A.

The Commissioner's Decision.

In the matter of a Commission issued by His Excellency the Governor of New Zealand, in pursuance of the provisions of "The Lundon and Whitaker Claims Act, 1871;" and of a Special Case stated by agreement between the Governor on the one part, and John Lundon and Frederick Alexander Whitaker on the other part, under the 3rd Section of the said Act.

1. Having heard Counsel on behalf of the parties to the special case, I have come to the conclusion—although my mind is by no means free from doubt—that, on the whole, the claimants have not made out the existence of the right upon which their claim is based. I have arrived at this result upon the grounds and for the reasons following:—

2. The first duty I had to perform was to ascertain, as precisely as possible (according to the proper construction of the Act of 1871, the Commission, and the special case), the questions in dispute which I had to determine. The view which I took at the argument, and which I continue to entertain, is, that all I have to decide is whether, immediately before the passing of "The Native Lands Act, 1869," these claimants possessed any right at law or in equity—that is to say, any right cognizable and available in the tribunals of the Colony—in respect of the lands in question; and that if such right did then exist, there could be no doubt that the Act of 1869 prejudicially affected it, for it is plain that if Messrs. Lundon and Whitaker then had such a right, Messrs. Graham and De Hirsch could, upon the facts, have none; and therefore, the Act of 1869, by virtue of which the latter acquired a legal title through a Crown grant, did manifestly affect prejudicially, or take away, the right of the others. If the Act of 1869 was only declaratory of rights, such as Messrs. Hirsch and Graham had without it, then Messrs. Lundon and Whitaker had no claim which it could prejudice.

3. It was partly for this reason, and partly because I did not consider that the language of the Act of 1871 was capable of the suggested interpretation, that I refused at the hearing to go into the question, which I was with some urgency invited on the part of the opposition to the claimants to consider, namely,—"Whether the Legislature acted arbitrarily in passing the Act of 1869; and whether it was not their duty, under the circumstances, to pass an Act explanatory of the meaning of the former Acts?" I then stated that I could not believe the Legislature could have intended to empower a Commissioner to pronounce an opinion with respect to their duty, or to the political or moral propriety of their conduct, and that I never would have accepted a Commission which empowered me to censure the conduct of the Legislature. I considered that the words "improperly or unconstitutionally taken away," as applied by the Legislature to an act of their own, must mean "contrary to existing legal or equitable rights, or to the provisions of the statutory Constitution of the Colony." It is unnecessary to advert to these words for the purposes of my decision; but having been urged to take a note of my refusal to hear any arguments on this point, I deem it advisable that I should so far allude to it.

4. The claimants were content to rest their claim exclusively upon the existence of a legal or equitable right existing in them immediately before the passing of the Act.

5. The question at issue turns upon the interpretation and the construction of certain Imperial and Colonial Acts, which it is very difficult to harmonize in all respects, and in which the Legislatures have not always manifested their intention in the most perspicuous and unambiguous terms.

6. There are, as far as I am aware, no recorded decisions which can either directly or by analogy apply to the matter in question, except those which are illustrations of very general principles of interpretation and construction. Of such principles, those which seem most applicable to the case are—(1.) That words used in a Statute must have some meaning ascribed to them if possible; (2.) That where the interpretation of words is doubtful, the meaning of the Legislature must be arrived at by the intention manifested on due construction of the particular Act, and of others *in pari materiâ*; and (3.), That words occurring in an enabling statutory provision should be construed liberally, or extensively, in favour of the probable intention of the Legislature.

7. And here I think I may properly remark, that, in my opinion, there is no class of legal questions so embarrassing or difficult to deal with, as questions of interpretation and construction sometimes are;—and none for the determination of which it is so desirable to have the concurrence of more than one judicial mind. I am therefore glad to know that my present decision will probably be submitted for the consideration of the Court of Appeal under the provisions of the Act of 1871. Had this not been probable, I should have desired to postpone my decision for some time, in order that I might reconsider it with more leisure, and also might condense the statement of my reasons; but I am induced to come to a conclusion and express my reasons at once, in order that there may be an opportunity of appealing to the Court of Appeal at its next sitting, and that delay in the final settlement of the matter may thus be avoided.

8. In conducting the argument, and in forming my opinion on the case, I have assumed that, as Commissioner, I may take notice—as I should do when acting as a Judge of the Supreme Court—of all Imperial and Colonial Acts, charters, and treaties pertinent to the question, whether stated or referred to in the special case or not.

9. Before proceeding to a necessary though cursory review of the policy and provisions