I.–8, p. 9.

soon as the survey of the district shall take place. By a reference to the map accompanying the deed of sale His Excellency will perceive that, while there are several Native settlements upon the line of coast between Akaroa and Otago, the inhabitants are but small in number, and, as they are widely scattered, I saw there would be great difficulty in inducing them to concentrate into one or even two blocks. In the event, therefore, of its being decided upon by the Government that they should have blocks reserved adjoining each of the settlements, I think there would be then but little obstacle, and little or no interference with the interests of the Company, in the division and survey of the district. At each of the Native settlements marked on the map the number of the inhabitants is also given, which may serve hereafter for a guide as to the quantity of land it may be thought desirable to set apart for their use, a matter which I believe may be easily and finally settled as the surveys of the coast-line progress."

There can be little doubt that Mr. Kemp was dealing with the Natives, as he supposed, on behalf of the Company, and that any title the Company could actually get would only be through the Crown; and the reference to the Government and the Company, in our opinion, shows that he must have believed, and led the Natives to believe, that the Governor, who was looked upon as the protector of the Natives, before issuing any title would see that those reserves were laid out. Governor Sir George Grey himself had laid down the policy of the Government, protecting the Natives, in a despatch to the Home Office two years before: "It will be found necessary in all instances to secure to the Natives, in addition to any reserves made for them by the New Zealand Company, their cultivations, as well as convenient blocks of land for the purpose of such future cultivation, in such localities as they may select for themselves" (14th September, 1846). Lieutenant-Governor Eyre's instructions to Mr. Mantell say: "It is our duty to see that proper and adequate reserves are set apart for them out of all lands sold."

1888, I.–8, p. 15.

Although the question of reserves was left uncertain with the best of intentions, it is out of this uncertainty that subsequent trouble arose.

1888, I.–8, p. 10.

On the 21st June, 1848, Lieutenant-Governor Eyre (through Mr. Gisborne) acknowledges Mr. Kemp's report of the 19th June, 1848, and expresses strong disapproval of what he considers Mr. Kemp's departure from his written and verbal instructions, viz:—

(1.) He had included more than the residential portions, and had thereby acknowledged the Natives' title to large tracts of unoccupied country.

(2.) That he was told to lay out reserves before the deed was signed. Not a single reserve was defined on the map or deed, but "instead is inserted a clause specifying that all their places of residence and plantations are to be left for their own use, and for the use of their children, and for those who follow after them, besides other additional reserves which are to be made by the Governor, when the land shall be properly surveyed hereafter—an arrangement, His Excellency observes, as indefinite and unsatisfactory as could well have been proposed, being in fact the very one which for so many years precluded the New Zealand Company from accepting a Crown grant for any one of their purchases, and which was during that time a source of the greatest anxiety, difficulty, and expense to the Government. It was, the Lieutenant-Governor directs me to state, your duty, in compliance with your instructions, to have had all the necessary reserves plainly marked on the ground, and indicated to the Natives, before any purchase was effected. It was for this purpose the New Zealand Company placed one of their surveyors at your disposal to make the requisite surveys."

(3.) The deed was executed to the Company, or their agent, instead of to the Crown. He is reminded that in the Taranaki purchase, where the New Zealand Company was similarly interested, the parties were the Natives and the Crown.

This error, His Excellency observes, may probably entail upon the Government the necessity of sending down a Commissioner to have another deed of sale executed in a proper form. It is due to Mr. Kemp to observe that, from the correspondence, it appears the form of deed in question was supplied to him by the authorities.

The Lieutenant-Governor reported the matter to the Governor-in-Chief on the 5th July, 1848, and in the course of that despatch says: "It remains for me to observe that, in accordance with the wishes of the New Zealand Company's principal agent, I purpose, as soon as the worst of the winter months are over, to send down a new Commissioner, accompanied by a surveyor, for the purpose of defining and determining all the Native reserves; and after the due completion of which I propose that another and more formal deed should be executed by the Natives, and the second instalment, which by that time would become due, be paid to them. By thus correcting the mistakes which have occurred without the lapse of any long interval of time, and before circumstances can have arisen to make the Natives disposed to take advantage of any opening left them to extort further payments, I would trust that some of the difficulties, otherwise unavoidable, may in a great measure be obviated, and especially as the comparatively small amount and scattered character of the population offer greater facilities for attempting such a rearrangement than could have been hoped for in any other portion of New Zealand." 1888, I.-8, p. 12.

