F.—No. 6A.

REPORT

OF THE

SELECT COMMITTEE

ON THE

EVIDENCE ADDUCED BEFORE THE NATIVE LANDS BILL COMMITTEE,

AND THE

PETITION OF JAMES DE HIRSCH, OF AUCKLAND.

APPOINTED 31ST AUGUST, 1869. REPORT 3RD SEPTEMBER, 1869, AND, WITH THE EVIDENCE AND DOCUMENTS PRODUCED BEFORE THE COMMITTEE, ORDERED TO BE PRINTED.

WELLINGTON.

1869.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

TUESDAY, 31ST AUGUST, 1869.—*Ordered*, "That a Select Committee be appointed to take the evidence of Mr. F. A. Whitaker on certain allegations affecting him contained in the evidence of certain witnesses examined before the Committee on the Native Lands Bill; such Committee to consist of Mr. Richmond, Mr. Carleton, Mr. Creighton, Mr. Brandon, Mr. Clark, Mr. Baigent, and the Mover. Three to be a quorum. To report not later than Thursday, and to have power to communicate with any Committee of the Legislative Council appointed for a similar purpose." (*Hon. Mr. Dillon Bell.*)

WEDNESDAY, 1ST SEPTEMBER, 1869.—*Ordered*, "That the Petition of J. de Hirsch, of Shortland, and all papers in relation thereto, as laid before the Public Petitions Committee, together with the Report of that Committee thereon, be referred to the Committee on the Evidence adduced before the Native Lands Bill Committee." Also, "That the said Committee have leave to sit this day, notwithstanding that the House may be sitting at the time." (*Mr. Cracroft Wilson, C.B.*)

REPORT OF SELECT COMMITTEE ON EVIDENCE ADDUCED BEFORE THE NATIVE LANDS BILL COMMITTEE.

YOUR Committee have the honor to report that they decline to make any recommendation on the Petition of the said James de Hirsch.

HUGH CARLETON,
Chairman.

3rd September, 1869.

PROCEEDINGS OF THE COMMITTEE.

WEDNESDAY, 1ST SEPTEMBER, 1869.

PRESENT:

Mr. Baigent,	Mr. Carleton,
Hon. Mr. Dillon Bell,	Mr. Clark.

Order of reference read.

The Hon. Mr. Dillon Bell moved, That Mr. Carleton do take the Chair.

Agreed to.

The Hon. Mr. Dillon Bell moved, That the Committee adjourn to the Legislative Council Chamber to confer with the Select Committee of the Legislative Council.

Agreed to.

The Committee then adjourned.

JOINT COMMITTEE.

PRESENT:

Legislative Council.	*House of Representatives.*
Hon. Mr. Gray,	Mr. Baigent,
Hon. Mr. Lee,	Hon. Mr. Dillon Bell,
Hon. Mr. Mantell,	Mr. Brandon,
Hon. Mr. Seymour.	Mr. Carleton,
Hon. Colonel Whitmore.	Mr. Clark,
	Mr. Creighton,
	Mr. Richmond.

Orders of reference read.

On the motion of Mr. Carleton, the Hon. Mr. Mantell took the Chair of the Joint Committee.

The Hon. Mr. Lee moved, That the evidence contained in the printed Report of the Native Lands Committee of the House of Representatives be accepted as evidence.

Agreed to.

The following letter from Mr. J. de Hirsch was read:—

Wellington, 1st September, 1869.

SIR,—

I have the honor to tender my evidence, and solicit to be examined before the Committee on the Native Lands Bill, in support of the amendment.

I have, &c.,
JAMES DE HIRSCH.

The Hon. W. B. D. Mantell, Chairman of Committee.

The Hon. Mr. Dillon Bell moved, That Mr. de Hirsch be heard before the Committee.

Agreed to.

The following letter from Mr. J. Horne was read:—

Wellington, 1st September, 1869.

SIR,—

I have the honor, as agent for and representing Mr. Robert Graham, of Auckland, and also on my own behalf, to solicit that Mr. Robert Williams Wynn, of Auckland, Solicitor, may be permitted to appear before the Committee as Counsel for Mr. Graham and myself, to cross-examine Mr. Frederick Alexander Whitaker, a witness to be examined this morning before the Committee in opposition to the amendment of the Bill, and from whose cross-examination material evidence in support of the amendment will be elicited.

I have, &c.,
J. HORNE.

The Hon. W. B. D. Mantell, Chairman of Committee.

Mr. Creighton moved, That Mr. Wynn be admitted to appear on the part of Messrs. Graham and Horne before the Committee.

Agreed to.

The Hon. Mr. Seymour moved, That the parties applying to be examined, and the Counsel, be introduced forthwith.

Agreed to.

The parties being in attendance were called in.

Mr. Carleton moved, That Mr. F. A. Whitaker be first examined.

Agreed to.

Mr. F. A Whitaker and Mr. J. de Hirsch examined.

Mr. Creighton moved, That a copy of the Reporter's short-hand notes of the evidence of Mr. J. de Hirsch be furnished at once to Mr. F. A. Whitaker.

Agreed to.

The Committee then adjourned.

THURSDAY, 2ND SEPTEMBER, 1869.

PRESENT:

Mr. Baigent,	Mr. Clark,
Hon. Mr. Dillon Bell,	Mr. Creighton,
Mr. Brandon,	Mr. Richmond.

Mr. Carleton in the Chair.

Further orders of reference read.

The Chairman informed the Committee that he had conferred with the Chairman of the Legislative Council Committee, and that the Legislative Council Committee had resolved to sit apart.

The following letter from Mr. John Lundon was read:—

SIR,— Wellington, 2nd September, 1869.

I have the honor to request that you will afford me an opportunity of giving evidence before the Joint Committee on Native Lands Bill, in reply to certain allegations made against me by Mr. de Hirsch and others.

I also claim to be heard as being interested in certain blocks of land at the Thames, my title to which I conceive may be injuriously affected by the Bill now before the Legislative Council to amend "The Native Lands Act, 1865."

I have, &c.,

The Chairman, Joint Committee on Native Lands Bill. JOHN LUNDON.

Mr. Creighton moved, That Mr. J. Lundon be heard before the Committee.

Agreed to.

Mr. Richmond moved, That Mr. Lundon be invited to make a statement as to those matters in which he considers his character impugned by the evidence already taken by the Committee, and that, without allowing any cross-examination, the Chairman then report the supplementary evidence to the House.

And on the question being put, the Committee divided.

Ayes, 4.	*Noes*, 1.
Mr. Brandon,	Hon. Mr. Dillon Bell.
Mr. Creighton,	
Mr. Clark,	
Mr. Richmond.	

So it was resolved in the affirmative.

The Chairman reminded the Committee that the Order of Reference made by the Legislative Council, under which the joint proceedings in the Legislative Council Chamber took place, was much more comprehensive than the order made by the House of Representatives; and that it would be his duty, now that the joint action of the two Committees was concluded, to restrict the proceedings within the Order of Reference made by the House.

The Hon. Mr. Dillon Bell moved a resolution.

The Chairman put it to the Committee whether the resolution was within the Order of Reference.

And it passed in the negative.

The Hon. Mr. Dillon Bell then moved, That the Resolution be entered upon the minutes.

Agreed to.

That the Committee proceed to consider whether the proposed new legislation would now be advisable, after hearing the evidence taken yesterday and to-day.

On the motion of Mr. Dillon Bell, *Ordered*, That the witnesses attend before the Committee.

Mr. Lundon was then examined.

The minute book of the Public Petitions Committee, and the papers relative to the petition of Mr. J. de Hirsch were produced and read, together with an affidavit made by Mr. J. de Hirsch, and ordered to be entered upon the minutes. (See Appendix A.)

And then the hour for the meeting of the House having arrived, the Committee adjourned.

FRIDAY, 3RD SEPTEMBER, 1869.

PRESENT:

Mr. Baigent,	Mr. Clark,
Hon. Mr. Dillon Bell,	Mr. Creighton,
Mr. Brandon,	Mr. Richmond.
Mr. Carleton,	

Minutes of previous meeting read and confirmed.

The Committee proceeded to consider the evidence taken before the Public Petitions Committee on the petition of James de Hirsch, which had been referred to this Committee by order of the House, and Mr. Whitaker being in attendance,

The Clerk read the evidence to him. (For the evidence see Appendix A.)

