SESS. II.—1891.
NEW ZEALAND.

# UNFINISHED REPORT BY THE LATE MR. THOMAS MACKAY RELATING TO NATIVE-LAND LAWS.

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

## No. 1.

Mr. Judge MACKAY to the UNDER-SECRETARY, Native Department.

(Memorandum.) Native Land Court Office, Wellington, 20th June, 1891.

RE Native-land Laws Commission: Having noticed in the newspapers that Government intend to publish the late Mr. Thomas Mackay's report, and being familiar, to a certain extent, with the views he held on the question, I should be glad to be of assistance in piecing together the unfinished portion with a view to make the report as complete as possible.

The Under-Secretary, Native Department, Wellington. A. MACKAY.

## No. 2.

The UNDER-SECRETARY, Native Department, to Mr. Judge MACKAY.

SIR,— Native Office, Wellington, 22nd June, 1891.

I am directed by the Hon. Native Minister to thank you for your kind offer to assist in placing the late Mr. Thomas Mackay's unfinished report in connection with the Native-land Laws Commission in such a shape that it can be printed and presented to Parliament.

As your relationship and intimate intercourse with Mr. Mackay, whose sudden death is deeply regretted by the Government, has made you better acquainted with the papers he has left on the subject than any one else, Mr. Cadman will be much obliged if you will kindly undertake the work you propose. I am, &c.,

Alex. Mackay, Esq., Judge, Native Land Court, Wellington. T. W. LEWIS, Under-Secretary.

## No. 3.

Mr. Judge MACKAY to the UNDER-SECRETARY, Native Department.

(Memorandum.) Native Land Court Office, Wellington, 27th June, 1891.

RE late Mr. Thomas Mackay's report: Annexed is all the material that can be obtained out of the fragmentary minutes left by him. Had he lived it was his intention, in addition to other matters under contemplation for the completion of his report, to have compiled a return showing in perpendicular columns the several sections in the different Acts that conflicted with each other, with a view of exemplifying the cause that had led to the numerous complicated and defective titles that now exist.

Owing to the memoranda left by Mr. Mackay containing only an imperfect indication of his views as to the action to be taken to remedy the defects in the existing Native land laws, it does not appear possible to add anything more to the annexed papers, and I beg to recommend that they be printed as arranged.

The Under-Secretary, Native Department, Wellington. A. MACKAY.

No. 4.

UNFINISHED REPORT of the late Mr. THOS. MACKAY.

MAY IT PLEASE YOUR EXCELLENCY,—

While I concur with a great deal of the Report that the Chairman of the Commission has drawn up, yet I also quite as completely dissent from much that is contained in it. To this expression of dissent I am chiefly impelled by the conviction that there are matters in the report of my colleagues which are altogether foreign to the specific questions referred to the Commission by your Excellency. To these questions I consider the report should be strictly confined. No excursion should be made beyond those limits. The parts of the report to which I object are so blent and intermingled with those portions which I unreservedly indorse that any attempt to detach the one from the other might only obscure our points of difference. I have, therefore, concluded that my own views could be more concisely and perspicuously placed before your Excellency in an independent report, strictly confined to the actual subjects of reference to the Commission. To these I have drawn up categorical answers, which I respectfully submit to your Excellency :—

FIRST REFERENCE.

*The operation of the existing laws relating to the alienation and disposition of interests in Native lands within the Colony.*

To comprehend the various circumstances which lead up to the subject of this reference an epitome of the history of dealings in Native lands and a survey of the course of Native land legislation are necessary. They are as follows :—

In 1814 the scenes of barbarism enacted in New Zealand between the Europeans and Maoris had attracted general attention. The lawlessness which prevailed, combined with the remarkable aptitude evinced by the Maoris in the acquisition of knowledge, and their disposition to embrace the doctrines of Christianity, suggested to the Rev. Samuel Marsden, Colonial Chaplain of New South Wales, the desirability of establishing a mission-station at the Bay of Islands. In 1814–15 this benevolent scheme was carried into effect by Mr. Marsden himself, under the sanction of the Governor of New South Wales ; and, through the mission thus set on foot by the Church Missionary Society, a regular intercourse was opened up between England and New Zealand. It is doubtful whether, previous to the arrival of Europeans, the Natives had any notion of such a thing as the absolute alienation of territory. A contract for the transfer of an individual right in land had evidently been unknown in New Zealand until Mr. Marsden purchased 200 acres from the chiefs at Rangihoua (lat. 35° 10′ 28″ S., long. 174° 5′ 21″ E.) for the first missionary establishment at the Bay of Islands. This land he obtained in accordance with European law on a technical deed of feoffment prepared by lawyers in Sydney. The instrument itself became the model of a vast number of contracts for the sale of land to Europeans between 1814 and the establishment of the colony in 1840.

Long prior to Great Britain assuming the sovereignty of New Zealand numerous parties of Europeans claimed to have purchased large tracts of land from the Native chiefs. Other purchases were made in a hurried manner after it became known that New Zealand was to be formed into a British colony.

During the period referred to, the "land fever" in its different stages of "sharking," "jobbing," and *bonâ fide* speculation raged in New Zealand. Almost every ship-captain arriving in Sydney from New Zealand exhibited a piece of paper with a tattooed Native head rudely drawn on it, which he declared to be the title-deed of an estate bought for a few muskets, hatchets, or blankets. Some of these shipmasters were liberally supplied in Sydney with blank "deeds of feoffment" to be used in purchases of this kind ; and as the New South Wales Government had fixed a price of 5s., and afterwards 12s., per acre on land in Australia, adventurers crowded to New Zealand, hoping there to pursue their schemes with impunity. So numerous indeed were these pretended purchases that it is on record that seven companies in New South Wales laid claim to 36,614,000 acres, purporting to be in the South Island.

In January, 1840, Sir George Gipps, the Governor of New South Wales, within whose jurisdiction New Zealand had been placed, in order to stop these illegal proceedings, issued a Proclamation prohibiting all future purchases of lands from the Natives, and at the same time intimated that a Commission would be appointed to investigate all purchases already made.

This Proclamation was promulgated by Governor Hobson on his arrival in New Zealand in January, 1840 ; and in the same year the Governor and Council of New South Wales

passed an Act under which Commissioners were appointed to inquire strictly into all the circumstances under which land was said to have been purchased by British subjects from the aboriginal natives of New Zealand. By a provision of this Act, 2,560 acres were fixed upon as the largest quantity that any individual could retain in virtue of cession from the Natives, and legal title could only be issued by the representative of the Crown; to obtain which, it would be necessary to prove that a reasonable consideration had been given to the Native proprietors.

The rate of sufficient payment was fixed as follows: Between the years 1815 and 1824, 6d. per acre; between 1825 and 1829, 6d. to 8d. per acre; between 1830 and 1834, 8d. to 1s. per acre; between 1835 and 1836, 1s. to 2s. per acre; between 1837 and 1838, 2s. to 4s. per acre; and in the year 1839, 4s. to 8s. per acre.

On the 9th June, 1841, an Ordinance was passed by the Legislative Council of New Zealand, at Auckland, to repeal the Act of 1840 passed on behalf of New Zealand by the Governor and Council of New South Wales, and to terminate any Commission issued under the authority of the said Act, New Zealand having, in the meantime, been made independent of New South Wales.

The new Ordinance enacted that: "All unappropriated lands within the Colony of New Zealand, subject, however, to the rightful and necessary occupation and use thereof by the original inhabitants of the said colony, are and remain Crown domain lands of Her Majesty, her heirs and successors, and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by Her Majesty, her heirs and successors."

All titles to land, however obtained, "either mediately or immediately from chiefs or individuals of the aboriginal tribes," unless allowed by the Crown, were declared absolutely null and void. Under another clause the Governor was empowered to appoint Commissioners to hear, examine, and report on claims to grants of land in virtue of titles acquired from the Natives, such claims to be made at latest within twelve months from the date of the Ordinance.

The Commissioners were to be authorised to summon witnesses, and to punish by fine or imprisonment those who should fail to appear or refuse to give evidence. The rate of purchase between the years 1815 and 1839 was to be the same as that fixed by the New South Wales Act of September, 1840, but 50 per cent. was added above these rates for persons not personally resident in New Zealand or not having a resident agent there. Goods, when given to the Natives in barter for land, were to be estimated at three times their selling-price in Sydney at the time. A scale of fees to be paid by land claimants was scheduled with the Ordinance, and Major Richmond and Colonel Godfrey, who had been previously selected by Sir George Gipps, were reappointed Land Commissioners by Governor Hobson.

Up to the 1st of August, 1841, about six hundred claims to land in all parts of the colony had been referred by the Governor to the Commissioners for hearing, some of which had regard to small patches of ground, others to millions of acres, different parties in many instances asserting rights to the same tracts of land. All awards recommended by the Commissioners, on being approved by the Governor, were notified in the Government *Gazette*.

Subsequently to these proceedings Governor Fitzroy, who succeeded Governor Hobson in the government of New Zealand, appointed a new Commissioner, and, without the cases being further reheard, the former decisions were reversed, the result being that several hundred grants of land were issued to the land-claimants, some of these grants conveying to the grantees a greater quantity of land than they claimed to have purchased from the Native owners.

In consequence of the complications caused by these proceedings, Governor Grey, in 1849, considered it expedient, with a view to the final adjustment of the whole matter, to obtain legislation to quiet the titles to these lands, and an Ordinance was accordingly passed for that purpose, which received Her Majesty's confirmation.