At the conclusion of this despatch the Lieutenant-Governor says: "I must confess, therefore, that I cannot but anticipate that when the question is more fully inquired into it will be found that the purchase has been made, and the first instalment paid, without even the knowledge that such transactions were occurring on the part of very many of those whose interests are materially affected by it." As a matter of fact, as the years went by, it was urged that very many of those interested were not originally aware of the transaction.

On the 2nd August, 1848, instructions were issued to Mr. Mantell, "as the Commissioner appointed to complete the negotiations connected with the purchase of certain districts in the Middle Island, which were partially entered upon by Mr. Kemp in June last." The following duties were laid down for him:— 1888, I.-8, p. 14.

Firstly, to traverse by land (accompanied by a surveyor) the whole of the district lying between Ngatitoa boundary-line and Otakou Block; to see the principal Natives; and to decide upon and see distinctly marked on the ground the various reserves he considered necessary. In deciding upon the number, extent, or situation of the reserves to be set apart he was to be guided by the following consideration, viz.: that Mr. Kemp guarantees to the Natives in the deed of sale executed by them that their places of residence and plantations are to be left for their use and the use of their children, and provides, further, that other additional reserves, to be determined on by the Governor, should also be set apart for the same purpose. To the first class of reserves, therefore, they were said to be strictly and literally entitled. "But as it is desirable to avoid the difficulties which must certainly arise in laying out the lands for settlers, from the existence of innumerable small and irregularly shaped reserves dotted all over the country, or from their occupying important points upon harbours, it will be desirable that you should use your influence to induce the Natives to take their reserves in as few localities as possible, in as limited a number of reserves in each locality as you can persuade them to agree to, and in as regular-shaped blocks as circumstances will admit of. Much may be done towards accomplishing this by inducing the Natives of very small settlements to unite in taking their reserves at one locality, and by getting them to consent to give up the smaller patches of cultivation in exchange for additional land nearer the larger ones, a liberal provision being made both for their present and future wants, and due regard shown to secure their interests and meet their wishes."

There are six other duties laid down, but the only ones needing passing references are—

"Fourthly: It will be necessary to have a new deed executed by the Natives, conveying the lands to Her Majesty and her successors instead of Colonel Wake-

field, or the director of the New Zealand Company, which was the form adopted by Mr. Kemp; and the Natives should be informed of this, and an explanation given of the reason of the change. The Crown Solicitor will furnish you with the proper form, which can then be filled up so to meet the requirements of the case.

"Fifthly: At each locality where reserves are set apart for the Natives, the principal chief of the place must have a plan given to him showing the position, shape, and size of such reserves, signed by yourself; and all these separate reserves must be distinctly shown on the general map of the district to be attached to the new deed."

It will be seen, then, from these instructions that the Commissioner was authorized to consult with the Natives, follow out their wishes, make liberal provisions for their present and future wants, and see that due regard was shown to secure their interests; and it was further added, "One other point the Lieutenant-Governor would earnestly press upon your attention, and that is the great necessity of exercising the most indefatigable perseverance in all inquiries or discussions with the Natives, both in ascertaining their respective rights and interests, and in winning them to acquiesce in such arrangements as you may consider just and best."

1888, I.–8, p. 20. Mr. Mantell later said that in addition he was verbally authorized to promise the Natives schools, hospitals, and general care. This may have arisen out of a discussion as to how the Native reserves set aside for their future wants were to be dealt with. The Native Trust Act of 1844, which was intended to deal with Native reserves, provided that the proceeds of all real and personal property held by the trustees should be expended for the maintenance of schools, providing relief for the sick, and generally for the advancement of the Native race. Mr. Mantell said that these latter promises played an important part in securing the adhesion of the Natives to the terms of the deed of cession.

1 MacKay, p. 213. Mr. Mantell's report, dated the 5th September, 1848, shows that he was meeting with difficulties, which he says far exceeded his expectations. "In addition," he says, "to the repudiation of the sale, I have had to encounter every obstacle which the Natives could possibly throw in my way." He then says that after pointing out a reserve which he thought sufficient he got the approval of all except one, and that man stopped the survey. "I feel," he says, "that a survey by force even against one man, or concession, or intimidation would be inconsistent with my duty to Her Majesty's Government."

