

1883.

## NEW ZEALAND.

## SUBDIVISION OF POUAWA BLOCK, GISBORNE.

(LETTER FROM MR. JUDGE HEALE RELATING TO.)

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

Mr. Judge HEALE to His Honor the CHIEF JUDGE, Native Land Court.

SIR,—

Auckland, 23rd March, 1881.

The history of the Pouawa subdivision case, which has been partially dealt with by the Court over which I preside at Gisborne, is so remarkable, and it appears to me pregnant with consequences so disastrous to the Natives, that I think it right to lay all the facts before you, in the hope also of obtaining some support in the action I may take in similar cases in the future.

The Pouawa Block was awarded, under the 17th section of "The Native Lands Act, 1867," to sixty-five registered owners. It contains 19,200 acres of land, much of it hilly and steep, but all of fair quality, and part of it excellent agricultural land. Seven years ago it was leased for twenty-one years at a rent of £100 per annum.

As the basis of the present proceedings it is proposed, on behalf of the Native owners, to purchase the interest of the lessee for £25,000. When this is done the awards of the Court in partition will come into effect. By these a reserve of several hundred acres, including old pas and burial-places, is to be made inalienable; about 800 acres have been ascertained to represent value of the interest of a small number of dissentients, and of infant owners; and the remainder, about 18,000 acres, will be awarded to the parties, who have executed a conveyance of 12,000 acres of it for £1 per acre, the proceeds to be paid towards the cancellation of the lease. Thus a remnant of 6,000 acres of the least valuable portion of the block will be left to the Natives subject to a debt of £13,000, in addition to the costs of the agent and counsel, which I am informed have extended over two years.

The Native Land Court has been directed, in many sections of the Act of 1873, and elsewhere, in addition to its purely judicial functions, to take into consideration the fairness and propriety of transactions brought before it, especially in respect of partition. The operation described appears to me so prejudicial to the interest of the Native owners that, although they are consenting parties, I should have hesitated in acting upon it and giving it effect, but for the fact that *bona fide* purchasers and lessees for the greater part of the 12,000 acres now to be sold have been induced, with the full knowledge of the Native owners, to come from England to occupy and cultivate it, and it is right that the contract with them should be carried out, though to the detriment of the sellers; but should similar cases be brought forward in which this inducement to the Court to act does not exist, I, for my own part, should think it right to refuse to proceed to a partition to be brought into effect by the purchase of a lease at a price equivalent, or nearly so, to the value of the land.

It happens, however, that the document embodying that particular transaction would not generally come before the Court; but the facts must come out in evidence, and the Judges are so distinctly directed in many sections of the various Acts to consider the fairness and reasonableness of the transaction, and to make that the basis of its awards in partition, that it cannot be contrary to the intention of the law for them to extend such considerations beyond the document immediately before them to the whole transaction in respect of which its action is invoked. The Court has been informed that lands to the extent of some 300,000 acres are proposed to be dealt with in some similar manner, so that the question is likely soon to be raised.

There can be no doubt that for the Native Land Court to interpose a barrier against the subdivision of these lands, on the ground of the exorbitant sums to be paid for the purchase of the leases (to which, however, the consent of the owners themselves has been obtained), will arouse a very vehement outcry and opposition; and, before incurring it, I should be very glad to be fortified with your opinion whether such discretionary action by the Court could be sustained, and whether in your opinion it is proper to exercise it.

I have, &amp;c.,

THEOPH. HEALE.