In 1856 an Act was passed, extending the time for purchasers to lodge their claims, and for the appointment of Commissioners to carry it into effect. Another Act was passed by the Assembly in 1858 for the like purpose. Many persons who claimed to have purchased lands from the Natives never obtained their land, in consequence of refusing to acknowledge the power of the Commissioners.

With regard to the area claimed throughout the colony by these alleged purchasers, Mr. Commissioner Bell, the present Agent-General, in his report on the settlement of land-

claims dated the 8th of July, 1862, stated as follows: "The total area originally estimated to have been comprised in all the claims cannot be accurately ascertained. In many cases the extent of the claim was not stated. In some the contents were estimated in round numbers by millions of acres, or by degrees of latitude or longitude, or by the expression, 'as far as a cannon-shot will reach.' So far as can be estimated, however, after excluding the last-mentioned classes, the particulars as given in the return show a total of 10,322,453 acres."

In the instructions from the Colonial Office in 1839, regarding land in New Zealand, Governor Hobson was directed to induce the chiefs, if possible, to enter into a contract with Her Majesty that thenceforward no land should be disposed of, either gratuitously or otherwise, except to the Crown of Great Britain; and that immediately on his arrival he was to announce by Proclamation, addressed to all the Queen's subjects in New Zealand, that Her Majesty would not acknowledge as valid any title to land which either had been or should be thereafter acquired unless it were either derived from or confirmed by a grant to be made in Her Majesty's name and on her behalf. In order to prevent the acquisition of large tracts of territory by mere land jobbers, the Governor was also instructed to obtain by equitable contracts with the Natives the cession to the Crown of such waste lands as might be required for the occupation of settlers resorting to New Zealand. Care, however, was to be taken not to purchase any territory which the Natives might require for their own safety, comfort, or subsistence.

In conformity with these instructions Governor Hobson, shortly after his arrival in New Zealand, met assemblies of the Natives at Waitangi (in the Bay of Islands) and Hokianga, and induced them to agree to the treaty which has been named after the former place. By the second article of this instrument, which was officially promulgated and laid before Parliament,—

> Her Majesty the Queen of England confers and guarantees to the chiefs and tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and individual possession of their lands, estates, forests, fisheries, and other properties which they may collectively or individually possess so long as it is their wish to retain the same in their possession; but the chiefs of the united tribes and the individual chiefs yield to Her Majesty the exclusive right of pre-emption to such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective proprietors and persons appointed by Her Majesty to treat with them in this behalf.

The right of pre-emption being vested in Her Majesty by the aforesaid treaty, no persons could legally purchase land from the Natives after 1840 without permission or license from the Crown, or without conforming to the rules prescribed by colonial laws. Prior to the promulgation of the treaty the acquirement of Native land had also been interdicted by a Proclamation issued by Sir George Gipps, in January, 1840. The settlement of the country, and the establishment of British sovereignty of necessity effected a great change in the status of the New Zealand tribes. The assumption of the sovereignty of the islands under the provisions of the Treaty of Waitangi extinguished the separate nationalities that existed prior to its promulgation, while at the same time it saved all their proprietary rights, and, subject to Her Majesty's right of pre-emption, confirmed to the Native landowners the power of alienation which they had already begun to exercise.

The New Zealand Company's purchases from the Natives, having been made antecedent to the treaty, were also dealt with under these arrangements by a special Commissioner despatched from England to investigate their titles.

Very little land appears to have been purchased from the Natives by the Government during the first year or two after the establishment of the colony. This inaction caused considerable dissatisfaction amongst the Natives, as it deprived them of one of their chief means of obtaining money, a circumstance that was used by land speculators to foment discontent in the minds of the Natives with the terms of the Treaty of Waitangi, which forbade private speculation in Native lands.

Governor Fitzroy, shortly after his arrival in the colony in 1843, found the Natives clamorous to be allowed to sell their land. While acknowledging their obligations under the Treaty of Waitangi, they urged bitterly the injustice of the Government in refusing either to buy of them or permit them to sell to others. In fact, the Government at this time had neither money nor credit to enable them to purchase.

Yielding to these entreaties the Governor, in March, 1844, considered it advisable to waive the Crown's right of pre-emption, and permit a regular system of purchase between the settlers and the Natives under certain restrictions. Under the terms of a Proclamation issued on the 26th of the same month, all applications were to be sent in to the

Government, stating the particulars of the proposed purchases. The right of sale, however, was barred in respect of any pas, burial-grounds, and cultivated lands then in use by the Natives, and one-tenth of all lands purchased was to be reserved for the benefit of the Natives, the purchaser to pay to the Crown 4s. per acre, and to bear the expenses of the survey on nine-tenths of the land on receiving the consent of the Government to waive the Crown's right. Then, on the issue of the grant a further payment of 6s. was to be made, in all 10s. per acre, as a contribution to the land fund. The measure thus adopted was understood to be limited to the districts adjacent to Auckland.

These terms were not deemed sufficiently liberal by land speculators, and only a small quantity of land was purchased. At the same time the Natives were led to believe that the Treaty of Waitangi was merely a ruse by means of which to deprive them of their land, and that the recent Proclamation was a badge of slavery. A sham display of strength was accordingly made by the Natives at the instigation of interested individuals to intimidate the Government into withdrawing the obnoxious Proclamation, and permit the sale of land on easier terms.

In October, 1844, another Proclamation was issued, known as "the penny-an-acre Proclamation," doing away with the payment of fees to the Crown for consenting to waive the right of pre-emption, and making a fee payable at the rate of 1d. an acre on the issue of the Crown grant. These measures, though tacitly assented to in the first place by the Imperial Government, were afterwards disallowed.

Both Proclamations enabled private individuals to purchase land in the vicinity of Auckland which Government should have purchased, and about 90,000 acres were acquired from the Natives under the later one.

It was expected that "the penny-an-acre Proclamation" would restore prosperity to the country, and allure emigrants from Australia; but the unsatisfactory condition of this colony at the time discouraged people from coming.

The landowners in the New Zealand Company's settlements complained bitterly of the reduction in the price of land, as they had invested their capital and industry to a considerable extent in those settlements on the supposition that the minimum price (£1 per acre) of waste land would remain permanent. With regard to the reduced minimum price of land occasioned by the aforesaid regulations, the Directors of the Company also expressed a wish that the Imperial Government, in justice to the parties who had purchased from the Crown at the minimum price named, and also to the Company, should peremptorily declare that thenceforward no Native should sell land to any one but the Government; and that in all purchases made under Captain Fitzroy's Proclamation the purchaser should only be entitled to one acre for every £1, including the payment to the Natives, together with the 10s. or the 1d. paid to the Government, as the case might be.

With reference to this suggestion, Lord Stanley stated that he could not disturb the purchases already made under these Proclamations: that a further communication had been made to Governor Grey in connection with the instructions already given, and, to allay any apprehension that existed on this subject in regard to that and other points raised, the Governor had also been directed to waive the Crown's right of pre-emption in order to facilitate the acquisition of land by the company. In conformity with these instructions, the Governor issued a Proclamation in February, 1846, waiving in favour of the New Zealand Company, but of no other persons, the Crown's right of pre-emption, until further notice shall be given, of all lands and rights belonging to the Natives within such portions of the Northern and Middle Islands commonly known as the company's districts. The right of pre-emption had been previously waived in favour of the company by Governor Fitzroy, in February, 1844, over 150,000 acres in the Middle Island, to enable them to found the Otago settlement. A waiver of pre-emption was also made about the same time over 150,000 acres of land in Wairarapa District, and 250,000 acres elsewhere within the limits of the company's districts, and Mr. Commissioner Spain was instructed to assist the company's agent in effecting a purchase. These purchases, however, were subsequently prevented by the Proclamation issued in 1844, authorising the purchase of land direct from the Natives on payment to the Crown of a fee of one penny per acre, and by the suspension of the company's operations.

With a view to facilitate the operations of the New Zealand Company in their selection of land, and to expedite the issue of a Crown grant for the land acquired by them on both sides of Cook Strait, Colonel McCleverty was despatched in January, 1846, by the Imperial Government as a Commissioner to assist the company in that respect, and to judge the reasonableness of any purchase they might make from the Natives.

Lord Stanley, in a despatch to Governor Grey under date the 14th August, 1845, on the subject of the aforesaid Proclamation, disapproved of the regulations established by the Proclamation of the 10th October, 1844. He also explained that the fear of alienating the Natives in the then critical state of the colony had alone restrained the issue of peremptory instructions to stop the practice, but that it was to be terminated as soon as it was practicable to do so.

With regard to the ten-shillings-an-acre Proclamation of the 26th March, 1844, its operation was to be confined northward of a line drawn from Cape Kidnappers, in Hawke's Bay, running slightly westward until it met the Ruahine Range, thence along the range to the mountain of Rangitoto, and thence down the river Mokau to the port of Mokau. Lord Stanley also expressed himself unfavourable to its continuance at all if it was possible to put an end to it, preferring rather that the Crown's right of pre-emption as conceded by the Treaty of Waitangi should be maintained.