On the 21st September, 1848, he again reported, and refers to the vexatious and dishonest attempts at repudiation (as he describes them), and the further difficulties placed in his way.

1 MacKay, p. 215. On the 8th November, 1848, Mr. Mantell reports progress, and asks for the assistance, at Akaroa, of some gentleman well acquainted with the Native language, in drawing out the deed of sale, which he desires to have as perfect as possible.

On the 23rd December, 1848, he acknowledges receipt of a letter communicating certain changes in his instructions. These must be the ones referred to in the Governor-in-Chief's despatch of the 4th October, 1848. One of the results of these instructions was that Mr. Mantell did not submit the new deed for signature as proposed, and the idea of obtaining it seems to have been abandoned.

1 MacKay, p. 216. On the 30th January, 1849, Mr. Mantell made his final report. This shows again that the marking-out of the various reserves was not always done with that good will on the part of the Natives that the Lieutenant-Governor had hoped would be the case. No doubt the Natives were feeling dissatisfied, and expressed themselves accordingly.

1888, I.–8, p. 16. On the 10th February, 1849, the Governor-in-Chief reported to Earl Grey that, though he had no official information, he had received information that the whole of the details had now been conclusively and satisfactorily adjusted, so that the land question, in as far as nearly the whole of the Middle Island was

1888, I.–8, p. 20. concerned, *had been set at rest.* And Lieutenant-Governor Eyre similarly reported to the representative of the New Zealand Company on the 26th February, 1849, that the steps necessary to complete the points left indefinite by Mr. Kemp had been carried out.

The result of Mr. Mantell's labours was that reserves of an average of about 10 acres a man were marked off by Mr. Mantell. His reason for making them so small was given in a letter to the Governor-in-Chief dated the 13th March, 1851 : "In carrying out the spirit of my instructions on the block purchased by Mr. Kemp I allotted on an average of 10 acres to each individual, in the belief that the ownership of such an amount of land, though ample for their support, would not enable the Natives in the capacity of large landed proprietors to continue to live in their old barbarism on the rents of an uselessly extensive domain." 1858, C.-3, p. 12.

The Natives complained that these reserves were insufficient. Mr. Mantell has since admitted that they were far too small, and explains that he made them small, and confined the Natives as much as possible, to please the Government. But whatever may have been the spirit of the instructions, as he terms it, the written instructions were that a liberal provision was to be made both for their present and future wants; while Mr. Kemp, who procured the signatures to the deed, says in reference to that part of the deed which refers to the setting-apart of further reserves by the Government, "I think that the impression on my mind and on the minds of the Natives, made at the time, was that the provision hereafter to be made was one which was to be carried out in a liberal spirit, and in such proportions as to meet the wants and provide for the general future welfare of the Natives resident at the different settlements at the time the purchase was made." 1888, I.-8, p. 40.

As time went on and European closer settlement followed, complaints became louder and more insistent. Matiaha Tiramorehu, on the 22nd October, 1849, wrote to Lieutenant-Governor Eyre complaining of his reserve being too small : "You are aware, when Mantell first commenced his work in this place, his first mistake was at Kaiapoi—viz., he would not listen to what the owners of the land wished to say to him; they strenuously urged that the part that should be reserved for the Maoris ought to be large, but Mantell paid no attention to their wishes. It was thus he did wrong in the commencement of his work, and continued to do so in all his arrangements in regard to the portions which were reserved for the Maoris." By "doing wrong" the writer evidently means committing an error of judgment. "This," he also says, "is the commencement of our speaking or complaining to you, Governor Eyre; and although you should return to England, we shall never cease speaking to the white people who may hereafter come here." The words of this old Native have turned out to be literally true, for we are to-day, over seventy years after, inquiring into a petition in which the Natives continue to allege that they were not then justly treated. 1 MacKay, p. 227. 1 MacKay, p. 228.

It will be remembered that the position as it stood in 1848 to 1850 was that the arrangement had virtually been made between the Natives and the New Zealand Company's agent; that the actual residences and cultivations of the Natives had been expressly reserved; and that the question of further reserves was, with the consent of the Natives, left to the Governor to decide according to his discretion, but in the faith that the Crown, which had the command of the issue of any titles, would see justice done between the parties, and especially towards the Natives. Kemp's letter, 1 MacKay, p. 209.