The Chairman informed him that, in pursuance of a resolution, he was at liberty to make a statement.

The petition and affidavit of Mr. de Hirsch were produced.

Mr. F. A. Whitaker made a statement.

Mr. Creighton moved, by way of resolution, That this Committee declines to make any recommendation on the Petition of James de Hirsch, of Auckland.

Agreed to.

Mr. Creighton moved, That the Chairman be requested to report accordingly.

Agreed to.

Mr. Clark moved, That the evidence and statements taken before this Committee, and the Joint Committee, with the documents produced, and also the evidence referred from the Public Petitions Committee to this Committee, together with the documents, be printed, and appended to the evidence taken before the Native Lands Bill Committee.

Agreed to.

The following Report was agreed to :—

"The Committee have the honor to report that they decline to make any recommendation on the Petition of the said James de Hirsch."

The Committee then adjourned.

7th September, 1869.

SELECT COMMITTEE ON EVIDENCE ADDUCED BEFORE NATIVE LANDS BILL COMMITTEE.

WEDNESDAY, 1ST SEPTEMBER, 1869.

Mr. Frederick Alexander Whitaker in attendance and examined.

Mr. F. A. Whitaker.
1st September, 1869.

1. *The Chairman.*] You reside at Graham's Town?—I do.

2. You are a barrister of the Supreme Court?—I am.

3. *Mr. Dillon Bell.*] The Committee understand that you desire to give some evidence on the subject of the allegations contained in certain evidence which was taken before the Committee of the House of Representatives on the Native Lands Bill, which allegations I presume you have seen?—I have read portions of the evidence of Mr. O'Keefe and Mr. Buchanan.

4. If you will turn to page 9 you will find the following statement in Mr. O'Keefe's evidence: "I placed my agreement, to prepare a lease, in the office of Messrs. Whitaker and Russell. It remained in that office for two or three months. I called to know if the deeds were ready; I was informed that they were not ready. Subsequently I found that Mr. Whitaker, jun., solicitor of the Supreme Court, and a man named John Lundon, went to three of the Native owners of this property, and, by representations, they succeeded in obtaining another lease from the Natives of the same property. It was some time in March, 1869. Mr. Whitaker, jun., is no partner of the firm of Messrs. Whitaker and Russell, nor is he associated with them in any way." Further,—"I was in possession at the time the lease was obtained by Whitaker and Lundon, and am now in possession. They had full notice that the land was occupied. I was in possession from the 9th September, 1868. They were fully in possession of the fact that large machinery was being erected on the property. On hearing that Whitaker and Lundon had obtained a lease from the Natives, I inquired of the Natives why they had given the lease, but I could get no satisfactory answer from them. One of the Natives, Aperahama, the father of one of the owners, refused to sign the lease, and stated as a reason that he would be committing a robbery, as he had already leased the land to Horne. Mr. Joseph Cook, Native interpreter, was present, and explained the questions and answers." Have you any statement to make with regard to the transactions in which you are said to have been concerned?—This case, upon which Mr. O'Keefe gave evidence, appears to relate to a block at Kauaeranga, No. 23, which is a sample of the whole of the lands at Graham's Town to which I lay claim; and I presume, therefore, that in relating the facts concerning this block, the Committee will understand that I speak of the whole of Graham's Town. It is mainly as to the words "by representations," which seem to impute somewhat of fraud to myself, that I wish to speak. At the time I first became connected with Shortland and Graham's Town, soon after I arrived from England, I became aware, of course, of the value of this land, although it was not so valuable then as it is now. I am not sure in reference to the lease of No. 23; but all the leases to Mr. Graham were not then completed, as many of the signatures of the Natives had not been obtained. It was then perfectly competent, of course, for any other person than Mr. Graham or Mr. Horne, the so-called owners of this land, to lease it from the Natives according to any view which could be taken of it; but upon making further inquiries, I discovered that for these blocks no certificates of title had been issued. Upon referring to the Native Lands Act, I found that all lands, conveyances, gifts, and so forth, made before the issuing of the certificate, would be made absolutely void. I therefore deferred any operations until such time as the certificates might be issued. This took place about the beginning of April last. I then went to the Natives, and told them I wished to obtain leases of this land. They were placed in full possession of all the facts of the case. It was distinctly understood, and I have brought down the interpreter I made use of on the occasion, for the purpose of proving that it was distinctly understood by the Natives that a question of law was involved between ourselves and the parties they had leased to before. We in no way gave them to understand that we were connected or in any way associated with any of the former owners. They demurred slightly on these grounds; not that they considered it unjust or wrong, but that they would be embroiled in trouble and litigation with the other parties. Of course it was then, as I conceived, fair, and my duty, to explain to them that it was my risk, that I embroiled myself, that I was fighting against the original holders, that there was a hitch in the law, and that the onus of fighting any person who had obtained illegal possession of the land would fall upon us. The Natives complained very much about the non-payment of rent to them, and said that they would be only too glad to get better tenants, provided they would not embroil themselves in litigation, as I believe it was afterwards stated by the opposing party that they would be sent to the Stockade on Mount Eden, and it was this which they were afraid of. I then repeated what I had to say, namely, that it was my look-out, and lay between myself and the original holders, in the Supreme Court. The Natives then signed. The reason the whole of the Natives did not sign at the time I first turned my attention to this land was this, that I did not consider myself in the least degree bound, if I took the responsibility of waiting until the law gave me permission to deal with Native lands, by any transactions that might have illegally taken place between other parties and the Natives while I was waiting until the law would permit me to deal with them. I waited a great many months, because I knew that the law would not bear me out in dealing with the Natives; and during those months many signatures were obtained by the opposite party, in contravention of the law, which I was waiting for.

Mr. F. A. Whitaker.
1st September, 1869.

5. *The Chairman.*] Are they the same Natives who signed the other agreements to which you referred?—Yes; after the fullest explanation had been given to them of what they were doing.

6. *Mr. Dillon Bell.*] Were you in partnership or association with Mr. John Lundon, whose name is referred to in the evidence which has been placed in your hands?—I was in partnership; that is, he was to look after the Natives, as I had not time to do so. He was to see the Natives at different places about the land, and the deeds were prepared in our joint names.

7. *Mr. Creighton.*] What was the date of the lease which you say you obtained from the Natives?—I could not state the exact date; it was in the month of April last. The certificates were issued about the end of March or the beginning of April, and my deeds were obtained at once.

8. You have seen question 74, put to Mr. O'Keefe, "Do you know that Lundon refused to sign the deed?—Yes; my solicitor, Mr. J. B. Russell, told me he refused to sign the deed." The question refers to a deed for No. 23, stated previously by Mr. O'Keefe as "signed by Frederick A. Whitaker, purporting to be from Frederick A. Whitaker and John Lundon to Michael Hannaford and N. S. Walker." Did Mr. Lundon refuse to sign that lease?—I understand that he did refuse, although I do not know of my own knowledge. I asked him to sign it, but he did not, and said he would be guided by his counsel.

9. You exercised a right of property over that land?—In this matter it was entirely an act of friendship, and I did not consider that it would be brought against me in evidence, because I never read the deed, and trusted entirely to what was put in it before they signed it. They were friends of mine, and I said I would take no advantage, and assigned my interest over, and I believe I would have succeeded in getting John Lundon to do the same. I did not contemplate any effect as to right of property, but gave them what I had to give, that they might be secured. I got nothing for it, and leased it to them for exactly what they paid the Natives, to secure them against my death, or whatever might occur.

10. You say the Natives signed the lease to yourself and Lundon; did all the Native owners sign?—We have only three out of four signatures to number twenty-three.

11. Were you engaged as counsel or solicitor in preparing the first lease from the Natives to Mr. Horne?—I was not; nor to Mr. de Hirsch in any way. They were all made while I was on the seas, before I arrived.

12. *Mr. Carleton.*] Are you aware whether Judge Munro, at a sitting of the Native Lands Court held on the 1st October, 1868, stated that "the certificate must issue from the date of the hearing of the case at Shortland?"—I am not aware of it.

13. Are you aware that an order was made by Judge Munro?—I was not; I presumed so on account of the certificate afterwards being issued.

14. Did the Native owners execute leases to certain parties after the making of the order, but before the issue of the certificate?—They executed leases before the issue of the certificate, and I presume after the making of the order. I only looked at the certificate.