The ten-shillings-an-acre Proclamation was sanctioned by Her Majesty's Government in reference to the particular district defined by Lord Stanley, and the penny-an-acre Proclamation was confirmed in respect of sales sanctioned under it by Governor Fitzroy. Governor Grey was subsequently informed that Her Majesty had disallowed the Proclamations of the 26th March, 1844, the 10th October, 1844, and the notice of the 7th December, 1844; such disallowance not to prejudice any acts which had been done in strict pursuance of the Proclamation of the 26th March, 1844, antecedent to the receipt of the despatch conveying these instructions or any acts which had been done in strict pursuance of and under the authority of the Proclamation of the 10th October, 1844, antecedent to the receipt by the then Governor of New Zealand of Lord Stanley's despatch of the 27th June, 1845. All claims were to be referred to the Attorney-General to report on, and no Crown grant was to be prepared in favour of any claimant unless the Attorney-General certified that the terms of the Proclamation had been complied with.

The regulations subsequently adopted by the Governor in regard to land acquired under the foregoing Proclamations are contained in the subjoined extract from a minute of His Excellency to the Legislative Council, 7th August, 1847 :—

The regulations the Government intend to adopt are as follows:—The Government will issue at once to all claimants under the ten-shilling-an-acre Proclamation (who complied strictly with the terms of the Government notice of the 15th June, 1846), and whose claims have already been investigated or may hereafter be investigated by the Commissioner and favourably reported upon by him, absolute Crown grants in the usual form, on payment within one month from the report of the Commissioner of the remainder of the fees due; the grants to include the reserved tenths (at £1 per acre) in any case where the whole quantity granted does not exceed 200 acres. The same rule will be extended to the penny-an-acre claimants, for blocks not exceeding 500 acres (whether the land be cultivated or not), whose claims have been or may hereafter be favourably reported upon by the Commissioner, on their paying 5s. an acre within the same period of time, the quantity granted in any case not to exceed 500 acres.

The steps taken by Governor Grey for effecting a settlement of claims arising out of the above Proclamations were confirmed by Her Majesty's Government in 1848. A large proportion of the land within a radius of seven miles of the City of Auckland was claimed under the ten-shillings and penny-an-acre Proclamations; and, even to within a radius of twelve miles, but a very small portion of the land remained unclaimed under the penny-an-acre regulations.

The right of pre-emption being vested in Her Majesty by the Treaty of Waitangi, and certain Acts and Ordinances having been passed prohibiting, under penalty, private individuals from acquiring Native lands, a system of land-purchasing was commenced by the Government in 1847, and continued till 17th May, 1865, at which date it was abolished by proclamation. The Native Land Act of 1862, permitting the Natives to alienate their lands by private sale or otherwise, having been confirmed by Her Majesty, the Land-Purchase Department, by which the cession of Native lands to the Crown had heretofore been conducted, was no longer required.*

One of the chief reasons for the introduction of the Native Land Act of 1862 was owing to the discontent that agitated the minds of the Natives against the alienation of their land to the Crown. This feeling ultimately developed itself into the formation of a league to prohibit the sale of their land to Europeans. The tribes who originated this movement had viewed with alarm a rapid alienation of Native territory by other tribes, together with the progress of colonisation going on around them. They dreaded lest they should be ultimately persuaded to sell their lands and admit amongst them the advancing tide of European settlement. The Act in question was therefore considered necessary under the

* This narrative, so far, is mainly compiled from Part II. of the Introduction to the "Compendium of Official Documents relative to Native Affairs," by Alexander Mackay, Native Commissioner, Vol. I., 1873.

circumstances, as it enabled the Governor to constitute Courts for determining the proprietorship of Native lands. This measure received the Royal assent, and the General Assembly were empowered to repeal the 73rd section of the Constitution Act, which secured to Her Majesty the right of pre-emption over Native land.

A fresh Act was passed in 1865, the object being to provide the means of extricating the Native title from its existing entanglement, for reducing it to fixed rules, and subjecting it to the jurisdiction of regular tribunals, so as to provide a way by which the extensive unproductive lands in the hands of the Natives should be brought within the reach of colonisation. It was also hoped by its means the communistic habits of the Natives, which pervaded the whole of the institutions on which their social system was based, would be eradicated; and that, in giving to them the same individual ownership in land which we ourselves possessed, they would gradually lose their communistic character, and assimilate their social status to our own.

## Synopsis of Legislation affecting the Alienation and Disposition of Interests in Native Lands from 1862 to 1890 inclusive.

### "*The Native Land Act*, 1862."

This Act was the first to provide a Court for the investigation into, and the determination of, Native-land titles. It also waived in favour of the Natives so much of the Treaty of Waitangi as reserved to the Crown the right of pre-emption of their lands, except in those cases where agreements were pending between the Crown and the Native owners for the cession of territory, or the acquisition of land by purchase and cession. By this abrogation of the treaty Europeans were enabled to deal directly with the Natives for their lands so soon as a certificate of title thereto was issued. This was the first step towards complicating the titles of Europeans to Native lands. The certificates referred to were merely deductions of ownership, with but limited rights of transfer. A purchaser could only acquire a good title, such as might be exchanged for a Crown grant, when all the Natives named in the certificate, if that instrument was in favour of individuals, and not of tribes or communities, joined in the transfer. Should, however, only a proportion of these Natives execute a transfer, the purchaser had to trust to their applying to the Court to partition their interests, which application the Court could, in its discretion, either approve of and effectuate, or refuse to do so. The Act did not, however, provide for the purchaser himself applying to the Court to ascertain, and allot to him, the interests which he had acquired.

The Act was seldom, if ever, brought into operation. Perhaps this was owing to so many of the Native tribes in the northern and western divisions of the North Island being in rebellion. There was also an Amendment Act passed in 1864, which merely gave the Governor power to increase the number of members forming a Court.

### "*The New Zealand Settlements Act*, 1863."

This Act was passed in consequence of the many outrages upon life and spoliations of property which had been perpetrated by rebel Natives. Its object was to provide for the defence of the European settlers and loyal Natives in disturbed districts, by promoting further settlement of Europeans. Eligible sites for such settlements were to be taken by Proclamation, and compensation therefor determined by Compensation Courts, except that no compensation was to be granted to any person engaged since January, 1863, in making war against Her Majesty, or who had aided any such persons, or been concerned in any outrage against persons or property, or who had refused or neglected to deliver up his or their arms on being required to do so after a certain day to be proclaimed. A return was made to the House of Representatives in August, 1866, of all lands proclaimed or taken from rebel Native tribes under this Act. The total was 3,255,787 acres, which included the confiscated lands in Auckland, Taranaki, and Wanganui. Of these confiscated lands, however, over 1,000,000 acres have since been restored, as reserves for friendly Natives and returned rebels. An Amendment Act was passed in 1864 giving extended powers to the Governor in Council in awarding compensation. The duration of both Acts was limited to the 3rd December, 1865.

"The Native Lands Act Amendment Act, 1864," contained only one clause, which gave the Governor power to increase the number of members forming a Court.

### "*The Public Works Lands Act*, 1864."

This provided for Native lands required for public purposes being dealt with in the same manner as prescribed in "The New Zealand Settlements Act, 1863."

*"The New Zealand Settlements Amendment and Continuance Act,* 1865."

This made perpetual the Act of 1863, as amended by the Act of 1864, but provided that no proclamation of districts and reservation of land for settlement should be exercised after the 3rd December, 1867; otherwise it only provided more enlarged machinery for the Compensation Courts in dealing with claims for land taken but not confiscated. This Act was repealed in 1878.

*"The Native Lands Act,* 1865."

This amended and consolidated the laws relating to Native lands in the colony. It constituted a Court, the Judges of which held their office during good behaviour, and the Assessors their office during pleasure; for the ascertainment of the persons who according to Native custom were the owners of such lands; for the extinction of proprietary customs, and the conversion of such modes of ownership into titles derived from the Crown. The discretion was reserved to the Court of recommending that the Crown grant should contain such restrictions on alienability, limitations, or conditions as it deemed desirable. The Act also provided for the regulation of the descent of lands when the title thereto was converted as aforesaid, and made further provision in reference to the aforesaid matters. The most important of these are contained in Part III., "Jurisdiction and Duties of the Courts," sections 21 to 29, and particularly as affecting subsequent alienation of any lands which had passed the Court; in the provisoes to section 23, "that no certificate of title shall be ordered to more than ten persons, and, further, that if the piece of land adjudicated upon shall not exceed five thousand acres, such certificate may not be made in favour of a tribe by name;" and also in the provisions of section 24, "that two or more certificates may be ordered under one claim, if on investigation there is more than one owner or set of owners who desire that their respective estates or interests shall be divided, or that the land shall be apportioned."

Section 42 prescribed that any Native claiming to be interested in a piece of Native land may give notice to the Court, specifying such piece of land by its name, and giving the names of the persons whom he admitted to be interested with him, and that he desired that his claim should be investigated by the Court.

Section 43 prescribed that, if, upon the publication by the Court of such claim, the claimant and his opponents (if any) should agree to submit to the decision of the Court, it might proceed to determine the same, provided that the certificate or certificates to be issued should be delivered to the person named therein as entitled. It also enacted that if the Court recommended that any conditions or limitations should be attached to such certificate it should not issue it until the Governor should have approved or disapproved of such conditions or limitations, and should have caused as much as he should think fit to be indorsed thereon.

Section 44 provided that such certificates should, in all Courts of law in the colony, be conclusive as to the persons who owned the land described therein, and that they might be registered in the proper registry of deeds.