During 1849 steps were taken with regard to the founding of a settlement at Port Cooper, afterwards known as the Canterbury Settlement. In April, 1850, the first pioneers arrived, and in December of that year the first body of the Canterbury settlers arrived. It then became necessary to issue titles, and in due course of time the Crown took the place of the New Zealand Company and treated the deed as its own, assuming in doing so that Mr. Mantell's mission had already settled the whole question of Native reserves. Complaints, however, continued to be made to the Government by the Maoris, while applications were also sent in to the Native Land Court, both with regard to the title to the reserves as well as claiming as their own land included in Kemp's deed as if it were not a valid deed.

A sitting of the Native Land Court to deal with these applications was commenced at Christchurch on the 20th April, 1868. At this sitting it soon became evident that the Crown's title under the deed of purchase was being N.L. Court, S. Is., M.B. 1, p. 1.

challenged. In addition to this there were disputes as to the ownership of various reserves. One of these, touching the Rapaki Block, occupied some time; issues were framed, and judgment was given on the 28th April, 1868. In the course of this judgment the learned Chief Judge says: "The Court feels that it would be leaving its duty only half discharged if it failed to notice the character of the deeds purporting to extinguish the Native title to this Island which have been produced before it. Whether the deed called the 'Ngaitahu deed' can have any effect whatever in law is not a question upon which it is necessary to pronounce any opinion; but, having been compelled in the course of these proceedings to consider the terms and stipulations in this and other deeds produced, the Court could not fail to be struck with the remarkable reservation by the vendors of 'all their pahs, residences, and cultivations, and burial-places, which were to be marked off by surveys and remain their own property.' This provision has not, according to the evidence, been effectually and finally carried out to the present day, nor has any release been sought for by the Crown. . . . The Court feels very strongly that it would be greatly to the honour and advantage of the Crown that the stipulations and reservations of these deeds of purchase should, without further delay, be perfectly observed and provided for. The present large assemblage of the persons interested has removed many of the difficulties which would otherwise attend the obtaining of the necessary agreement and release."

2 MacKay, pp. 202, 203.

After this judgment was delivered the Kaitorete case was called on. This was an application by the Natives to have the title to certain lands investigated. The claim was made on ancestral rights, and thus put the onus of proof upon the Crown of showing that it had purchased the land. Some of that land was already Crown-granted, and some was under pasturage license. Mr. Cowlishaw, for the Natives, did not claim the land which had been Crown-granted, but did claim the balance. After some evidence had been taken, Mr. John Hall, a member of the Executive, conferred with counsel, and the matter was adjourned until next day to ascertain whether any arrangement could be arrived at between the parties.

1 MacKay, p. 243.

1 MacKay, p. 204.

On the following day counsel for the Crown handed in what purported to be a reference to the Court, under section 83 of the Native Lands Act of 1865, of an uncompleted agreement. This reference, after reciting the authority under which it was made, goes on: "And whereas in the year 1848 a certain agreement was made between certain persons owning land in the Middle Island of the one part, and duly authorized officers of the Government of the other part, purporting to extinguish the Native title to land comprised in the plan hereto annexed, save over such lands as were thereby stipulated should remain the property of such Native sellers: And whereas such reserved lands have never hitherto been effectually and completely defined, and there are doubts whether the said agreement has been absolutely effectuated in law by written instruments: And whereas it is expedient to determine all such questions, and finally to conclude the agreement for the purchase of the lands comprised in the said plan: Now, therefore, the said agreement is hereby referred, in accordance with the above-mentioned Acts, to the Native Lands Court."

2 MacKay, p. 244.

1888, I.–8, p. 33.

Counsel for the Crown, in handing in the order of reference, said that it was proposed to adduce evidence that certain reserves were to be made under the Ngaitahu deed, which had never been carried out; and in respect to the non-fulfilment of those stipulations evidence would be given to show what quantity of land the Natives would be entitled to. This the Crown would consent to have given to them upon their signing a release of all claims to land in the Ngaitahu Block. Mr. Cowlishaw, for the Natives, objected to the order of reference on various grounds, which were overruled.

The Kaitorete case then proceeded. Some formal evidence was taken, and then Mr. Williams, for the Crown, put in the plan and the Ngaitahu deed, and said that was the Crown's case. Mr. Cowlishaw, for the Natives, contended the Native title had not been properly extinguished, and various legal questions were raised. The Chief Judge reserved his decision.