15. I am to understand that you are aware that the certificate does not bear date from the making of the order?—I am aware of it.

16. When did you become aware of the fact?—When the certificate was issued.

17. Did the Natives afterwards execute new leases to other parties after the signing of the certificate?—They did.

18. Did they execute new leases to you?—They did.

19. Did they receive additional payments for such leases?—They received so much rent; that was all. I paid them a portion of the rent in advance, but no bonus or premium.

20. Are you aware that the Native lessors have been paid twice over for leasing the same sections?—I was not aware whether they had been paid. I knew they were leased.

21. You have stated that the original leases were illegally obtained. How do you know that the transaction was illegal?—I stated it as a lawyer, because it was before the issue of the certificate. The leases were in existence, and no certificate had been issued.

22. Is it declared in the Native Lands Act that such a transaction is "illegal"?—Most unquestionably so.

23. Is it not rather stated that the transaction is "void"?—Those are the words used, but I concluded that the terms were synonymous.

24. Does not the term "illegal" rather signify in opposition to the law?—I should think it had precisely the same signification as the word "void." Whatever is made outside the law is illegal, as it is in contravention of the law, and therefore illegal.

25. Are you aware from the reports of debates in the House, that a gentleman of the legal profession, Mr. Travers, has expressed his opinion in the House, that, according to his reading of the Native Lands Act, the transaction in question was not invalidated by anything contained in that Act?—I am not aware of it.

26. Can you point out anything contrary to fact in the evidence contained in the report of the Committee on the Native Lands Bill?—I have not had time to peruse the whole of it, as I only arrived in Wellington this morning; but as to some of the opinions in reference to the bearings of the amendments in the Bill upon Mr. O'Keefe, and parties leasing No. 23, I think it would have a decided influence, although he thinks it would not. The "representations," if "misrepresentations" are meant, I must emphatically deny, because the whole thing was laid before the Natives.

27. *Mr. Dillon Bell.*] Is there any interest in which you and Mr. Lundon are concerned, in Kauaeranga, No. 23, which is now the subject of any action or proceeding in the Supreme Court?—I think there is not, as far as I am concerned. Some actions have been brought against him, without myself, although we are partners, but I do not think any of them apply to 23.

28. There is no case in which you are concerned in Kauaeranga, No. 23, pending in the Supreme Court?—There is not.

29. When you state that you use the words "illegal" and "void" as synonymous, do you mean that they have an equal interpretation, in your opinion, in applying the 75th section of "The Native Lands Act, 1865," which says, "Every conveyance transfer, gift, contract, or promise, affecting or

Mr. F. A. Whitaker. 1st September, 1869.

relating to any Native land, in respect of which a certificate of title shall not have been issued by the Court, shall be absolutely void?"—In reference to that question, and the signing of deeds before it was possible to comply with that section.

30. Was it because you considered it illegal to make any treaty with the Natives before the issue of the certificate, that you did not do so?—It was.

31. Had you any opportunity of making any treaty with the Natives before the issue of the certificate?—Yes.

32. Why did you not avail yourself of the opportunity?—Because I held it on some of the best legal authorities, and on my own strong opinion, that any deeds signed before the issue of the certificate would be absolutely null and void.

33. Do you consider, as a lawyer, that any one who holds a conveyance or other instrument, affecting any Native land, executed by the Natives, and made before the issue of the certificate, has committed any breach of the Native Lands Act?——

On the motion of Mr. Creighton, it was resolved that this question be not put.

34. Are you aware of any other cases in which transactions have taken place between the date of the order and the date of the certificate being issued?—I am not.

35. So far as your interest in Lundon's is concerned, what would be the effect of any decision by which the date of the certificate should be made to be the date of the order?—The effect would be to invalidate our title, if the certificate were dated back to the order. I will explain it. The order might be provisional, as it was, I believe, in other cases, when certain conditions were complied with, and the certificate might be dated on the day on which the conditions were complied with.

36. I understand you to say that the transaction which took place before the issue of the certificate was illegal, and, in consequence, you did not make any transaction, which you might otherwise have done?—Yes.

37. Is the Committee to understand that you contend your course was in strict accordance with the law, in not making treaty before the issue of the certificate, and that the course taken by any one who made the treaty is contrary to the law?—Yes.

38. Then what would be the effect of any decision which should place the date of the certificate the same as the date of the order: would it, in your opinion, place you at a disadvantage, as a person who had not complied with the law?—Yes, it would place me at a great disadvantage, as depriving me of the results of my time and money.

39. Mr. O'Keefe states, in reply to question 72, "I was in possession at the time the lease was obtained by Whitaker and Lundon, and am now in possession. They had full notice that the land was occupied. I was in possession from the 9th September, 1868. They were fully in possession of the fact that large machinery was being erected on the property." Were you aware that, at the time you were making the treaty with the Natives, large machinery was being erected on Kauaeranga, No. 23?—There were, all over the land, batteries and houses standing; I was aware that machinery was erected on the property, and for that reason I signed the deed.

40. *The Chairman.*] You say you were satisfied that certificates had been issued before you executed the lease, but you did not see them?—I did not see them.

41. Do you know of any person who did see them?—No.

42. *Mr. Carleton.*] You have stated in reply to Mr. Bell that you had opportunities of making a treaty with the Natives before the issue of the certificate. Were you aware before the issue of the certificate that it did not bear the date of the order made by the Court?—I was not aware.

43. *Mr. Dillon Bell.*] You say you never saw the certificate; how were you aware that it was issued?—I received a letter stating that a certificate had been issued. I was always on the look-out for its issue, to confer with the Natives. I had inquiries constantly made as to when the certificates were issued, and I received a letter stating that they had been issued.

44. *The Chairman.*] Was it an official letter or a private one?—It was from no officer of the Court.

45. *Mr. Richmond.*] What reason have you for thinking a treaty for land with the Native owners to be illegal, before the issue of the certificate?—On account of the 75th section of "The Native Lands Act, 1865," where the word "issued" is used.

Cross-examined by Mr. Wynn.

46. Do you understand the distinction between the word "void" and the word "illegal"?—I have stated it before; I may be wrong, and it may be an error of judgment in saying that they are synonymous. They seem to me to be so, as far as they relate to that clause. It is absurd to say that because a man does a void act, he does an illegal act; but in a technical sense, I consider that in that clause they are synonymous.

47. When you obtained the lease of Kauaeranga, No. 23, from the Natives, you were aware that other parties had obtained leases, and were liable for rent to the Natives?—Yes, I was perfectly aware of it.

48. Who had possession of the lease; when you bought it a second time from them, who were the previous owners?—I understand that Mr. Horne and Mr. de Hirsch were the owners.

49. Were you in any way concerned as a professional man in preparing the previous lease to Mr. de Hirsch?—No, I was not.

Mr. de Hirsch. 1st September, 1869.

Mr. James De Hirsch in attendance, and examined.

50. *The Chairman.*] Where do you reside, and what is your profession?—I reside at Graham's Town, and have no particular profession.

51. You applied to be heard in connection with this subject. How are you interested? Will you make a statement?—I am the lessee from the Native proprietors of Kauaeranga, No. 24, at Graham's Town. The block of land was passed through the Native Lands Court on the 23rd of June, 1868, and the order for the certificate of title was issued on that day. I then instructed my solicitor, Mr. Macdonald, to prepare a lease for me from the Native owners for the said block, which he accordingly did, fully understanding at the time that the order for the certificate of title was the title required under the Native Lands Act to make it good. A few months afterwards, on examining the

Mr. de Hirsch.
1st September, 1869.

plans of the Native Lands Court, I found that by an error a portion of the block had been left out of the deed. I then went to my solicitors, Messrs. Whitaker and Macdonald—Mr. Frederick Alexander Whitaker having joined Mr. Macdonald in partnership between the 30th June and the 15th February, the date of my second lease. I showed them the plan of the block, and asked them to prepare me a new deed instead of the last deed, including the whole of the block. Mr. Whitaker accordingly did so. The deed was drawn up according to instructions. I fully understood at the time that it would give me a proper legal title to the whole block. When the deed was drawn out, the Natives were, on the 15th February, brought to Mr. Whitaker's office. Mr. Whitaker read out the deed word by word in English, while the Native interpreter interpreted it to the Natives. Mr. Whitaker's name appears at the foot of the deed as the attesting witness. I was advised some little time afterwards that a lease numbered 6,970 was registered to Messrs. Whitaker and Lundon on the 23rd April, 1869, demising the same property to them. When I heard this I went to see Mr. Whitaker, and asked him what he meant by appropriating lands to his own use for which he had drawn out deeds for me. Mr. Whitaker then made some excuse which I do not remember, but he generously offered to pay me any outlay which I might have incurred with the Natives. I went to see the Native owners accompanied by a sworn Native interpreter, and asked them what they meant by signing a second deed to Mr. Whitaker. They said that Mr. Whitaker represented to them that I had treated them very badly, that they did not receive as much rent as they ought to receive, and that he would give them two or three times the amount which I gave. [The witness produced the following deeds:—Wiremu Kingi and others to James de Hirsch, lease of lot 24, Kauaeranga, dated 30th June, 1868. Lease, Wiremu Kingi and others to James de Hirsch, dated 15th February, 1869.]