Section 45 enacted that any Native having a claim by right of Native custom to succeed to the ownership of any land whereof a Native may die possessed, might apply to the Court to have his right in the premises decided, and the Court might hear and determine such claim, and issue a certificate setting forth the decision of the Court, and such decision should be final in all Courts of law.

Section 46 prescribed that on receipt by the Governor of the certificate it should be lawful for him to cause a Crown grant to be issued in favour of the person or persons named in such certificate, and, if recommended by the Court, it should also be lawful for him to insert in the grant any restrictions on alienability, limitations, or conditions, as might be expressed in such recommendation.

Section 47 prescribed that if the purchaser of part of a piece of land comprised in a certificate applied for a Crown grant for the same, it should be lawful for the Governor to issue one, provided the certificate contained no restrictions, limitations or conditions; but it also enacted that the deed should be surrendered as hereinafter provided with respect to Crown grants on subdivision of hereditaments.

Section 48 prescribed that such grants should be valid and effectual as grants made by the Governor of waste lands of the Crown, and as if the lands comprised had been ceded by the Native proprietors to Her Majesty, and should bar all estates, rights, titles, or interests of all persons except the grantees named therein. It should be conclusive as to the limits and extent of such land, and in all other respects have the legal effect and consequence of an ordinary grant from the Crown.

Section 74 prescribed that every conveyance or other disposition of hereditaments of Native land granted under this Act made by a Native to a person of European race or to another Native should be interpreted to the conveyor or other disposer, and should be executed by him in the presence of and be attested by a Judge or a Justice of the Peace, and should have written thereon or annexed thereto a statutory declaration by the person so interpreting that his translation was correct, and was understood by such Native; and such declaration should be made before the said Judge or Justice of the Peace, and should have the legal effect of a declaration made under the Imperial statute 5 and 6 Will. IV., cap. 62.

By the 75th section, however, "every conveyance, transfer, gift, contract, or promise affecting or 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."

This Act was so successful that in a return of the proceedings of the Court, embodied in a Report on the working of "The Native Lands Act, 1865," by Chief Judge Fenton (Parliamentary Paper A No. 10, 1867) it is stated that from the 1st November, 1865, to the 30th June, 1867, a period of twenty months, there were 1,220,477 acres, of which 957,774 acres were in Auckland Province, to which title was ordered by the Court. The late Judge Maning, the quaint and humorous author of "Old New Zealand," in a letter to Chief Judge Fenton, dated Hokianga, 24th June, 1867, on the working of the Court, states "that 'The Native Lands Act, 1865,' satisfies a great want and vital necessity of the Maori people, by offering them a means of extricating themselves from the Maori tenure, and obtaining individual and exclusive titles of land;" and Chief Judge Fenton winds up his report with the following words: "Nothing that has yet been tried has so largely tended to produce in the minds of the Maoris peaceful desires and a grateful confidence in the Legislature as 'The Native Lands Act, 1865.'"

An Amendment Act, to be read and construed as part of the Act of 1865, was passed in 1866. Its principal features in respect of the alienation of Native lands were as follows: Section 5 provided that in every Crown grant of any Native reserves the land therein comprised shall be inalienable by sale or mortgage, or by lease for a longer period than twenty-one years from the making of such lease, except with the consent of the Governor in Council: provided that, if any grant of Native land shall have been made to a Native under limitations or restrictions on the alienation of such land greater or other than above provided, the Governor in Council may release the land from such limitations or restrictions, or any of them, so that such land shall be thenceforward subject only to the restrictions in this section contained, and to the other provisions of this Act relating to Native reserves. Section 6 gave the Governor in Council power to indorse any proposed conveyance, lease, or other disposition of such land, and thereby make it alienable to the extent expressed in the instrument. Section 11 removed the discretionary power of the Court, conferred on it by section 28 of the Act of 1865, as to whether or not in every case of investigation of title the Court when issuing the certificate should prescribe in that document any restrictions or limitations, and made it imperative that the Court should do so.

### "*The Native Rights Act*, 1865."

This Act declared that the Maoris should be deemed to be natural-born subjects of the Queen, and that the jurisdiction of the Queen's Courts of law extended over the persons and properties of all Her Majesty's subjects within the colony.

Section 4 provided that the Native title to land be determined according to the ancient custom and usage of the Maori people.

Section 5 enacted that in any action in which the title to any interest in such land is involved, the Judge should order that any issues of fact or of Maori usage should be tried in the Native Land Court, and the Judge of that Court should return the judgment into the Supreme Court; and such judgment should be taken as conclusive, and should have the effect as the verdict of a jury in the Supreme Court.

### "*The East Coast Investigation Act*, 1866."

This was passed to enable the Native Land Court to inquire into and determine titles to land in the East Coast (Poverty Bay) District.

By section 3 it conferred upon the Native Land Court the following power and jurisdiction: (*a*) To inquire into and determine the title to all and any land or lands, whether claimed by or belonging to aboriginal natives or other British subjects, and whether or not such investigation shall be required on the part of any person or persons claiming title

thereto; (*b*) to award, by certificate issued under the direction of the Court, that grants of land may be made to such Natives, or other persons respectively who shall be found to be entitled thereto, as shall not have been engaged in the rebellion; (*c*) in those cases in which it shall be found that Natives who have been engaged in the rebellion are, or but for such participation in rebellion would have been, entitled to land jointly with other Natives who shall not have been so engaged, to make an equitable partition of such land, to assign to the Natives so entitled, who shall not have been so engaged, their just portion of such land; (*d*) and to ascertain and certify what lands are, or, but for participation in the rebellion would have been, the property of persons who have been engaged in the rebellion.

Section 4 enacted that lands which the Court certified to be the property of persons who had been engaged in the rebellion should be declared to be land of the Crown.

Section 6 prescribed that provision might be made for persons who had been engaged in the rebellion by setting apart lands for them, subject to conditions as to how such lands should be held or disposed of for the benefit of such persons.

### "*The Native Lands Act*, 1866."

This Act was to be read and construed with "The Native Lands Act, 1865."

Sections 4 to 10 principally affected alienations of Native reserves. Section 11 provided that the Court should append a report on every certificate, whether it was proper or not to place any restrictions on the alienability of the land comprised in such certificate.

Section 12: If report adopted in the affirmative, restriction to be endorsed on certificate.

### "*The Native Lands Act*, 1867."

This repealed the Act of 1866, except in so far as was necessary to the support of any act, matter, or thing done or completed thereunder, and except also as to any penalty or forfeiture incurred under the Act of 1866: provided that any investigation of title commenced under the repealed Act, and pending at the time of the passing of this Act of 1867, should be continued and conducted under this Act as if originally commenced thereunder.

The principal object, however, in introducing the Act was to insure the ascertainment of the whole of the owners so as to cure the defect in the Act of 1865 which enabled the land to be vested in ten persons, thereby ignoring the interests of the majority. No sale of land under this form of title could be effectuated until after subdivision. Although the Act was passed with the object of protecting the whole of the owners, the fact of its being only requisite that no more than ten should be inserted in the body of the certificate perpetuated the evil effects of the Act of 1865, as these ten individuals could lease the land and appropriate the proceeds.

Section 17, which was enacted for the above object, was but a clumsy attempt to amend section 23 of the Act of 1865. The verbiage of the former is so infelicitous and obscure that it can hardly be "understanded of any man." Nevertheless titles have been determined by it, but whether satisfactorily is doubtful.

Section 32 weakened section 74 of the Act of 1865, in regard to the interpretation and execution of deeds of Native lands, so that, instead of such instruments being interpreted to the conveyor or disposer of the land, and executed by him in the presence of, and attested by, a Judge or Justice of the Peace, *it should be sufficient if the execution of such deeds were made in the presence of, and attested by, the interpreter and any other person being a male adult.* The removal of a safeguard to the *bona fides* of such transactions, by the substitution of the latter mode, enabled many illegal and doubtful titles to land to be obtained by Europeans from Natives.

### "*The Maori Real Estate Management Act*, 1867," *and* "*The Maori Real Estate Management Act Amendment Act*, 1877."

These Acts provided for the management of land owned by Native minors and others under disability, otherwise than under their customs and usages, and for the appointment of trustees, and defining their powers.

They were repealed by "The Native Land Court Act, 1886."

### "*The Native Lands Act Amendment Act*, 1868."

This was simply a machinery Act dealing with a few questions outside of investigation of titles, or the alienation and disposition of interests in Native lands.

*"The East Coast Act,* 1868."

This Act repealed "The East Coast Land Titles Investigation Act, 1866," and the Amendment Act of 1867, but this repeal was not to affect the past operations of these Acts, or the validity of anything done, or of any right, title, or interest which had accrued thereunder.

Section 3 directed the Native Land Court to refuse to order certificate of title to issue in favour of persons guilty of offences mentioned in the 5th section of "The New Zealand Settlements Act, 1863."

Section 4 gave to the Court a discretionary power either (1) to order a certificate of title in respect of the whole of such claim to issue in favour of the owners who had not committed any of the offences mentioned in the 5th section of the said Act; or (2) to order that such claim should be divided in a manner to be specified by the Court, and that in respect of each of the several divisions either a certificate of title should issue in favour of owners who had not committed any of the offences so mentioned in the said 5th section of the said Act, or a certificate stating that the land comprised therein belonged according to Native custom to persons who had committed some of the offences mentioned in the said 5th section of the said Act; or (3) to order that a certificate in respect of the whole of the claim should issue stating that the land comprised therein belonged according to Native custom to persons who had committed some of the offences mentioned in the said 5th section of the said Act.