A very lengthy judgment was delivered on the 5th May, 1868. The judgment is emphatic that the Ngaitahu deed did not vest any estate in

2 MacKay, p. 211.

Mr. Wakefield or the New Zealand Company; but the Court was inclined to think that the deed did suffice to extinguish the title of the Ngaitahu Tribe in the lands described therein, and that a private person making the attempt to acquire the land will, if the transaction be fair, extinguish the Native title, gain nothing for himself, but give a title to the Crown. The Court then goes into reasons why, even if that were not good law, the Court could compel the specific performance of a parol contract for the sale of the land under the circumstances cited; "and it will be the duty of the Court," it says, "under the order of reference, to ascertain all the terms of the contract, and to make such orders as will secure the due fulfilment of them, by the Crown on one side and the Ngaitahu Tribe on the other."

Following the delivery of the judgment, Mr. Rolleston, on behalf of the Crown, asked for an expression of opinion from the Court as to what further quantity of land the Natives should be entitled to, and the Crown would immediately carry out whatever decision was given by the Court, a release from the deed being obtained. The Chief Judge replied that evidence would first be required as to the lands used about the homes, then as to fisheries, pahs, and burial-grounds. This concluded the Kaitorete case. 2 MacKay, p. 210.

Claims were then taken as to the reserves asked for by the Natives. Some Native evidence, claiming extended reserves, and the evidence of Messrs. Mantell and MacKay (called by the Crown) was taken. In the course of Mr. MacKay's evidence the suggestion was made that the reserves should be brought up to 14 acres per head all round, to make them equal to the average granted to the Kaiapoi section. The Court, on the 6th May, 1868, gave judgment, in part as follows: "As to the clause promising that the Governor would cause to be marked out other land for them later, the Court feels altogether bound by the evidence of the Crown witnesses. Whatever may be the demands of the Natives under this head, we think that in interpreting the contract we are bound, under the terms of it, by the Crown witnesses, for the discretion rests purely in the Crown, and accordingly we entirely follow them. At the same time we ought to express our opinion that the concessions of land proposed to be made, according to their testimony, go as far as a just and liberal view of the clause would require. We take the quantity to be provided, including what has already been set apart, at 14 acres per head, and are prepared to make an order accordingly. The Natives must sign a deed of release of their claims under these clauses, and no persons refusing to sign the general release to be entitled to any interest in the above order." S. Is., M.B. 1, p. 85.

Later on, a memorandum is made by the Chief Judge: "I intimated that on reconsideration I did not think it necessary that a release should be signed of claims under the deed, as the orders of the Court are evidence of the satisfaction of their rights—*i.e.*, under both the clause of reservation and the further clause containing the promises of the Governor—though I will leave the order standing as it is, but it need not be acted upon." S. Is., M.B. 1, p. 89.

Formal orders were drawn up on the 8th May, 1868, ordering that the agreement referred to the Court should be forthwith completed in terms of the deed of the 12th June, 1848, and that the stipulations in the deed should be observed by making certain grants, on the performance of which condition the claims under the deed of all the Natives specified in the order are to be absolutely released. This judgment did not remain unchallenged on the part of the Natives, who took proceedings in the Supreme Court at Christchurch to raise the question of the validity of the order of reference and the correctness of the judgment of the Chief Judge. A rule *nisi* was obtained, and made absolute on the 27th November, 1868.

Meantime the Ngaitahu Reference Validation Act, 1868, had been introduced. The purport of this was to validate the order of reference and the Native Land Court proceedings and orders. A protest against its becoming law was made by Mr. Mantell, on the ground that litigation was pending. The Act, however, was passed. This in effect made the order of reference as valid as if it had been signed by the Governor, and the Ngaitahu deed was to be a valid 1868, 4 *Hansard*, p. 185. See signed protest in *Hansard*.

