

Fenton, while preparing the Act, the question was discussed whether the principle of trustees should be introduced, that is, whether one Native or several Natives should be put in as trustees for the whole tribe or hapu. It was agreed that the principle of trustees should not be introduced. The consequence was that, by the interpretation by the Court, ten Natives were put into the certificate of title as owners of large quantities of land which were really owned by the whole tribe. I have heard that great injustice has been done by the land being disposed of by the ten nominal owners; and, the money for the land being received by these ten nominal owners, the rights of the body of Native owners, even of powerful chiefs, being altogether ignored. It is obvious there could be no interpretation of the clause which I am speaking of except either that the ten whose names were put in the grant were to be trustees, or that no grant should be made except to ten men who were the owners, and the only owners of the piece of land to which the grant referred.

888. I would ask Mr. FitzGerald if he could suggest any measure or provisions, which he thinks essentially necessary, which would render it possible to deal in a satisfactory manner with the purchase of Native lands?—I have been so long removed from all consideration of Native questions that I would speak with great reluctance and diffidence on the subject at all; but I may say that I think the first or one of the first objects to be attained should be to put an end to large tracts of Native lands falling into the hands of private individuals. I know no way of stopping what is called "land-sharking," or jobbing in Native land, except by putting an absolute limit to the quantity of land that any private individual may obtain from Natives, and absolutely confiscating to the Crown any land so obtained in excess of the quantity limited by law.

889. *Mr. Locke.*] Would not that tend to encourage dummyism: half a dozen persons could club together for the purpose?—I think there would be no difficulty in preventing that if there were an intention that it should be prevented.

890. *Hon. Mr. Bryce.*] You have described to us, Mr. FitzGerald, that clause 23, by which only ten persons could be put into the grant, and you have given us your interpretation of it: you said it was obvious that these ten persons were either trustees or the only owners of the land?—I think that was the intention of the clause.

891. Now, may I ask you, as a matter of opinion, whether you think there is a single piece of land in all New Zealand in which ten persons "are owners, and the only owners"?—Ten or less than ten, I think it is. I think the intention was to individualize the land so far as the number ten; that is, unless the Natives should agree that the piece of land should go to a certain ten persons no certificate was to issue.

892. *Sir G. Grey.*] You say ten or less than ten?—Ten or less than ten.

*Hon. Mr. Bryce:* I wanted to clear up that expression of yours respecting the number in the grant, but your last answer makes it quite clear.

893. *Mr. Ormond.*] You spoke just now of limiting the area which you would allow one individual to purchase: have you any definite idea as to the limit you would like to fix, or that you would recommend?—No; probably my opinions and the opinions of others would be guided on that question by whether it was desirable to place a limit to the extent of land held from any particular source by one person: on that there might be a great difference of opinion.

894. Do you know the interior of the country?—No.

894A. You know it to be rough: would it not be very difficult to apply any system to such land as it is compared with land that is really valuable and fit for profitable settlement?—Possibly; as also with regard to inaccessible mountains.

895. But does it not suggest to you very great difficulty in carrying out your proposal?—Perhaps; but not impossible. What I meant to express was this: that one way of putting a stop to the purchase of Native land by Europeans, purely for speculative purposes, and to make money out of such transactions, would be to reduce the area capable of being purchased to such a limit that it would not be worth the while of that class of persons to enter into them.

896. That gives a very different meaning from what you said before?—That is what I mean.

897. That gives a fuller meaning?—Yes.

898. In referring to the Act of 1865, did you mean to convey, in your opinion, that the Native Land Court had misinterpreted the spirit of the Act?—I think it entirely misapprehended that clause.

899. Are you aware of the point ever having been raised for the consideration of the Court, by protest or otherwise?—No, I am not; but I have frequently had conversations with the late Chief Judge on the subject in the course of the years that have passed since. I left office the year after that Act was passed. I have no hesitation in saying that had I remained in office the doubt as to the meaning of the clause would have been cleared up.

900. You said, I think, that the Chief Justice and yourself drew that Act?—It was brought down by Mr. Fenton from Auckland. He was not Chief Judge then. We were engaged on it for some time, and after many alterations it took its present form.

901. How soon after, do you remember, did Mr. Fenton become Chief Judge?—About a year after, I believe.

902. Why did he then, knowing the intention and the spirit of the Act, administer it differently: can you give us any explanation?—No; I cannot.

903. He would not have been amenable to instructions by the Government on the subject?—Certainly not; but the Act ought to have been altered the moment the misunderstanding as to its meaning was discovered. I may say that it is impossible to believe that it was the intention of Parliament to hand over to ten people land which belonged to five hundred.

904. *Mr. Hobbs.*]—I understand you, Mr. FitzGerald, to say, that when you were discussing this Bill with Mr. Fenton it was agreed that the principle of "trusts" should not be introduced?—Yes.