Section 5 directed that any land comprised within any such certificate which stated it to belong to persons guilty of such acts aforesaid, should be deemed Crown lands.

Section 6 empowered the Government to make reserves for the use and maintenance of specified aboriginal Natives.

*"The Native Lands Act,* 1869."

Section 2 directed that every certificate of title should be dated on the day of signature, and that such day should be the date of issue.

Section 3 empowered the Court to fix in such certificate a day on which the legal estate in the lands described therein should be vested under any Crown grant of the same to be thereafter issued.

Section 4 provided that no deeds, transfers, gifts, contracts, or promises affecting the land of which such certificate was granted, made or entered into after the day fixed on therein should be void under or affected by section 75 of "The Native Lands Act, 1865."

Section 12 declared that in any grant theretofore or thereafter to be made under the Native Lands Acts of 1865 and 1867, when there was more than one grantee, such grantees should be deemed to be tenants in common, and not joint tenants. This provision, however, was not to apply to cases in which grantees or their survivors should have previously alienated the lands comprised in their grant or any part thereof by absolute conveyance in fee-simple.

Section 14 directed that undefined shares of tenants in common should not be deemed to be equal unless it was so stated in their grant. This provision was not, however, to apply to shares, estates, or interests already purchased from any such grantees, which for the purpose of such transactions were to be considered equal.

Section 15 declared it should not be lawful for less than a majority in value of the grantees of any land under the said Acts (1865 and 1867) to alienate or dispose of their shares in such land, or any part thereof; but, if any dispute should arise as to such value, either or any of the parties could apply to the Court to have such value ascertained, and order made accordingly, as provided in section 50 of the Act of 1865. The Court, however, might, if it thought fit, refuse to make any order.

Section 20 limited the time for ordering a rehearing under section 81 of the Act of 1865 to three months, instead of six months. This was repealed by a short Act for the purpose, "The Native Lands Act Amendment Act, 1870," section 3, in which the original limit of six months was reinstated.

*"The Native Lands Frauds Prevention Act,* 1870," *and Amendment Act of* 1873.

The object of these Acts was to prevent the maladministration of lands vested in trustees for the Natives in cases where trusts had been created in the names of individual proprietors, but really for the benefit of Native communities; to take care that these trusts were fulfilled, and that the lands were not alienated so as to defeat the true objects of the trust. The same precautions were also to be exercised in respect of the alienation of lands that were not the subject of any trust. The machinery employed under them to secure these ends was as

follows: Districts were to be constituted, and Commissioners appointed to each district. The Commissioner was to examine directly into all land-transactions between Europeans and Natives. He would have to satisfy himself that the transaction was fair and equitable; that it was in accordance with the trusts affecting the land; that no part of the consideration, either directly or indirectly, was payable in liquor or arms; and, lastly, that the parties understood the nature of the transaction. If he was satisfied that all these conditions had been fulfilled he would grant a certificate to that effect, and no instrument without this certificate indorsed would be allowed to be registered, or admitted as evidence in any Court of law. For the purpose of enabling the Commissioner to discharge his duty all the powers under the Commissioners' Powers Act were vested in him. Persons feeling themselves aggrieved by the decision of the Commissioner could appeal direct to the Supreme Court in a simple and inexpensive manner, and the Court had the power to confirm or annul the transaction, as seemed fit. But, lest the Court might chance to be overburdened by this work, power was taken in the Act, with the approval of a Judge of the Supreme Court, to appoint a barrister to exercise the function of the Court. Power was also given to the Governor in Council to regulate the manner in which the Commissioners should discharge their duties.

*"The Native Land Act,* 1873."

This Act was originated by the late Sir Donald McLean to amend and consolidate the laws relating to the Native Land Court and to Native land. Its intention was to establish a system by which the Natives should be enabled, at a reduced cost, to have their surplus land surveyed, their titles thereto ascertained and recorded, and the transfer and dealings relating thereto facilitated; to have a roll or "Domesday Book" prepared of the Native land throughout the colony, with a view of assuring to the Natives, without any doubt whatever, a sufficiency of land for their support and maintenance, besides establishing endowments for their permanent general benefit out of such lands.

This Act repealed the Native Lands Acts, 1865, 1867, 1868, 1869, and 1870, and section 73 of "The Constitution Act, 1852," which latter enactment had confirmed the Crown's right of pre-emption over Native lands. In addition to amended powers for the investigation and determination of titles to Native lands, it gave power to set apart land out of Native blocks as reserves for the benefit of Natives; and the land so reserved was to be equal to an aggregate amount of not less than 50 acres per head for every Native—man, woman, or child—resident in any district. It likewise reconstituted the Native Land Court on lines somewhat different from those laid down in earlier Acts, and it introduced certain changes in the procedure of the Court. For instance, in settling the titles of Native reserves and other Native lands it substituted for a certificate of title a memorial of ownership, in which the names of all the individual owners of the lands reserved for the benefit of Natives, or lands otherwise adjudicated upon, should be enrolled. Moreover, Native reserves lands were to be inalienable by sale, lease, or mortgage, except with the consent of the Governor in Council.

In the case of other lands, the amount of the proportionate share of each owner was to be declared in the memorial when the majority of the owners so required; and to every memorial there was the condition "that the owners of the land referred to therein had not power to sell or otherwise dispose of the said land, except that they might lease the same for any time not exceeding twenty-one years, without covenant for renewal or for purchase at a future time." In spite of this condition, however, nothing was to preclude any sale of the land comprised in such memorial when all the owners agreed to the sale, nor was it to prevent any partition of such land.

*Sales under Memorial of Ownership.*

By section 59 any sole owner, or any number of collective owners, could sell their land held under memorial, subject to inquiry by the Court into the particulars of the transaction, and to its being satisfied of the justice and fairness thereof, of the assent of all the owners to such sale, and the payment of all costs and charges whatsoever, and advances as earnest-money to the Native owners. When so satisfied, the Court was to indorse the memorial to the effect that the transaction appeared to be *bonâ fide,* and that no difficulty existed to the alienation of the land comprised in the memorial.

By section 62 no lease of any land held under memorial was to be valid unless all the owners of the land comprised in such lease should assent thereto; and the Court was required to satisfy itself in every case of the fairness of the transaction, of the rent to be paid, and of the assent of all the owners to the lease. All such leases were to be signed by all the owners in the manner provided in section 85.

By section 63 receivers of rent might be appointed by the Judge, with the consent of all the owners; and on their application he might appoint any persons selected by them, not being fewer than four persons, either out of their number or not, Europeans or Natives, to be receivers on behalf of all the lessors of the rents under such lease. Moreover, the lessee was not bound to see to the proper application thereof, nor in any way be accountable for any loss or misapplication thereof.

Section 79 declared that, in any grant made under any of the Acts repealed by this Act, where there was more than one grantee, such grantees should be deemed to be tenants in common and not joint tenants, but the estate or interest of each of such several grantees should not be deemed to be of an equal value unless it had been so stated in the grant: Provided that nothing contained in this section should be deemed to apply to any former grantee who had already alienated the land comprised in any such grant.

Section 85. This imposed a fresh provision for the signing and attestation of instruments of alienation or disposition even more stringent than the similar clause (section 74) of the Act of 1865. In addition to the terms of the latter it required that before the execution of any such instrument it should be properly explained to each Native before the execution thereof, by a duly-appointed interpreter, and a clear statement of the contents thereof, written in Maori and certified by the signature of such interpreter, should be indorsed on the instrument, and it further required that its execution should be attested by a Judge of the Court or a Resident Magistrate, and at least one other male adult credible witness.

Section 87 declared that every instrument of disposition affecting any Native land before it should become vested in freehold tenure by order of the Court should be absolutely void, except that contracts by *parole* might be made affecting flax, timber, or actual productions growing on such land, extending over a period of not more than two years.

Section 89. This affected past transactions. It permitted a grantee under any of the repealed Acts who was desirous that subdivision should be made of the land included in the grant, or any part thereof, for the purpose of having his share in severalty allotted to him, or affecting a partition among the owners thereof, and should no disposition of the said land or any part thereof have been made before the passing of this Act, such person might apply to the Court to make such subdivision, and the Court might order a Crown grant for a defined portion of the land to the applicant; and on surrender of the original grant to the Crown, the Court might, in its discretion, order such subdivision as it should deem just, and might order Crown grants to be issued according to the award in partition.

Section 92 provided that, where lands had been in part alienated, undivided shares of former grantees might be ascertained.

Section 97 provided that after the passing of this Act no land comprised in any certificate of title heretofore issued under section 17 of the Act of 1867 should, until it was subdivided and awarded, be alienated in any way except in accordance with the provisions of this Act: Provided that owners under former certificates might apply for subdivision, and such subdivision might be ordered, notwithstanding that any lease of such land might have theretofore been made; but no award of partition in any such case should take effect during the subsistence of any lease of the land comprised in such award.

Section 98 declared that all lands comprised in any certificate as aforesaid not alienated in any way might be dealt with same as land held under memorial of ownership under this Act: Provided that such land respecting which any dealings may have theretofore been had might be dealt with same as land held under memorial of ownership under this Act; but that in every dealing with such land the parties interested should satisfy the Court that they had the assent of all the persons whose names were indorsed on the certificate, as well as those on the face thereof, to any such transaction.

