"THE land of those Natives who have adhered to the Queen shall be secured to them; and to those who have rebelled, but who shall at once submit to the Queen's authority, portions of the land taken will be given back for themselves and their families.

"The Governor will make no further attack on those who remain quiet.

"To all those who have remained and shall continue in peace and friendship, the Governor assures the full benefit and enjoyment of their lands."

These promises appeared to us very clear and very solemn, and remembering another maxim of Lord Coke's,—*Rex non potest fallere*, we found in these proclamations some guide to the intentions of the Legislature in framing the tenth clause of the Amendment Act, *i.e.*, an intention of giving full power to Government to carry out and perform these pledges. And we notice that the words are very distinct. Those Native subjects who should remain in peace and friendship were assured the full benefit and enjoyment of their lands, not lands of equal value somewhere else, but their own ancestral territory.

I must guard myself here against being supposed to say that it was the business of the Compensation Court to take charge of the honor of the Crown and fulfil its pledges. If the Act of 1865 had been perfectly clear, and the several rights of the Crown, and of the claimants thereunder had been unmistakably set forth, we should have interpreted the law even if in our judgment honor and equity had failed. But when the intention of Parliament is not clear, surrounding circumstances must be admitted as a guide thereto and even contemporaneous exposition. Thus Grose J. in Rex *v.* Miller, (6 T. R. 280) "I admit that where there is any doubt in a Statute or Charter it may be explained by usage."

The doctrine of interpretation was greatly enlarged in the celebrated case of the "Alexandra" where a full bench of Judges permitted even the speeches of honorable members who spoke on the passing of the Foreign Enlistment Act to be quoted as a guide to the intention of Parliament in making that law, and I myself have used the same means of interpretation in an argument in the Supreme Court before Chief Justice Arney (Attorney-General *v.* Gilbert).

Our view then of the Act of 1865 is that a great change is effected in the priority of rights of the several classes of persons before enumerated as soon as the agent for the Crown shall have elected to give land in lieu of money, and this we apprehend that a due regard to the promises of the Crown and the intentions of the Legislature if we have rightly ascertained them, should, except in cases of great necessity, none of which in our judgment have yet come before us, always induce him to do.

We place these rights now in the following order:—

1. Loyal owners; 2. Military Settlers and works of defence; 3. Ordinary purchasers of superfluous land.

N.B.—The legal authority to make these sales is extinguished as before observed.

The question will now arise why land could not be ordered for these loyal owners by the Court out of other lands in the Province subject to the provisions of the Acts. The objections are two.

Firstly: We think that if the Natives demand their own land or so much of their tribal estate as will represent their proportion of the tribe, they are entitled on the reasoning before given, to have it.

The question of locality is as before stated in our judgment a mere question for the decision of the Court. If the previous reasoning is correct, the discretion as to locality rests with the Court, and we should certainly choose that locality and in all respects take such other measures as *(cæteris paribus)* would most fulfil the promises of the Crown and preserve its honor, that is to say, wherever we think that a discretion is left to the Court by the Legislature.

But the second reason is of greater force because it rests on undoubted facts and a state of things which presents the insuperable obstacles to which I have previously alluded. The other lands in the Province subject to the provisions of the Acts are the Ngatiruanui Coast Block, and the Ngatiawa Coast Block and the Orders in Council taking these blocks under the Act both contain the clause before referred to ordering that the lands of no loyal Natives shall be taken except as aforesaid. Neither of these blocks have yet been investigated by the Compensation Court, and we are in entire ignorance of what parts of these blocks will be free from loyal claims. If then we were to place the loyal claimants to the Oakaura Block on any part of these other blocks we should be doing precisely the same thing for ourselves that the Government or some other authority has already done for us in the case of the Oakura Block, *i.e.*, appropriating the land in other blocks before we knew what was appropriatable, and at some future sitting of the Compensation Court these very persons would have to be ousted on behalf of persons who had superior rights, if the Court would then have power to oust them. Thus the difficulty would only be defined in time and shifted in place.

It therefore appeared to us that the compensation in land to be ordered to the Oakura claimants must come out of the Oakura Block.

I must observe in passing that it is possible that the Military Settlers on Oakura had been located there and their selections made and possession given before the passing of the Act of 1835. If this is so, for as before stated we had no evidence on the subject, the rights of the Military Settlers would rest on a stronger basis in equity, though they would still fail in law, as the Act of 1865 contained no continuing clause nor any expression saving existing rights. And wherever the Act of 1865 conflicts with or alters the Act of 1863, it must of course have the precedence, and supersede the antagonistic portions of the prior Act. But in the Compensation Court we cannot, as decided in Mr. Lewthwaite's case, support equitable rights, where the legal rights of others come into conflict with them. The remedy rests with the Legislature.

Having thus arrived at the (to us) unavoidable conclusion that the claimants before us were entitled to 7,400 acres of good land in this block, and having accepted Mr. Atkinson assertions that the whole of the available land except 2,500 acres had been appropriated to Military Settlers, the question then arose: "What are we to do?"

We thought that possibly the Government were not aware of the large majority of owners of this land who had remained loyal, and reflecting on the great public calamity which would be caused, and the serious embarrassment which would occur to the Government if we issued orders of the Court extending, as they would have done, over the lands of considerable numbers of these Military Settlers, we determined to despatch one of our number to Wellington to place the state of affairs before the