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

1882, I.-2, p. 33. We have quoted the proceedings of the Native Land Court pretty fully because in some quarters that was understood to be an untrammelled settlement of the matter arrived at, after solemn judicial proceedings. But we have cited them in vain if we have not sufficiently shown that there was a broad acknowledgment by that Court, and those giving evidence before it, that justice had not up to that time been done to the Natives; that doubts were expressed by that Court as to the validity of the deed, and also as to the Government's position on the matter of the unfulfilled promises; that while the Court was sitting, and without previous warning or notice, the Government, by an order of reference, placed the matter wholly within the jurisdiction of that Court; and, further, that the tribunal, holding the matter of granting the reserves to be one purely within the discretion of the Governor or the Crown, decided that, whatever the demands of the Natives, the Court was completely bound by the evidence of the Crown witnesses, and accordingly entirely followed them. This was scarcely, we take it, the kind of investigation contemplated by the Act of 1865. Even had the first intention to demand a release from the Natives been carried out, at least the Natives would have had the chance of discussing, before they did sign, whether the proposed allotment was a fair one or not. Unless we are to apply to the Crown a different set of principles from those applicable to individuals, we feel that, notwithstanding the Court proceedings were validated by special Act, the fairness and justice of the allotment is within the scope of our inquiry. If we are barred by those proceedings we but perpetuate a wrong, since the Judge who presided at that Court, and the witnesses on whose evidence the decision was arrived at, all agree that the Natives ought to have been met in a more liberal spirit.

1888, I.-8, p. 61.

1888, I.-8, p. 33.

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

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

1881, G.-6. Another means of arriving at a measure of compensation, or "restitution," as it was called, was suggested by the Smith-Nairn Commission of 1879. That Commission, having found that the reservation the Natives were entitled to would be fairly and properly represented by 1 acre reserved for every 10 acres sold to Europeans, suggested that an account should be opened. One side was to consist of one-eleventh of the proceeds of all sales of the land bought from the Natives; the other was to show the then value of all reserves, and in addition

the actual expenditure by the Government on behalf of the Natives, including the price of the land. The balance was to be treated as a funded debt, to be used for the benefit of the Natives. Besides being founded on wrong premises, it would be found impracticable to formulate the complicated accounts and calculations which it would require, and various matters which the Commissioners evidently did not foresee would have to be taken into account.

In our opinion, had the Governor or those representing him fulfilled the duty of arbiter, left to him under the deed, to decide what was a fair and just provision for dwelling-places and cultivations of the Natives as well as for their present and future wants, he would doubtless have waited, as was contemplated by the deed, until the surveys were completed, and then made his selection on behalf of the Natives accordingly. About their settlements there could be very little doubt, although they might, as in the case of Wellington, require some adjustment for the general welfare. The rest of the reserves would be chosen with an eye to the future, probably not so much in town sections as in larger blocks, which would be expected to yield a revenue sufficient to provide for the actual wants of the Natives beyond what their small holdings would yield, as well as for their future health, education, and comfort, until at least they became sufficiently merged in the general body of inhabitants to make their special care unnecessary. The theory in buying their lands at a small price was that the lands were useless to the Natives as they were; that European settlement would vastly enhance their value; and that such enhancement of value would attach also to the reserves kept for the Natives, and would thereby yield them eventually a handsome profit. Thus they would not have the actual purchase-money to waste, to become, when it was spent, charges on the State.

This, however, has become impossible of realization. The requisite reserves for the present and reasonable future wants of the sellers and their descendants, as arranged by Sir George Grey with the principal chiefs of the South Island; 1 MacKay, p. 208. or Lieutenant-Governor Eyre's instructions to Mr. Kemp, to reserve ample 1 MacKay, p. 212. portions for their present and prospective wants; or those to Mr. Mantell, that 1888, I.-8, p. liberal provision be made both for their present and future wants, and due regard be shown to secure the interests of the Natives and meet their wishes, have never been carried out. We do not lay particular stress on the non-fulfilment of the promises as to the hospitals, schools, and care of the Natives, as referred to by Mr. Mantell, and the claims to which were expressly recognized and preserved by the Ngaitahu Reference Validation Act, 1868, since if proper and sufficient reserves had been made at the time for the then present and future reasonable wants of the Natives there would doubtless have been sufficient revenue realized from the administration of such of the reserves as were not presently acquired for Native occupation to have adequately met all demands on that score. We hardly think it was intended to treat the Maori with charity at the expense of the State, but rather to so utilize their own proper estate, which the Governor had been specially chosen to select for them, so that their physical and social well-being would not be neglected. In view of Sir George Grey's dealings with the Natives in other portions of New Zealand, the Natives had every reason to expect that the question of their future care would not have been lost sight of.