This Act was intended to simplify and methodise the Native-land laws, and although prepared with great care to give effect to such intention, yet it turned out a failure. It was found to be unworkable through being hampered with too many conditions relative to the investigation and determination of title to Native lands on the one hand, and the alienation or disposition of them on the other.

"*The Native Land Act Amendment Act*, 1874."

This Act was to be construed and read with "The Native Land Act, 1873."

Section 3 repealed the proviso to section 4 of the Act of 1873, and in lieu thereof it provided that the repealed Acts recited in the Act of 1873 should, notwithstanding the repeal thereof, thereby continue and be in force for the purpose of continuing and perfecting under any of the said repealed Acts any proceedings commenced or in progress thereunder, and under the said repealed Acts all such proceedings should be continued and perfected.

*"The Native Land Act Amendment Act,* 1877," *and "The Native Land Act* 1873 *Amendment Act,* 1878."

These Acts did not contain any special provisions affecting disposition of Native lands.

*"The Government Native Land-purchase Act,* 1877."

It was deemed expedient to pass this Act in order to make better provision for the protection of the interests of the Crown in the acquisition of Native lands. Agents had been employed to purchase such lands on commission, and there were a number of such purchases under negotiation; and it was also deemed expedient that that mode of purchasing Native lands should be forthwith discontinued and other arrangements made for the completion of any such purchase then under negotiation.

Section 2 provided for the protection of the interests and rights of the Crown in all cases of incomplete purchases or negotiations whether the same had passed through the Native Land Court or not.

*"The Government Native Land-purchase Act Amendment Act,* 1878."

Section 2 gave the Crown the right to expel intruders on lands under negotiation.

Section 3 provided that the relinquishment of any rights of the Crown should not operate for two months after the intention of such relinquishment had been notified in the *Gazette.*

Section 4 authorised the Governor to issue Crown grants for any lands agreed to be reserved for Natives out of any blocks to which the title of the Crown had been determined by the Court, vesting such reserves in the persons interested with such restrictions as the Governor should deem fit.

*"The Native Land Act Amendment Act,* 1878 (*No.* 2)."

Section 10 fixed three months as the time for making application for rehearing.

Section 11 prescribed that, notwithstanding anything to the contrary thereto in "The Native Land Act, 1873," or any amendments thereof, it should be lawful for the Court in its discretion, on the application of any Native owner or other person interested therein, to hear and determine the value or extent of any estate or interest in any land held by such applicant under memorial of ownership, or Crown grant, or award, or conveyance; and, if it should deem fit, to make an order vesting any part or portion of such land in such applicant.

Section 12 made a fresh rule, relative to the execution of instruments of disposition, as follows: That any instrument might be signed by any Native interested in the same before any Justice of the Peace, Clerk of any Resident Magistrate's Court, or any Inspector of Armed Constabulary, or a Solicitor of the Supreme Court, not professionally concerned or engaged for any of the parties to such transfer, lease, or other instrument, who should have the same powers as are conferred on Judges of the Native Land Court, or Resident Magistrates, under the provisions of section 85 of "The Native Land Act, 1873:" Provided that any such officer holding a license as an interpreter under "The Native Land Act, 1873," should not attest the execution of any deed which had been interpreted by himself: Provided, further, that the attestation by an adult witness, as required by the said Act, should still in all cases be necessary.

*"The Native Land Court Act,* 1880."

Section 70 repealed the Act of 1873, in so far as was repugnant to this Act, and provided that a certificate of title issued under this Act should have the same force and effect and might be dealt with as a memorial of ownership under the Act of 1873. The rest of the Act principally related to the procedure of the Native Land Court, but contained no provisions respecting the alienation or disposition of lands.

*"The Native Lands Frauds Prevention Act,* 1881."

This repealed and consolidated the Acts of 1870 and 1873, and provided additional machinery for effecting the purposes for which such legislation was necessary.

*"The Native Land Acts Amendment Act,* 1882."

Section 7 enacted that, whereas claims to land had been heard and decided, or partly decided, and proceedings had been taken by the Native Land Court under "The Native Land Act, 1873," and its amendments, in which sundry provisions of the said Act had not been technically complied with, it should be lawful, on the application of any person interested either originally or derivatively in any such land, for the Court to inquire into the matter, and make such order respecting the same as should appear to the Court justly to remedy any mistake or error in the proceedings; an indorsement made by the Court in pursuance of any such order, on any instrument of disposition, should be valid and effectual for effecting the objects specified in such order, and an entry should be made in the Registry of the Land Transfer and Registry of Deeds offices to the effect that such order had been made.

*"The Native Land Division Act,* 1882."

The object of this Act was principally to remedy defects in the division of shares of Native lands purchased by Europeans, and particularly with the view of clearing away the complications of the general Native Land Acts with "The Poverty Bay Grants Act, 1869."

The latter Act was passed to enable the Governor to carry out certain engagements for grants of land in the Poverty Bay district, as follows: Whereas by deed dated the 18th of December, 1868, certain lands therein described at Poverty Bay were ceded to the Governor, on behalf of the Crown, by the Native owners thereof, upon the terms that certain engagements to grant land to members of the Colonial Defence Force, and to certain friendly Natives, theretofore made should be performed by granting part of the said lands so ceded, and the residue should be granted to those loyal persons whose claims should be ascertained as in the deed mentioned.

Power was therefore given for grants to be issued of any part of the said lands to such persons as were entitled thereto under the said deed, or under any engagement by the Government with respect to the said lands or any part thereof, whether there was evidence in writing or not of such engagement, on the Governor in Council being satisfied with the evidence produced in proof thereof.

*"The Native Land Laws Amendment Act,* 1883."

Section 7 debarred private persons from negotiating for the purchase or occupation of any Native land until forty days after the title thereto should have been ascertained. Any person so doing was, by section 8, subject to a summary penalty not exceeding £500, and the transaction, except thereinafter provided (section 11), was declared null and void.

Section 9 required the Trust Commissioner, in addition to the other inquiries directed by "The Native Lands Frauds Prevention Act, 1881," to ascertain if any such negotiation was commenced or carried on after the passing of this Act, and before the day fixed by the *Gazette* notice, under section 7, that dealings with such land would cease to be prohibited under the provisions of this Act.

Section 10 directed the Trust Commissioner to indorse invalid instruments to that effect, and no instrument so indorsed should be registered in any Registry of Deeds or Land Transfer unless the decision of the Commissioner should be removed or altered on appeal to the Supreme Court, and the indorsement ordered to be expunged by the Court.

Section 11 rendered such instruments valid after registration, but did not abate the liability of any person to any pecuniary penalty.

*"The Native Committees Act,* 1883."

This Act, which was passed to enable the constitution of Native Committees, or Courts of Arbitration, in case of dispute between Natives where the cause of same did not exceed £20, by section 14 enacted that, in respect of questions of the Native title to land, a Committee might make inquiries and report their decision thereon to the Native Land Court in the following cases: (1) Where it is desired to ascertain the names of the owners of any block of land being or to be passed through the Native Land Court; or (2) where it is desired to ascertain the successors of any deceased Native owner; or (3) where disputes have arisen as to the location of the boundaries between lands claimed by Natives.

There is no record of any operations having been initiated under this section, but if it was acted on properly the time of the Court would be much saved.

*"The Native Land Alienation Restriction Act,* 1884."

This Act prohibited dealings by Europeans in certain Native lands in the Provincial Districts of Auckland, Taranaki, and Wellington, known as "the King-country," to prevent complications which might arise through negotiations for such purchases within the boundaries of that territory, it being desirable to lock it up for a time until the necessary land through which the northern main trunk line of railway was to be constructed was definitely arranged for.

Section 7 saved the right of the Crown to acquire any of the land within the territory aforesaid which the Native owners thereof might wish to dispose of.

In connection with this Act it may be stated that "The Government Native Land Purchases Act, 1877," and the relative Amendment Act of 1878, which were passed to protect the interests of the Crown in the purchase of Native lands, are unrepealed.

*"The Native Equitable Owners Act,* 1886."

This Act was passed to confirm to Natives certain equitable rights. Under "The Native Lands Act, 1865," certificates of title to and Crown grants of certain lands were made to Natives nominally as absolute owners, whereas in many cases such Natives were only entitled and were only intended to be clothed with titles as trustees for themselves and others, members of their tribe, or hapu, or otherwise. It was therefore enacted by sections 2 and 3 that, upon the application of any Native claiming to be beneficially interested in any such lands, the Native Land Court might inquire into the nature of title to such land, and into the existence of any intended trust affecting the title thereto. And, according to the result of the inquiry, the Court might declare that no such trust exists, or, if it found that any such did or was intended to exist, who were the persons beneficially entitled. Section 4 empowered the Court, therefore, to order that the persons entitled to beneficial ownership should be owners as tenants in common of the land in question, and should be deemed to be such owners as if their names had been inserted in the certificate or grant affecting such land.

Section 5 protected prior conveyances, also leases.

Section 8 restricted alienation, except by lease for no longer period than twenty-one years, unless with permission of the Governor.

*"The Native Land Administration Act,* 1886."

This Act was enacted to control dealings by Europeans in Native lands. In fact, it was a resumption by the Crown of the pre-emptive right; but no transactions were effected under it, and it was repealed by the 3rd section of "The Native Land Act, 1888."

