No. 1, and the same had been approved, and the Commissioners had recommended grants, or a grant, to the Company accordingly, it would have remained at the discretion of the Crown to make or refuse such grant. This title the Crown has always asserted; and although, after the selection of the officers by the Company of the land in question, as reserves for the benefit of the Native chiefs, the Crown forebore to interfere with the lands thus selected, it has done no solemn act to encumber, much less to alienate its estate, but in 1847 the Crown asserted its title by building an hospital on one of the sections, and in 1851 made the grant now impeached, and has continued to maintain its title till the present time.

Upon the construction of the findings upon the issues in this case, we are of opinion that the facts as found do not establish any right in the prosecutors which can be recognised and enforced by *scire facias*.

In disposing of this case, as by law we are bound to do, we cannot be insensible to those facts by which the expectations of the Native chiefs and their descendants may have been encouraged and kept alive. It is possible that the original vendors to the Company would have demanded and obtained a higher price for their lands had they not relied upon the covenant that one tenth of those lands would be held and improved by their European purchasers for their benefit. In the arrangements with the Pah Taranaki Natives, it is shown that some of the Natives still counted upon these lands as reserves in estimating the additional compensation which they should accept; and it appears that those Natives entered, or some of them, into an agreement on that occasion to cede their interests to the Crown. The subsequent correspondence and negotiations between the Company and the Secretaries of State, if known or explained to the Native owners, may have led them to rely even upon the officers of the Crown, as the advocates and protectors of their interests. The grant of the 27th January, 1848, under the public seal of the Colony, upon the back whereof the sections in dispute were indicated, by an officer appointed by the Crown, as Natives Reserves, although the grant itself was issued four days too late to give it statutory validity, this and other acts certified by the finding on the 23rd issue, if known to the Natives interested, may have been by them accepted as guarantees of their supposed rights. If so, the natives have slept upon those rights apparently until the present suit. We have not the evidence on which to form an opinion, nor is it any part of the duty of this Court to decide upon such questions in the present case. If the Natives have any claim upon the favorable consideration of the Crown, it may be presumed that those claims will be respected, when properly represented. We can only, on this *scire facias*, order that judgment be entered of record for the defendants. The rule obtained by the defendants is made absolute, and that obtained by the prosecutors is discharged.

Mr Izard applied for and obtained leave to appeal to the Judicial Committee of the Privy Council.

No. 2.

The Hon. the NATIVE MINISTER to the Hon. W. MANTELL.

Native Office,
Wellington, 20th August, 1873.

SIR,—

I have the honor to acknowledge the receipt of your letter of this day's date, enclosing for the information of the Government copies of the judgment of the Court of Appeal in the case of Regina v. Fitzherbert, as printed in the *New Zealand Mail*, and to express to you my thanks for the same.

I have, &c.,

DONALD M'LEAN.

The Hon. W. Mantell,
Wellington.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.