After considering the matter from every standpoint, we have arrived at the conclusion that the only fair way to deal with the matter is as if it were one between private individuals, where the contract had been unwittingly broken or for some reason had become incapable of full performance according to the original intention. Under these circumstances one would expect to put the aggrieved party in the same position as if the contract had been fulfilled, by allotting proper reserves, ascertain what the present value of them would be, and measure his loss accordingly. This, as we have already pointed out, is, under the circumstances, impossible. The reserves were to be made with certain objects, and in no sense in any relation to the average value of the whole estate. There seems, then, but one way left, and this is to assess the value of the estate as if it had been sold without any condition attached, and the measure

of damage would be the actual value of the land at the time it was bought, less any valuable consideration that may have been obtained by the Natives, whether in payment of the consideration or attempted performance of the conditions attached to the contract.

In order to arrive at this it will be necessary to adopt some basis of calculation. The land originally bought by Kemp's deed was estimated at something over twenty millions. From this has to be excluded Banks Peninsula (about a quarter of a million acres) which was bought under separate deeds; next the Arahura or West Coast Block, estimated to contain about five million acres. In addition there will be the area of the reserves given back to the Natives, as well as a proportion of the land given for landless Natives. There is also the absolutely valueless lands, such as snowy mountain-tops, the waste beds of rivers, and precipitous cliffs. If we deduct for this class of land and the reserves already granted, say, two and a quarter million acres, as well as the additional acres over the twenty millions, we arrive at a saleable balance of twelve and a half million acres, upon which the value has to be calculated.

It is, of course, impossible to fix that value by comparison with present-day values, yet it is extremely difficult to gauge it without being biased by the knowledge of the prodigious strides the Dominion has made since the year 1848. What was once practically wilderness has, by the enterprise, industry, and perseverance of the early settlers and those who followed them, been given an immense value. It is necessary, therefore, to arrive at some standard of value in 1848. Assuming that the Government was buying for itself and not for the Company, certain rules were laid down for the guidance of Government officers in a despatch of the 14th August, 1839, from the Home Office: "It will be your duty to obtain, by fair and equal contracts with the Natives, the cession to the Crown of such waste land as may be progressively required for the occupation of settlers resorting to New Zealand. All such contracts should be made by yourself through the intervention of an officer expressly appointed to watch over the interests of the aborigines as their protector. . . . I thus assume that the price to be paid to the Natives by the local Government will bear an exceedingly small proportion to the price for which the same lands will be resold by the Government to the settlers, nor is there any real injustice in this inequality. To the Natives or their chiefs much of the land in the country is of no actual use, and in their hands it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased by the introduction of capital and of settlers from this country. In the benefits from that increase the Natives themselves will gradually participate. All dealings with the Natives for their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's sovereignty in the Islands. Nor is this all; they must not be permitted to enter into any contracts in which they might be ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory the retention of which by them would be essential or highly conducive to their own comfort, safety, or subsistence. The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the Natives can alienate without distress or serious inconvenience to themselves. To secure the observance of this rule will be one of the first duties of their official protector."

1888, I.-8, p. 65.

1 MacKay, p. 6.

Earl Grey, in a letter of the 13th April, 1848, echoes similar sentiments: "Nor would there have been any injustice in taking advantage of the exclusive right of purchase vested in the Crown to obtain land on such terms from the Natives. The object of the Crown in acquiring the land being to turn it to the best account for the whole community, the price to be paid for it to the Natives would properly have been measured not by the value the lands they sold were capable of acquiring in the hands of civilized men, but by the amount of benefit they had themselves previously derived from that which they surrendered. It is hardly necessary to observe that, so estimated, the value of unoccupied lands would have been next to nothing."

To treat the lands as of nominal value would no doubt have been a fair way to look at the question if the original intention of the Crown to make adequate reserves or provision for the Natives had been properly carried out. The only known principles at that time, and which it is only reasonable to think that the statesmen had in mind, since they actually approved, were the system of tenths, or the reservation of one-tenth of all land sold for the benefit of the Natives, and a scheme of 15 or 20 per cent. of the proceeds of all resales of the land by the Government being earmarked for the welfare of the original owners of the soil (Lord John Russell, 28th January, 1841). Had such a system been carried out it must be admitted the Natives of the South Island would have been, had they held to the one and a quarter million acres which they would be entitled to, very rich landholders to-day. But this was not adhered to, and therefore it is necessary to consider the price the Government should pay as something more than a mere nominal consideration which was to be further augmented by future benefits to the remainder of the land. 1 MacKay, p. 2.