*"The Native Land Court Act,* 1886."

This Act was passed to amend and consolidate the laws relating to the Native Land Court. It repealed the following Acts: "The Maori Funds Investment Act, 1865," "The Maori Real Estate Management Act, 1867," "The Maori Real Estate Management Act Amendment Act, 1877," "The Native Land Act, 1873," "The Native Grantees Act, 1873," "The Native Land Act Amendment Act, 1874," "The Native Land Act Amendment Act, 1877," "The Native Land Act 1873 Amendment Act, 1878," "The Native Land Act Amendment Act, 1878 (No. 2)," "The Native Land Court Act, 1880," "The Taonui-Ahuaturanga Land Act, 1880," "The Native Land Act Amendment Act, 1881," (except the last three clauses,) "The Native Succession Act, 1881," "The Native Land Acts Amendment Act, 1882," "The Native Land Division Act, 1882," "The Native Land Laws Amendment Act, 1883;" and was simply a machinery Act for the future administration of the Native Land Court.

*"The Native Land Act,* 1888."

Section 3 repealed "The Native Land Administration Act, 1886;" but it, and also section 7, saved the rights of renewal of leases under the repealed Act.

By section 4, subject to the provisions of the Native Lands Frauds Prevention Acts of 1881 and 1888, Natives were permitted to alienate or dispose of their land as they thought fit.

Section 5 enacted that existing restrictions on alienation might be removed by the Governor in Council on the application of a majority in number of the Native owners.

*"The Native Land Court Act* 1886 *Amendment Act,* 1888" *(to be read and construed as part of "The Native Lands Court Act,* 1886").

Section 6 permitted restrictions on alienation which might thereafter be ordered under section 13 to be annulled or varied by order of the Court on application by a majority in

number of the owners of the land the subject of such restriction; but such restriction should only be annulled or varied on public inquiry by the said Court after notice had been given in the *Gazette* and *Kahiti:* Provided that the Court had to be satisfied that the owners of such lands had other land under a Court title in their own right, and sufficient for their maintenance and occupation, and that the owner of the land the subject of the application for removal of restrictions concurred in such removal.

Section 16 enacted that land or shares in land owned by Natives be deemed to be transferable, but not to apply to land where alienation was restricted, or to be thereafter restricted.

Section 17 prescribed that in the removal of restrictions on alienation under the provisions of section 5 of "The Native Land Act, 1888," the assent of one or more Judges and one Assessor were necessary.

"*The Maori Real Estate Management Act,* 1888."

The Acts under this head of 1867 and 1877 having been repealed by "The Native Land Court Act, 1886," without any incorporation of their provisions, it was found necessary to re-enact a fresh measure, on similar lines to those repealed Acts, for the management of the real estate of infants and others of the Maori race under disability, otherwise than under their customs and usages, and for appointing trustees and defining their powers.

"*The Native Lands Frauds Prevention Act* 1887 *Amendment Act,* 1888" *(to be read and construed with the Act of* 1881*).*

Section 5 prohibited dealings with Native land unless such land was owned under Crown grant or Native Land Court title issued to not more than twenty Natives, or unless such land should thereafter become and have been so owned for forty days.

Section 7 prescribed a penalty not exceeding £500, to be recovered in a summary way, against any person entering upon such prohibited dealings, and every such dealing was to be declared illegal and void.

"*The Native Lands Frauds Prevention Acts Amendment Act,* 1889."

Section 3 enacted that in section 5 of the Act of 1888 the words "to not more than twenty Natives" should not apply to Native land held under a Native Land Court or Land Transfer Act title before the passing of that Act: (1) If such land did not exceed 5,000 acres in area; or (2) if a contract in writing for the alienation of such land of any area, or any part thereof, had been made and not completed before the passing of the said Act. And the said section should be read and construed in respect of such lands as though the said words "to not more than twenty Natives" had been omitted therefrom: Provided that nothing in the said 5th section should be deemed to prevent a lease of land so owned or the subject of such order aforesaid not exceeding 10,000 acres.

"*The Native Land Court Acts Amendment Act,* 1889" *(to be read and construed together with the Native Land Court Acts of* 1886 *and* 1888*).*

Sections 2 to 19 inclusive were additions and amendments to the machinery clauses of these Acts.

Section 20 empowered the Governor in Council to appoint two or more Commissioners, of whom one should be a Native, to inquire into all the circumstances attending any alleged alienation or acquisition of land or of any interest therein before the 1st of July, 1887, which might be barred or invalidated by any law then or at that time in force, and report on each case that might be brought before them, and generally on all matters connected therewith, and make such recommendations as might appear proper.

Sections 21 to 26 inclusive were machinery clauses for carrying out the above objects.

Section 27 declared that the Commissioners if they should find any intended alienation of land could not be registered, or was liable to impeachment, because such alienation being of land under memorial of ownership or Native Land Court certificate did not include the whole of the signatures of the Natives owning under such title, or that completion was prevented by alteration of the law; that where the transaction was entered into in good faith and was not contrary to equity, and that the purchase-money had been paid, they might sign a certificate, and such alienation should be valid from the date of the instrument, or from such date as the Commissioners might determine, and such instrument might be registered under "The Land Transfer Act, 1885." This attempt to settle defective titles in certain dispositions of Native lands to Europeans proved abortive, as the powers which were conferred by

section 20 on the Commissioners who were appointed thereunder were insufficient to deal practically and absolutely with the cases which were submitted to them, and in consequence thereof the Commission came to an end on the 31st March, 1891.

"*The Native Land Laws Amendment Act*, 1890."

Section 4 declared that a voluntary arrangement by the Natives or by the Natives and Europeans concerned in any proceeding before the Native Land Court should be reduced to writing and signed *by all* the parties thereto; and the Court should be satisfied of the authenticity of the signatures and the *bona fides* of such arrangement before giving effect thereto.

The condition that the agreement should be signed *by all* the parties thereto rendered the section inoperative, as it is alleged that it had been found impossible to procure all the signatures in such cases.

SCHEDULE of the various ACTS referred to in the above SYNOPSIS, showing respectively those which have been repealed and those which are now in Force.

*Acts repealed.*

"The Native Land Act, 1862;"
"The New Zealand Settlements Act, 1863;"
"The Public Works Lands Act, 1864;"
"The New Zealand Settlements Amendment and Continuance Act, 1865;"
"The Native Land Act, 1865;"
"The East Coast Investigations Act, 1866;"
"The Native Lands Act, 1866;"
"The Native Lands Act, 1867;"
"The Maori Real Estate Management Act, 1867;"
"The Native Lands Act Amendment Act, 1868;"
"The Native Land Act, 1869;"
"The Native Lands Frauds Prevention Act, 1870;"
"The Native Lands Frauds Prevention Act Amendment Act, 1873;"
"The Native Land Act, 1873;"
"The Native Land Act Amendment Act, 1874;"
"The Native Land Act Amendment Act, 1877;"
"The Maori Real Estate Management Act Amendment Act, 1877;"
"The Native Land Act 1873 Amendment Act, 1878;"
"The Native Land Act Amendment Act, 1878 (No. 2);"
"The Native Land Court Act, 1880;"
"The Native Lands Act Amendment Act, 1882;"
"The Native Land Division Act, 1882;"
"The Native Land Laws Amendment Act, 1883;"
"The Native Land Alienation Restriction Act, 1884;"
"The Native Land Administration Act, 1886."

*Acts in Force.*

"The Native Rights Act, 1865;"
"The East Coast Act, 1868;"
"The Government Native Land Purchase Act, 1877;"
"The Government Native Land Purchase Amendment Act, 1878;"
"The Native Lands Frauds Prevention Act, 1881;"
"The Native Land Acts Amendment Act 1881" (sections 7 to 9 inclusive);
"The Native Committees Act, 1883;"
"The Native Equitable Owners Act, 1886" (lapses 16th September, 1891);
"The Native Land Court Act, 1886;"
"The Native Land Court Act 1886 Amendment Act, 1888;"
"The Native Land Act, 1888;"
"The Native Lands Frauds Prevention Act 1881 Amendment Act, 1888;"
"The Maori Real Estate Management Act, 1888;"
"The Native Lands Frauds Prevention Act Amendment Act, 1889;"
"The Native Land Court Acts Amendment Act, 1889;"
"The Native Land Laws Amendment Act, 1890."

LAWS AFFECTING THE ALIENATION AND DISPOSITION OF INTERESTS.