THURSDAY, 2ND SEPTEMBER, 1869.

Mr. Frederick Alexander Whitaker, in attendance, said,—

Mr. F. A. Whitaker.
2nd September, 1869.

I have to answer a very grave charge, made by Mr. de Hirsch, in reference to a deed having been prepared for a certain block of land, which block I afterwards obtained for myself. The first deed to which I shall draw the attention of the Committee is dated the 30th June, 1868. To that I will not refer, inasmuch as that was just about the time I arrived in New Zealand, and before I went to the Thames Gold Fields, and I cannot be expected to be responsible for the acts of Mr. Macdonald which were done before I entered into partnership with him. Our partnership commenced on the 14th October, and that deed is dated the 30th June. I shall now proceed to draw the attention of the Committee to the more important deed, on which the allegation is chiefly founded. The Committee will see, upon reading this deed, that it is for a small piece of land which was omitted to be included in the original deed of the 30th June, 1868; that it does not call in question the validity of the deed, which is also for No. 24; neither does it in any way affect the title to that No. 24, further than reciting that there is such a deed in existence, and it goes on to say that whereas it was omitted from being included, it is hereby leased,—

> This Deed, made the fifteenth day of February, one thousand eight hundred and sixty-nine, between Wirimu Kingi, Anaru Te Poroa, and Teritui Kingi, all of the District of Hauraki, in the Province of Auckland, and Colony of New Zealand, aboriginal Natives hereinafter called "the said lessors" of the one part, and James de Hirsch, of Shortland, in the said district, Settler, of the other part:

WHEREAS by deed bearing date on or about the thirtieth day of June last past, the lessors demised to the said James de Hirsch, his executors, administrators, and assigns, a piece or parcel of land therein particularly described, and being part of a piece of land mentioned in the Native Lands Court survey as lot Kaueranga, number twenty-four, for the term and subject to the rent therein mentioned: And whereas it was intended that the said lease should comprise not only the land thereby demised, and on the plan of the said lot drawn in the margin hereof and edged blue, but also the land hereby intended to be demised, and in the said plan edged red, being the residue of the said piece of land mentioned as aforesaid as Kaueranga, number twenty-four: And whereas for assuring to the said James de Hirsch the said residue of lot Kaueranga, number twenty-four, the said lessors have agreed to execute the demise hereinafter contained, and have also agreed to grant to the said James de Hirsch the rights and easements hereinafter mentioned: Now this deed witnesseth that the said lessors do and each of them doth hereby grant, demise, and lease unto the said James de Hirsch, his executors, administrators, and assigns, firstly, all that piece of ground situate in the District of Hauraki, in Queen's County, in the said Province, being the south-eastern part of the lot of land known as Kaueranga, number twenty-four, extending on the north-west next to the residue of the said lot of land two hundred and sixty-four links, on the north-east side thirty-five links, on the south-west side fifty links, and bounded on the south-east side by a line running along the centre of the Waiotahi Creek there, as the said piece of ground intended to be hereby demised is set out in the said plan of Kaueranga, number twenty-four, and is therein edged red; secondly, the full and free liberty of mining for and taking from the pieces of ground hereby and by the said in part recited deed demised, or intended so to be, any auriferous quartz: To have, hold, receive, exercise, and enjoy the said piece of land hereby demised, and the right of mining hereby granted and demised, or intended so to be, unto the said James de Hirsch, his executors, administrators, and assigns, for the term of twenty-one years from the thirtieth day of June last, yielding and paying therefor the yearly rent or sum of two pounds, to be paid by even and equal quarterly payments on the first days of April, July, October, and January in each year.

In witness whereof the said parties have hereunto subscribed their names.

Signed by the said Wirimu Kingi by affixing his mark, the same having been first read over and explained to him, and signed by the said Anaru Te Poroa and Teritui Kingi, in presence of

his
WIRIMU x KINGI,
mark.
ANARU POROA,
TERITUI KINGI.

Frederick A. Whitaker, Solicitor, Shortland; E. Davis, Licensed Interpreter.

Mr. F. A. Whitaker.

2nd September, 1869.

I, *Edward Davis*, of Coromandel, in the Province of Auckland, Native interpreter, do solemnly and sincerely declare as follows, that is to say,—

1. I did faithfully interpret, in the Maori language, the within deed to Wirimu Kingi, Anaru Te Poroa, and Teritui Kingi, named therein before the execution of the said deed by them.

2. My translation of the said deed was correct, and was understood by the said Wirimu Kingi, Anaru Te Poroa, and Teritui Kingi.

3. The said deed was executed by the said Wirimu Kingi, Anaru Te Poroa, and Teritui Kingi, in the presence of Frederick Alexander Whitaker, and of me this declarant.

4. The name "E. Davis," set and subscribed as that of one of the attesting witnesses of the due execution of the said deed, is of my proper handwriting; and I hold a certificate authorizing me to act as an interpreter under "The Native Lands Act, 1865," and "The Native Lands Act, 1867," which said certificate is in full force and effect.

5. The name "Frederick A. Whitaker," set and subscribed as one of the witnesses attesting the due execution of the said deed, is of the proper handwriting of the said Frederick Alexander Whitaker, and the said Frederick Alexander Whitaker is a male adult.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the said several Acts, and by virtue of an Act of the General Assembly of New Zealand, intituled "The Justices of the Peace Act, 1866."

E. DAVIS.

Made and declared at Shortland, New Zealand, this fifteenth day of February, 1869, before me,

HENRY GOLDSMITH, J.P.

(D. 2-1, 650 D.)

Thursday, 4th March, 1869.—Received for registration at 11.15 a.m.

JOSIAH BUTTRESS,
Deputy Registrar.

Auckland, 27th February, 1869.

I hereby certify that the duties payable under the Native Lands Acts on the within lease amount to two pounds one shilling and one penny.

JOSIAH BUTTRESS,
Deputy Registrar.

(No. 69-34.)

I have received this sum of two pounds one shilling and one penny above mentioned.

DANIEL POLLEN,
Sub-Treasurer.