In order to ascertain what would be a fair thing for the Government to pay it is necessary to ascertain, for comparison, what private individuals were paying about that period. Fortunately, we have statutory authority for this. In the Land Claims Ordinances of 1841, Schedule B, the following prices are laid down as what would be considered fair and reasonable value of lands at the dates mentioned :—

Period when the Purchase was made.	Per Acre.
	s. d. to s. d.
From 1st January, 1815, to 31st December, 1824	0 6 to 0 0
,, 1825, ,, 1829	0 6 to 0 8
,, 1830, ,, 1834	0 8 to 1 0
,, 1835, ,, 1836	1 0 to 2 0
,, 1837, ,, 1838	2 0 to 4 0
,, 1839, ,, 1839	4 0 to 8 0

It will be observed that these prices increase very rapidly towards later years, actually redoubling themselves in the last three years. It has to be remembered, however, that individuals in dealing would not be confined to any class of land, and would naturally only buy the pick of the country, or land that had some special value to them.

Turning now to Government purchases about the time in question, we find that close to the period in review the Government bought about 300,000 acres of land in the North Island at $2\frac{3}{4}$d. per acre. Out of this about 40,000 acres were reserved to the Natives. 1888, I.-8, p. 71.

In the South Island, so far as we can ascertain, the price paid per acre by the Government was :—

1844—Otago : 400,000 acres ... ... $1\frac{1}{2}$d. per acre.
1847—Wairau : 3,000,000 acres ... ... $\frac{1}{4}$d. per acre.
1849—Port Cooper : 59,000 acres ... $\frac{3}{4}$d. per acre.
1849—Port Levy : 121,000 acres ... ... $\frac{1}{2}$d. per acre.

In all these cases, in addition to the price paid, there were also reserves granted. It may therefore safely be assumed that the real value was never less than the amounts paid, and would at the very least be, say, twice as much. On the other hand, this is a very large block of land, and would require, before it could be profitably utilized, to be provided with means of access, and some of it would therefore lay unprofitable for a time. But for the front or eastern portion a demand had already been created, and was only awaiting completion of the title to be taken up at once, which differentiates it somewhat from the position that existed in 1839. We have already allowed for the waste lands.

Let us take the Otago price, not as being a fair criterion as to the actual value (Mr. Tuckett, the Company's agent, had suggested paying 6d. an acre for that land), but as being the very lowest price that could be taken into consideration, and as forming a basis for making our calculations. Probably it had a higher value. 2 MacKay p. 10.

Twelve and a half million acres at 1½d. would give £78,125. From this has to be deducted £2,000 already received by the Natives, leaving £76,125 as principal. Then to this has to be added seventy-two years' interest—£274,050—(at 5 per cent.) or a total sum of £350,175. In addition we think there should be added something as a contribution towards the heavy expenses the Natives have been put to in endeavouring to get their claims recognized. They have consistently and persistently exercised their right to petition Parliament in seeking to have their grievance remedied, and they have also attended and sought relief from various Royal Commissions, including our own. For this we add slightly over 1 per cent., and recommend a sum of £354,000 as the full compensation.

We may say, however, that had the Natives actually been allotted the reserves they were entitled to, those reserves would at this date, we are sure, be greater in value than the compensation now recommended. In arriving at this opinion we take into account that to make them so would have required exertions and expenditure on behalf of the Natives, in addition to the increment that it was anticipated and intended should be given to such lands by the spread of civilization and the extension of the settlement of the country.

We have therefore no hestitation in recommending what we have suggested as a reasonable basis on which this nearly century-old grievance, arising in the first instance out of misconception, prolonged through misunderstanding, and magnified by neglect in taking prompt measures to rectify it, should now, if possible, be amicably settled.

Should Your Excellency's Advisers deem it fitting to settle this long-standing grievance, either on the basis proposed by us or on any other that might be considered just and equitable, might we respectfully suggest that, in allotting any funds for the purpose, regard should be had to the future as well as the present wants of the Natives interested.

Dated this 30th day of November, 1920.

R. N. Jones,
John Strauchon,
John Orsmby,
} Commissioners.

To His Excellency the Governor-General of New Zealand.

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