I will now proceed further to explain the whole matter in reference to that deed. The title to that piece of land, which is therein etched red, is not in dispute either by Mr. Lundon or myself. I do not believe it was originally included in No. 24; but whether it was or not, the piece of land which I dispute is included in the small piece. This has been a subject of controversy in the newspapers, and I stated that I had no claim to the land, and should be most happy to hand the land over to Mr. De Hirsch at once. In reference to the facts connected with the signing of this deed, I am very sorry to have to differ from Mr. de Hirsch very materially on that point. About the time that the deed was executed I was engaged in many speculations upon the Thames Gold Fields, and I was not very frequently in our office. I recollect now, my attention having been drawn to it, that, running up one day into my office, Mr. de Hirsch and a number of Natives were standing there, and one of the clerks called me and requested me to attest the deed, which I accordingly did. That I read it or assisted in any way in drawing the deed, is absolutely not the fact. I was called in and I attested the deed. Mr. de Hirsch came to me afterwards, as he relates. Immediately after that I sent up to the Registry Office in Auckland, Mr. J. C. Young, Native Interpreter, to search the Registry Office and see what deeds for Mr. de Hirsch had been drawn in our office, for at that time the deed in question had almost escaped my memory, as it was drawn by one of the clerks. Mr. Macdonald said that he had not drawn it, but probably the chief clerk had done so. Mr. Young brought me down word that there was one deed only, which was for a small portion outside of No. 24, and was not included in the demise which I proposed to obtain from the Natives. I then went to Mr. Macdonald, and questioned him very closely in reference to Mr. de Hirsch's leases, as to when they were prepared. He informed me that they were prepared in June, before I came to New Zealand, in a small office in Pollen Street; that the only deed which had been prepared was for the small portion of land; and that I need not consider myself implicated in any way in the transactions with Mr. de Hirsch. I then proceeded to get the land. Some time after this a letter appeared in the newspapers, signed by Mr. de Hirsch, setting forth the very same facts which he has now set forth in this declaration, in reference to my having had deeds in my possession as the title of land which I afterwards sought to appropriate for myself. This letter was signed by Mr. de Hirsch, as "Unfortunately once a client of Mr. Whitaker, junior." All my friends came round me, and I told the same thing which I now tell the Committee; and I put the same story into print in answer to his letter, stating that I never saw Mr. de Hirsch's title-deeds, because since I joined Mr. Macdonald they were removed from our office and were drawn by Mr. McCaul. I was not aware of the deed, and never saw the others, or could be supposed to know anything about them. I mentioned also that there was some little dispute about that small piece; that I laid no claim to it; and that if it were included he had only to mention it, and I would at once have handed the land over to him. At the same time there appeared a letter from another client of mine of the name of Burke, who stated that he found it hard to believe what Mr. de Hirsch had said, as I had acted in the most honorable way, and had assigned to him a valuable piece of land at Graham's Town because the deeds had passed through our office. Mr. Lundon is here to prove that

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we both signed the deed; and I said, "Mr. Burke, I cannot interfere with the property; the land belongs to you, and you must have it." In the same way I agreed to deal with Captain Storey, whose battery also stood on the land, and whose title had passed through our office. I went even further than that, for hearing of these things, when permission was given to the shareholders of the Shannon claim, which was near or on this piece of land, I refused to attach my name to any document, because I was perfectly careful not to do so in reference to any deed which had been in our office. I said I could not do it because it was possible that it was within the boundary of the piece of land in question, and I would not compromise myself in the question. Although our names appear in every Native deed, yet that is directed de Hirsch against Lundon. It was to sink upon a piece of land of which I could not tell the position, and therefore I refused to sign any document, which Mr. Lundon did. It can be proved by the writ in regard to Kauaeranga, No. 24, that it is de Hirsch against Lundon, and not against Whitaker. I consider the charge a most cruel and unfounded one, considering the stipulations I made with Mr. Lundon before I made any agreement with him. Mr. Lundon and my father were in the office together, and I said, "I must insist upon two things—first, that the rights of my clients are respected, and the land given up to them; and secondly, in reference to the Golden Gate claim, that nothing shall be done to injure the shareholders, because I am solicitor for the Company, and it is my duty to look after their interests." I made these stipulations which were carried out; and why did not Mr. de Hirsch come forward when I stated it in the newspaper at the time he brought his charges, when he would at once have had the land? He took no notice, and I had no further intimation of it until the subject was revived on this affidavit. It was doubtless brought down here because I was in Auckland, and was not expected down to contradict the statement. I wish the Committee to consider that I have given a clear explanation of the real facts of the case, and I hope they will signify the same by some formal motion to that effect. With reference to the representation to the Maoris, that is of a piece with all the rest. One Maori lives at Mercury Bay, another at Poverty Bay, and a third at Coromandel. I never saw them, never held any communication with them, and, as to offering to give more money than Mr. de Hirsch, I never did so, and the interpreter, Mr. Lundon, will show that one of the Natives was continually following me about, asking me to take the land as no rent had been paid to him. Mr. Lundon told me he did not consider the land was worth much, and that he did not want it. Any representations as stated by Mr. de Hirsch cannot have been so, inasmuch as I never saw the Natives, and would not know them if I did, besides the fact that it was impossible for me to leave my business.

Mr. Whitaker and the other witnesses were directed to retire.

After some consultation, the Chairman was requested to call in Mr. Whitaker and Mr. Lundon, and to ask whether the lease executed by the Natives to Whitaker and Lundon was in their possession, and if so, to produce it. Mr. Whitaker and Mr. Lundon being in attendance, Mr. Whitaker proceeded with his evidence as follows:—

The lease in question is in the Registry Office, Auckland. I have a plan showing the exact boundaries of the land included in my lease.

52. *Mr. Brandon.*] Are the Committee to understand that the piece of land comprised in the lease of June, 1868, to Mr. de Hirsch from Wiremu Kingi and other Natives, is the piece of land comprised in the lease to you of April, 1869?—Yes, and it remains still vested in me.

53. *Mr. Dillon Bell.*] I understand by that answer that the deed which is in Auckland is for the same piece of land which is included in the deed of June, 1869?—Yes.

54. When the second deed of the 15th February was made for the same piece at the south-east corner, were you aware of the existence of the lease to Mr. de Hirsch of the 13th June, of the square part of No. 24?—No, I was not, but I became aware afterwards, on searching the registry.

55. This deed appears to have been registered on the 7th September, 1868: at what time did you become aware of it?—After my deed of April was completed.

On the motion of Mr. Bell, the witnesses present were requested to withdraw.

After consultation, Mr. Lundon was called in, and informed by the Chairman, that if he desired to make a statement, the Committee would hear him.

Mr. Lundon said:—

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I arrived here this morning, and have only just seen Mr. O'Keefe's evidence, and Mr. de Hirsch's evidence was read to me. They have both made statements which were not true. He says he was concerned in block No. 23 when I bought it from the Natives, and that I had offered a large sum of money to the Natives to get them to sign. I did nothing of the kind. There were four Natives; three of them signed, and I paid them three months' rent. Mr. O'Keefe had no call to the block then. He has given evidence in relation to a deed prepared in Mr. J. B. Russell's office, for Hannaford and Walker. Mr. O'Keefe was not interested then. Mr. Whitaker signed over a a portion of his interest to Hannaford and Walker for forty pounds a year. I refused to sign it. I asked Mr. Whitaker why he signed, and he said that Hannaford and Walker were his personal friends, and he could do as he liked with his own. They repeatedly since wanted me to assign my interest to Hannaford and Walker, and threatened if I did not do so, Mr. Hannaford, being in the Bank of Australasia, would use his interest with the General Assembly to try and upset my title. With regard to No. 24, speaking from memory, Mr. de Hirsch lays claim to it. Mr. Whitaker never saw any of the Natives connected with the block, or with any of the blocks which I lay claim to. The deed for No. 24 was made at Messrs. Whitaker and Russell's office in Auckland, and it was signed by one of the Natives in their office. Another Native in Poverty Bay signed to Mr. Eicke, who conveyed his interest since to Mr. Whitaker and myself. The other Native owner lives at Mercury Bay, and has very lately signed—about six or seven weeks ago. Those are the only owners for the block, and the round piece on the deed is not included. Mr. de Hirsch has entered an action against me in the Supreme Court, and so has Mr. Graham, relating to the lands, which will be heard on the 14th of this month. There is a statement in the printed report that I got the Natives to sign in the hotel, but they never did so, or had a glass of grog from me, but signed in Whitaker and Russell's office, and in

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the Court House, Auckland. There were three licensed interpreters present, and Mr. Young, Clerk to the Court at Shortland, was present, Mr. Edward Davis was present, and Mr. Hector. It was signed at half-past 9 o'clock in the morning, before they went into the Native Lands Court. I did not care much for No. 24, as there was no road to it. The Natives begged me to take it, and the others came a long distance to sign the deed. The Natives told me that Mr. de Hirsch would not take the land, and begged me to take it from them. The Natives kept following me about, one especially, asking me to take the ground, because he could not get any rent from Mr. de Hirsch.

FRIDAY, 3RD SEPTEMBER, 1869.

Mr. Frederick Alexander Whitaker in attendance.

Mr. F. A. Whitaker.
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56. *The Chairman.*] I presume you wish to make a statement in reply to the allegations of Mr. de Hirsch?—I do. The first point to which I would draw the attention of the Committee is precisely the same as I spoke upon yesterday, namely, the deeds for No. 24. The affidavit runs thus:—

"That I, this deponent, leased by deed dated the 30th day of June, 1868, certain lands at Waiotahi aforesaid, known as Kauaeranga, No. 24, by which the surface rights only were demised, the said lands being portion of the lands referred to in paragraph five of this my affidavit.

"On the 15th day of February, 1869, the mining right on the said lands, with the residue of the surface, was demised to me, the Native owners not having conceded any rights whatever to the Government.

"The proceedings with respect to these leases were conducted on my behalf by Frederick Alexander Whitaker and John Edwin Macdonald, solicitors, carrying on business as Whitaker and Macdonald. I consulted Mr. Frederick Whitaker, of Auckland, solicitor, upon the steps I should take to secure the rights which the said leases purport to create, and he advised the course which was subsequently taken. The said Frederick Alexander Whitaker is a son of the said Frederick Whitaker."

Although it is actually true that both the surface deeds for No. 24 and the mining deeds for No. 24 were prepared by Frederick Alexander Whitaker and J. E. Macdonald, yet the deed relating to the surface of No. 24 was prepared by J. E. Macdonald, notwithstanding that both the surface and the mining deeds are asserted by me to have been drawn up by F. A. Whitaker and J. E. Macdonald when they were carrrying on business as Whitaker and Macdonald. As I pointed out yesterday, the deed for No. 24 was drawn by John Edward Macdonald, not only before I entered into partnership with him, but before I arrived in New Zealand. I have never disputed the lease for mining which comes at the end of the second deed. I have never got the mining lease from the Natives for any part of the flat. I may show the Committee this plan which will be found to correspond exactly with my statement in regard to the portion I obtained. [Plan produced.]

57. *Mr. Brandon.*] Is your deed subsequent to the deed of the 15th February, 1869?—It is.

58. *Mr. Richmond.*] Then under the deed to Mr. de Hirsch, of the 15th February, you had notice of the existence of the deed to Mr. de Hirsch of the 30th June?—I am presumed to have had notice. Although I had not actual notice of any deeds, it was well known that parties had obtained leases from them.

59. *The Chairman.*] Is not the first deed recited in the second?—No, it is not "recited," because that means "set out," but it was referred to. It merely states that such a deed was in existence. With respect to the advice of Mr. F. Whitaker, senior, I am not in a position to say what was done or what was not done, but I think it is hardly possible that Mr. de Hirsch can have put the facts fully before Mr. Whitaker, as it must have been before that time that he considered mine was not a good title on the flat. In reply to question No. 10, he says:—

"I might myself have taken up the right of mining by miners' rights, but acting under the advice of the said Frederick Alexander Whitaker and John Edwin Macdonald, and of the said Frederick Whitaker, of Auckland, obtained such lease as aforesaid."

He is alluding to the advice given at the time he obtained the second deed, at the end of which there is a mining clause. These facts are palpably wrong, because his affidavit implies that the Golden Gate claim was pegged off, and, after he had obtained the lease from the Natives he could have taken it up under a miner's right. I happen to have been solicitor for the Golden Gate for a long period of time, and I happen to know that the claim was pegged out in December, two months before the February, and it was pegged out with my sanction and advice, and I am prepared to swear, before any court of law, that I never gave Mr. de Hirsch that advice, because the Golden Gate claim was pegged off, and I was aware of it, as their solicitor, in the December before the deed of February.

60. *Mr. Creighton.*] Would the effect of the deed of February be to dispossess the shareholders of the Golden Gate who held the ground under miners' rights? It would. I cannot understand what Mr. De Hirsch means by an affidavit to the effect that he could have pegged off the ground in February, when the Golden Gate was an existing fact, and every one on the Thames Gold Fields knew, and must have known, that the Golden Gate claim had been pegged off, and work had been done upon it; and it is physically impossible that he could have pegged it off under miners' rights in February, with any chance of success. In paragraph No. 12 he says:—

"The same parties having, under colour of miners' rights, taken up the ground included in the said leases to me were, by a perpetual injunction issued by the Supreme Court, Auckland, restrained from working on the said lands. Such injunction was granted against the proprietors of the Golden Gate claim, in which the said Frederick Whitaker, of Auckland, is gazetted as a shareholder holding three hundred shares of five pounds each."

That is an insinuation which I hope the Committee will consider worthy of the highest reprobation. It means to imply that Frederick Whitaker of Auckland, holding 300 shares, first advised Mr. de Hirsch that it was no good pegging off under miners' rights, and then took it up and pegged it off. A more scandalous accusation can scarcely be made against any man. All these things have been sworn to by Mr. de Hirsch in this affidavit. The mining lease was obtained in February, and the Golden

Gate claim was pegged off by Mr. Eicke and others, in December. The same parties did not peg it off, because I was one of the parties, and I did not peg it off. I had no original share in it, neither did I hold any of the ground under miners' right by pegging off, at the time Mr. de Hirsch obtained that deed. I bought for a specific sum of money, as can be seen by examining the Registration Office in Shortland, two quarter-shares, many months after the Golden Gate had been pegged off, I think in April last, by parties employed by Eicke and by Haase. That is how I became possessed of the 300 shares, and not by reason of being a party to taking up the claim under miner's right. This person referred to is Frederick Whitaker of Auckland, and is gazetted for 300 shares, and these 300 shares he bought from me a very short time ago, just before he was in Wellington the last time, for the sum of £300. Therefore, I beg the Committee will take notice, in regard to the insinuation in this clause, that the whole thing goes on the assumption that he, Mr. de Hirsch, was first advised by Frederick Whitaker, of Auckland, to take it up by lease from the Natives, and that it was afterwards pegged off. He says:— *Mr. F. A. Whitaker.* 3rd September, 1869.

"The same parties having, under colour of miner's rights, taken up the ground included in the said leases to me were, by a perpetual injunction issued by the Supreme Court, Auckland, restrained from working on the said lands. Such injunction was granted against the proprietors of the Golden Gate claim, in which the said Frederick Whitaker, of Auckland, is gazetted as a shareholder holding three hundred shares of five pounds each."

Of course the insinuation is perfectly clear. He means to imply that Mr. Frederick Whitaker having first advised Mr. de Hirsch to ground his claim upon the lease from the Natives, afterwards, pegged, or assisted, or directed to be pegged off the Golden Gate claim, under miner's right; to support which he makes the statement, "that the said Frederick Whitaker holds 300 shares of £5 each." I would not be justified in saying anything hard before the Committee; but when persons make statements concerning a gentleman of known character like Mr. Whitaker, which are absolutely false (and which can be seen by a reference to the Registry Office to be false, as the transactions are registered), I hope the Committee will take some strong notice of them, as it is most unfair for persons to try to take away the characters of men who bear generally the name of being honest and upright, sane and must stick,* and the Committee will be only doing justice to an honorable man's character if they express their indignation at the insinuation contained in the 12th clause.

61. *Mr. Richmond.*] What the Committee are to understand is, that neither you or your father were shareholders in the Golden Gate until long after the dealings of Mr. de Hirsch, and that you became shareholders by purchasing in the open market, and not as original claimants of the ground? —I had been solicitor for a long time for the Golden Gate, and I did not recollect ever to have seen Mr. de Hirsch in the office, as he was not a regular client of ours, and I never did anything for him at all. I believe he was a client of Mr. Macdonald's, but the deeds were never prepared in our office. I was the regular solicitor for the Golden Gate. He says that he came in February and saw me, but I do not recollect it; and if he did see me, I am certain that I never gave him any advice as stated in the affidavit, as I was solicitor for the Golden Gate long before I saw him. I had taken great pains and trouble about managing the Golden Gate, and these two principal shareholders Eicke and Haase, let me have them cheaper than the ordinary public, but it cost me about £150, which was a third below the market price, but a fair price. My father bought from me before he came to Wellington, six weeks ago. I should like to have had Mr. de Hirsch here to ask him questions about his sworn statement. It was a matter of perfect notoriety on the Thames Gold Fields, and I was aware of the fact of the Proclamations, and I never heard that any one was not. Mr. de Hirsch makes an affidavit to this effect:—

"This Proclamation was, I verily believe, issued in order to give the Government the right to construct roads, but the Natives had not cancelled the right to mine." The matter was well known, and it seems to me that it was a matter of common sense to suppose that the Proclamation was not made for making roads, but for mining purposes. The question was not the effect or contents of the Proclamations, but the validity of them; and I never heard it stated before that the second Gold Fields Proclamation was for the express purpose of constructing roads, as the Natives are expressly required to dedicate the roads to the public, and I should think that Mr. de Hirsch, being a resident sharebroker at the Thames, should have known that very well. I should like to ask whether it has appeared in any of Mr. de Hirsch's evidence what the facts of the case were, if he laid them before Mr. Frederick Whitaker?—I am certain if he did so that three parts of the facts must have been kept back. It is impossible for me to say what Mr. Frederick Whitaker did; but I am sure it would be absolutely unprecedented for a gentleman of his professional standing to examine all the documents on the small question of Mr. de Hirsch's, as to the effect of this or that, and I cannot believe that it was so; but I cannot contradict it, as my father would be the only person who could give any statement on the subject. I should have liked to have made a fuller statement on Mr. de Hirsch's evidence, if I had had time to go through it. I shall read through parts of his evidence and comment upon them.

"Subsequently on the 15th February, 1869, you state that you obtained a second lease from the Natives, demising to you the right of mining for gold beneath the surface of the same piece of land?—When I leased the land on the 30th June, I was under the impression that the first lease would secure the right of mining. As I was not sure, I called upon my solicitors about the middle of February, 1869, who then advised me to see Mr. Whitaker of Auckland. My solicitors were Messrs. Whitaker and Macdonald, of Shortland."

I am not in a position to contradict that, or say whether or not it is true. He may have called, but I can state, positively, he did not see me. He may have seen Mr. Macdonald in my absence, but I never heard of it. The report of the evidence continues:—

"You state in your affidavit that the lands on the flat at Waiotahi were not included in the original Gold Fields Proclamation, but that subsequently they were included by Proclamation of 16th April, 1868," and that according to your belief this Proclamation was issued to give the Government

* *Sic* in the original.

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the right to construct roads, but the Natives had not conceded the right to mine. Do you not know that the Graham's Town land was not included in the original agreement between Mr. Mackay and the Natives?—I do know that the Graham's Town land was not included in the first agreement with the Natives.

"The first Proclamation only extended to lands over which the right to mine was ceded by the Natives?—I believe so.

"That first agreement was the 27th July, 1867, and was proclaimed on the 30th July, 1867, and the 7th August, 1867?—Yes.

"By second agreement dated 9th November, 1867, did Mr. Mackay acquire for the Government the right to mine over the Graham's Town Flat?—I cannot say of my own knowledge."

It was a matter of public notoriety, and Mr. de Hirsch seems to contradict his former statement, that it was only the right to make roads that they had acquired. The "guarded answer" means that he had seen the agreement but he could not positively say, although it was a matter of public notoriety, that it had often come under his notice that the right to mine had been ceded. He swears that he verily believes that it was only the right to make roads. I can safely state that such a proposition was never broached by a single person, nor was it publicly reported that it was only the right to make roads that the Government acquired by the agreement. It was distinctly understood that it was the right to mine which was ceded by the agreements with the Natives. In answer to another question, Mr. De Hirsch says:—

"On the 9th March, 1866, Mr. Mackay entered into a third agreement with the Natives. Did that agreement purport to include the lands at Graham's Town?—I believe so."

"Under that agreement, did the Governor acquire the exclusive right to mine for gold under the lands in question?—I am not sure about that."

He makes a statement contradictory to that in his affidavit, where he says, "This Proclamation was issued in order to give the Government the right to construct roads, and the Natives had not conceded the right to mine." The report of the evidence goes on to say:—"Mr. Creighton then read part of the agreement, namely:—

"The Chiefs and People of Ngatimaru and Ngatiwhanaunga of Hauraki on the one part, and Sir George Ferguson Bowen, Governor of New Zealand, on the other part, witnesseth the consent of all of them, that is of the Chiefs and People of Ngatimaru and Ngatiwhanaunga, on behalf of themselves and their heirs, to release (give over) to Sir George Ferguson Bowen, Governor of New Zealand, and the Governors who may succeed him, a certain piece of land in the District of Hauraki, for gold-mining purposes, for himself and his assigns, within the meaning of the statute intituled 'The Gold Fields Act, 1866.'"

"Does this convey to the Crown the exclusive right of mining over the land described in the agreement?—Yes."

He does not state he was not aware of its being in existence, but says, "Yes, but the lessors in my case did not sign the agreement; they did not know what was going on." The affidavit says that the land was only handed over for the purpose of making roads, and he says now, "Yes, it did," and gives the reason why these very parties did not obtain it, and these parties did not sign the lease. This is a still further corroboration as to the fact stated in my affidavit as to the pegging out of the Golden Gate claim. I will place the facts before the Committee, and I think they will appear somewhat startling:—

"Almost within a fortnight after I obtained this lease, Mr. Frederick Alexander Whitaker, one Eicke and others took up this very same land under miners' rights. Then I went back to Auckland, and asked Mr. Frederick Whitaker's advice, and he told me he was very sorry he could not advise me, because he was retained on the other side. If I had taken up the ground under miners' rights I, could have held it."

Now a man who will give evidence of that description deliberately to damage the character of another person, when there is not a shadow of truth in the allegation, ought not to have much credence placed on his statements. That lease was obtained in February, the Golden Gate was pegged out in December, and here he says, "A fortnight after the lease, it was pegged out by Frederick Whitaker and others." I never had anything to do with the pegging out of the Golden Gate claim. I was not an original shareholder in it; I acquired what I held in it by purchase from Mr. Eicke and Mr. Haase, many months after it was pegged out, and subsequent to Mr. de Hirsch's dealings.

Mr. de Hirsch's petition was here handed to Mr. Whitaker, but he had no statement to make upon it.

Mr. Whitaker was thanked, and withdrew.

Appendix A.

MINUTES OF PROCEEDINGS OF THE PUBLIC PETITIONS COMMITTEE.

TUESDAY, 31ST AUGUST, 1869.

PRESENT:

Mr. J. Cracroft Wilson, C.B. | Mr. Creighton,
Mr. Wells.

On the Petition of James de Hirsch, of Shortland, being considered, it was resolved that Mr. de Hirsch be called in and examined. *Mr. de Hirsch.*

Mr. de Hirsch having appeared, handed in to the Committee an affidavit, which was read. 31st August, 1869.

Mr. de Hirsch was then examined.

1. *Mr. Creighton.*] You state that your first lease was on the 30th June, 1868: under that deed you acquired the surface right for 21 years?—Yes. I produce the lease.

2. Subsequently, on the 15th February, 1869, you state that you obtained a second lease from the Natives, demising to you the right of mining for gold beneath the surface of the same piece of land?—When I leased the land on the 30th June, I was under the impression that the first lease would secure the right of mining: as I was not sure, I called upon my solicitors, about the middle of February, 1869, who then advised me to see Mr. Whitaker, of Auckland. My solicitors were Messrs. Whitaker and Macdonald, of Shortland. I submitted the case to Mr. Whitaker, of Auckland, and he advised me to take up or get another lease, purporting to be a mining lease, which I obtained and now produce. Mr. Whitaker stated at the same time that, as the Natives had never signed any agreement whatsoever with the Government, it would be no use to take it up under miners' rights.

3. You state in your affidavit that the lands on the flat at Waiotahi were not included in the original Gold Fields Proclamation, but that subsequently they were included by proclamation of 16th April, 1868, and that according to your belief this proclamation was issued to give the Government the right to construct roads, but the Natives had not conceded the right to mine: do you not know that the Graham's Town land was not included in the original agreement between Mr. Mackay and the Natives?—I do know that the Graham's Town land was not included in the first agreement with the Natives.

4. The first proclamation only extended to lands over which the right to mine was ceded by the Natives?—I believe so.

5. That first agreement was the 27th July, 1867, and was proclaimed on the 30th July, 1867, and the 7th August, 1867?—Yes.

6. By second agreement, dated 9th November, 1867, did Mr. Mackay acquire for the Government the right to mine over the Graham's Town Flat?—I cannot say of my own knowledge.

7. On 9th March, 1866, Mr. Mackay entered into a third agreement with the Natives: did that agreement purport to include the lands at Graham's Town?—I believe so.

8. Under that agreement did the Governor acquire the exclusive right to mine for gold under the lands in question?—I am not sure about that.

Mr. Creighton then read part of the agreement, viz.:—"The Chiefs and people of Ngatimaru and Ngatiuhanaunga, of Hauraki, on the one part, and Sir George Ferguson Bowen, Governor of New Zealand, on the other part, witnesseth the consent of all of them, that is of the Chiefs and people of Ngatimaru and Ngatiuhanaunga, on behalf of themselves and their heirs, to release (give over) to Sir George Ferguson Bowen, Governor of New Zealand, and the Governors who may succeed him, a certain piece of land in the district of Hauraki, for gold mining purposes, for himself and his assigns, within the meaning of the Statute intituled 'The Gold Fields Act, 1866.'"

9. Does this convey to the Crown the exclusive right of mining over the land described in the agreement?—Yes; but the lessors in my case did not sign the agreement; they did not know what was going on, they were away.

10. Your first deed was dated the 30th June, 1868, and Mr. Mackay's agreement was dated on the 9th March, 1868, being three months prior to the date of your lease?—Yes.

11. Did you know, at the time you made the agreement, that the land was included in the boundaries of the Gold Field?—No. I always understood that the boundary of the Gold Field only extended, at that time, to the base of the hill. Mr. Mackay encouraged me in that belief. He told me, about the time the land was passing through the Native Lands Court, that the Crown would not interfere with private parties leasing land from the Natives in Graham's Town, but reserved the right of making roads for the public.

12. Did you know of the Proclamation of the Gold Fields boundary of the 14th April, 1868?—I knew nothing of the Proclamation till about a fortnight ago, when I found it affected my rights. I was living at Graham's Town at the time the Proclamation was issued. I was engaged as a share broker and land speculator. I heard about that time of the agreement of the 9th March, and my belief was that the Proclamation of the 14th April was made in consequence of that agreement.

13. Was your first dealing with the Natives of the 30th June, 1868, as to that land subsequent to its Proclamation as being within a Gold Field?—Yes; my first lease was dated 30th June, 1868, and the Proclamation was dated 14th April, 1868, and my second lease, purporting to convey to me the right to mine, was dated 15th February, 1869.

I desire to make a general statement to the Committee.

Mr. de Hirsch.
31st August, 1869.

In the first instance, when I leased the block, I leased it for the surface rights only. I asked Mr. Mackay if, in doing so, I should interfere in any way with any arrangement the Government had made about these lands. He said, certainly not; the Government only claimed the right of supervision for the construction of roads, and that the people living there should be compelled to take out business licenses and not have the excuse that they were living on Native lands, and generally that they should come under the rules of the Gold Fields. I leased these lands consequently on Mr. Mackay giving his sanction that I should do so, and Mr. Mackay assisted in negotiating with the Natives for me. Further, I must acknowledge that when I leased the land I never thought of mining on it; but some time after, when the land became a very valuable property, through the Golden Crown having struck a reef which was said to run right through the ground, I then asked my solicitors what to do, whether to take it up under a miner's right, or whether the first lease I got gave me the right to the land generally and all that was in it. Messrs. Whitaker and Macdonald, acting as my solicitors, I believe went to Mr. Mackay, and searched the various agreements between the Government and the Natives. They told me that if I was going to Auckland I should consult Mr. Frederick Whitaker, as they were not quite sure. Mr. Frederick Whitaker distinctly advised me to get the lease of the 15th February, 1869, telling me that it was no use my taking the land up under miners' rights: that anybody could get a lease from the Natives and then turn me out. I acted on that advice, and went back to Shortland and instructed Mr. Frederick Alexander Whitaker to draw this deed out, which bears his endorsement and signature as an attesting witness. Almost within a fortnight after I obtained this lease, Mr. Frederick Alexander Whitaker, one Eicke, and others, took up this very same land under miners' rights. Then I went back to Auckland and asked Mr. Frederick Whitaker's advice, and he told me he was very sorry he could not advise me because he was retained on the other side. If I had taken up the ground under miners' rights I could have held it.

JAMES DE HIRSCH.

WEDNESDAY, 1ST SEPTEMBER, 1869.

PRESENT:

Mr. Creighton, | Mr. Wells,
Mr. J. Cracroft Wilson, C.B.

On the Petition of Mr. James de Hirsch being considered, the Chairman was directed to report that the Petition should be referred to the Joint Committee on the Native Lands Bill.

The following Draft Report was then read and agreed to:—

"This is a complaint against the effects of the Gold Fields Proclamation Validation Act, passed during the present Session. The Committee direct me to report that as there is a Joint Committee of both Houses on the Native Lands Bill now sitting, to which the consideration of the whole question connected with the subject matter of this Petition has been referred, they are of opinion that the case of the Petitioner, with all papers connected therewith, should be remitted to that Committee."

In the matter of "The Auckland Gold Fields Proclamation Validation Act, 1869," and the Petition of James de Hirsch,

I, James de Hirsch, of Shortland, Thames Gold Fields, in the Province of Auckland, make oath and say,—

1. That I have caused a Petition to be presented to the Honorable House of Representatives respecting the said Act, and that all matters of fact contained in such Petition are, to the best of my knowledge and belief, true.

2. That the lands on the flat at Waiotahi, now called Graham's Town, were not included in the original Proclamation of the gold fields.

3. The said lands were afterwards proclaimed to be within the limits, on the sixteenth day of April, one thousand eight hundred and sixty-eight.

4. This Proclamation was, I verily believe, issued in order to give the Government the right to construct roads, but the Natives had not conceded the right to mine.

5. The Native owners of this land obtained a certificate of title to the said lands from the Native Land Court, on or about the thirteenth day of October, one thousand eight hundred and sixty-eight, without any restriction.

6. That I, this deponent, leased by deed dated the thirtieth day of June, one thousand eight hundred and sixty-eight, certain lands at Waiotahi aforesaid, known as Kauaeranga, number twenty-four (24) by which the surface rights only were demised, the said lands being portion of the lands referred to in paragraph five of this my affidavit.

7. On the fifteenth day of February, one thousand eight hundred and sixty-nine, the mining right on the said lands, with the residue of the surface, was demised to me, the Native owners not having conceded any rights whatever to the Government.

8. The proceedings with respect to these leases were conducted on my behalf by Frederick Alexander Whitaker and John Edwin Macdonald, solicitors, carrying on business as Whitaker and Macdonald. I consulted Mr. Frederick Whitaker, of Auckland, solicitor, of Auckland, upon the steps I should take to secure the rights which the said leases purport to create, and he advised the course which was subsequently taken. The said Frederick Alexander Whitaker is a son of the said Frederick Whitaker.

9. On the twenty-third day of April, one thousand eight hundred and sixty-nine, the said Frederick Alexander Whitaker, of Shortland, and one James Lundon, obtained a lease on their own behalf from the same Natives, demising the surface, the same parties occupying the ground under the Proclamation of the sixteenth day of April, one thousand eight hundred and sixty-eight by miners' rights.

10. I might myself have taken up the right of mining by miners' rights, but acting under the advice of the said Frederick Alexander Whitaker and John Edwin Macdonald, and of the said Frederick Whitaker, of Auckland, obtained such lease as aforesaid.

11. By the said deed of the twenty-third day of April, one thousand eight hundred and sixty-nine, the said Frederick Alexander Whitaker and John Lundon invaded the surface right demised under the said lease to myself on the thirtieth of June, one thousand eight hundred and sixty-eight.

12. The same parties having, under colour of miners' rights, taken up the ground included in the said leases to me, were, by a perpetual injunction issued by the Supreme Court, Auckland, restrained from working on the said lands. Such injunction was granted against the proprietors of the Golden Gate claim, in which the said Frederick Whitaker, of Auckland, is gazetted as a shareholder, holding three hundred shares of five pounds each.

13. The holders of the Criterion claim, in which the said John Lundon is a shareholder, also working on the ground claimed by myself, were restrained by an *ad interim* injunction of the said Court, which said last injunction is still in full force and effect.

14. From the aforesaid facts, I the said petitioner, James de Hirsch, most respectfully submit that "The Auckland Gold Fields Proclamation Act, 1869," will prejudice and affect my just rights, and practically inhibits me from taking the advantage and benefit that accrued to me by reason of my said arrangements and leases.

JAMES DE HIRSCH.

Sworn at Wellington, the 31st day of August, one thousand eight hundred and sixty-nine, before me,

E. Stafford,
Solicitor of the Supreme Court of New Zealand.