At the risk of being considered tedious, I have deemed it necessary to set before your Excellency the foregoing compendium of the various laws which have affected the alienation and disposition of interests in Native lands within the colony. The enactments in question have been placed on the statute-book from time to time during the last thirty years, and the following comparative analysis of some of their provisions will show how conflicting and changeable the legislation has been, its present tangled state being the result:—

SCHEDULE showing the various Forms of Title ordered by the Native Land Court under the Native Lands and Native Land Court Acts, from 1862 to 1890 inclusive.

| Date and No. of Act. | | No. of Section. | Form of Title ordered by the Court. |
|---|---|---|---|
| 1862 | 42 | 3 | Prescribed certificate of title to ten persons jointly. |
| 1865 | 71 | 23 | Prescribed certificate of title to all the owners as tenants in common. |
| 1867 | 43 | 17 | Prescribed certificate of title to all the owners. Ten to be placed in the certificate, and the remainder to be registered in the Court records. |
| 1869 | 26 | 12 | Prescribed certificate of title to all the owners. Where more than one grantee, such grantees to be tenants in common and not joint tenants. |
| 1873 | 56 | 47 | Memorial of ownership, all the owners to be declared and be tenants in common. |
| 1877 | 31 | 34 | Certificate of title. If owners more than ten, divisions to be made and certificates issued accordingly. |
| 1887 | 31 | 56A | Memorials of ownership under Act of 1873 may be cancelled, and certificates of title issued in lieu thereof. |
| 1877 | 31 | 58 | Grantees to be tenants in common, unless they request in writing to be made joint tenants. |
| 1880 | 38 | 25 | Certificate of title in lieu of memorial. |
| 1881 | 18 | 8 | Crown grants to be issued in favour of the persons respectively named in the certificates as tenants in common. |
| 1886 | 24 | 22 | Certificate of title under "The Land Transfer Act, 1885," to be issued to the persons ascertained to be owners. |
| 1886 | ... | 3 | Grantees under above certificate of title to be tenants in common, but not equally unless so stated in the grant. |

PARTICULARS OF THE ORIGIN OF THE PRE-EMPTIVE RIGHT OF THE CROWN TO NATIVE LANDS AS SOLE PURCHASER, AND THE VARIOUS WAIVERS AND RESUMPTIONS OF SUCH RIGHT.

In 1840 the Treaty of Waitangi, which was entered into between the Native chiefs, representing the owners of Native lands in New Zealand, and the Queen, reserved to the Crown the sole right of purchase of their lands.

In March, 1844, Governor Fitzroy, moved by the clamors of the Natives to be allowed to sell their land, waived the Crown's right of pre-emption by Proclamation on the 26th of the same month.

In October, 1844, another Proclamation was issued, known as the penny-an-acre Proclamation (a fee payable at the issue of the Crown grant to the purchaser). These measures were afterwards disallowed by the Imperial Government.

In 1852, the Constitution Act, by section 73, confirmed the pre-emptive right of the Crown under the Treaty of Waitangi.

In 1862 the Native Land Act, by section 17, waived in favour of the Natives the Crown right to pre-emption, but did not repeal section 73 of the Constitution Act.

In 1873 the Native Land Act, by section 4, repealed section 73 of the Constitution Act, by which repeal the Crown's right to the pre-emption of purchase of Native lands was absolutely abrogated.

In 1884 the Native Land Alienation Restriction Act, by section 3, temporarily prohibited dealings by private persons in certain Native lands in the Provincial District of Auckland known as "the King-country," and also in the Districts of Taranaki and Wellington, as it was considered desirable to lock them up for a time pending the construction of the Northern Main Trunk Railway.

In 1886 the Native Land Administration Act, by section 29, practically prohibited further dealings of private individuals with Natives for their lands by enacting that their lands should be disposed of in accordance with the provisions of "The Land Act, 1885."

In 1888 the Native Land Act, by section 3, repealed the Native Land Administration

Act of 1886, and thereby all Native lands otherwise unrestricted as to disposal were set free except those prohibited in that respect by section 3 of "The Native Land Alienation Restriction Act, 1884."

FRESH LEGISLATION RECOMMENDED.

In the fresh Native Land Court Act the following provisions should be made:—

1. The Judges to be given the status of a Judge of the Supreme Court, and to hold office during good behaviour; salaries to be fixed and paid without further appropriation.

2. Special Judges and one Native Assessor to be appointed to settle absolutely the titles in all incomplete and outstanding purchases and leases, and to validate, by an order of the Court, any transaction proved to have been entered into in good faith between the parties thereto; and wherever a fraud shall be found to have existed, or the common law to have been broken in other than mere technical matters of omission or commission, then to revest the land conveyed, or such portion of it as may be just, in the vendors or lessors: Provided always that the said Court shall have full power as arbitrators in all cases brought before them, subject to the provisions of this statute, to decide all questions at issue between the parties, and to give such decisions as may appear to them just and reasonable; and in all cases the said Court shall have power to make valid and effectual titles in accordance with their verdicts and decisions, which titles shall be valid and effectual for all purposes, and may be registered under the Land Transfer Acts in force in New Zealand.

6. The Chief Judge, in deciding to grant a rehearing, to have the power to direct that such rehearing may be held by himself, or by the Judge who originally dealt with the case, or by one or two other Judges, as he may decide. The decision of such Court to be final.

4. The Chief Judge, with the assistance of the other Judges, to reconsider the question of revising the present scale of fees payable by suitors and witnesses in the Courts, with the view of making them, so far as is judicious, less burdensome, consistent with sufficient safeguards against the time of the Court being taken up with unnecessary repetition or irrelevancy of evidence.

5. To also draw up a code of Native usages and customs regarding the tribal ownership of land, giving the different significations that may be in vogue in the several Native districts.

The following Acts should be revised, and consolidated into two Bills, viz.:—

(*a.*) "The Native Land Court Act, 1886" (No. 24), and its amendments (No. 37, 1888, and No. 32, 1889).

(*b.*) "The Native Land Frauds Prevention Act, 1881," and its amendments (No. 38, 1888, and No. 31, 1889).

(*c.*) "The Native Committees Act, 1883" (No. 19), and its amendment (section 18 of "The Native Land Court Act, 1888" (No. 37).

The new Native Land Administration Act and the Native Land Court Act should contain the following provisions:—

There should be saving clauses in each Act respecting all incomplete proceedings and transactions, prohibiting in the future all dealings between private individuals and Natives for their lands until such lands had been proclaimed under the New Zealand Administration Act as open for settlement, and then only such dealings to be carried on under the provisions of such Act.

Lands in the King-country should be restricted, as they will be very much enhanced in value by the Central Railway, and Government should have some benefit from the construction of the line.

Provide a Compensation Court composed of a Native Land Court Judge and two Assessors —one European and one Maori—to assess the value of all Native lands which the Government desire to take, or the rental of any land, in cases where the District Officer cannot come to terms with the owners.

*The Native Land Administration Act.*

This Act should be administered by a central Board, consisting of three Europeans and one Maori, experienced in Maori usages and customs, and experts in valuing lands—the Chief Judge and Surveyor-General to be members *ex officio*—who shall be a body corporate by the name of "The Native Land Administration Board," and by that name shall have

perpetual succession and a common seal, and be capable in law of suing and being sued, and, subject to the provisions hereinafter contained, shall have power to, &c.

Each Commissioner to hold office for a term of five years, and at the end of term to be eligible for reappointment.

Every Commissioner shall hold his office during good behaviour.

A Commissioner may be removed for misbehaviour, *when the General Assembly is sitting*, by a recommendation to the Governor, &c. *When the General Assembly is* NOT *sitting*, by a writing under the hand of the Governor.

A Commissioner shall be deemed to have vacated his office if, &c.

One of such Commissioners shall be appointed by the Governor in Council as Chief Commissioner, &c.

The Commissioners shall receive the following salaries: (1.) The Chief Commissioner a salary not exceeding £ per annum. (2.) Each of the Commissioners a salary not exceeding £ per annum. All such salaries, and the salary of any Deputy-Commissioner during his term of office, shall, without further appropriation, be paid out of the Consolidated Fund.

Each Commissioner shall be allowed per day for travelling-expenses.

Two Commissioners to form a quorum. The Chief Commissioner to be chairman at meetings of the Commission. If absent, the next senior Commissioner shall preside.

Presiding Commissioner shall, in the event of an equal division of votes at a meeting, have a second or casting-vote.

The present four Native Districts—Auckland, Poverty Bay, Wanganui, and Wellington to remain as they are.

A District Commissioner to be appointed to each Native District, except in the case of Auckland, which will require two—one for the North, the other for the South.

The main functions of the Board to be: (1.) To advise and assist Natives holding land under Maori usage or custom in getting their lands passed through the Native Land Court in the manner set forth in Appendix A. hereto. (2.) When such lands have finally passed through the Court, to further advise and assist the Native owners in the subsequent management and disposal of their lands in the manner set forth in Appendix B. hereto. (3.) To take over from the Public Trustee the control and management of all Native reserves, and the West Coast Settlement Reserves at present under his jurisdiction; and all moneys at the credit of these several reserves, as well as all liabilities, at the date of such taking over. (4.) To take over all endowments for educational or other purposes which have been made of lands belonging to the Native race, and to carry out the objects for which such lands were dedicated; or, if there has in the past been any failure in the carrying out of the trusts for which such lands have been set apart, then to endeavour to reinstate the same, or, if that is found impracticable, to restore the lands to the original owners or their successors.

*On the Disposition of Moneys.*

All moneys derived from the lease or sale of the lands in question shall be paid to the District Commissioner, who shall lodge the same daily in the bank to the credit of an official account of the Commissioners called "The Native Land Fund Account." Such account shall be operated on only by cheque signed by the Commissioners, or in such manner as rules may prescribe.

Public Revenues Act to apply.

Accounts to be kept by Commissioners in such form as the Controller and Auditor-General shall direct, &c.

Moneys to be paid to owners after deductions: (1.) 5 per cent. on all purchase-money or rent to be received towards the costs not otherwise provided for of giving effect to this Act. (2.) So much as may be agreed upon between the District Commissioner and the Committee to repay the cost of surveying and laying off roads, and the cost, or part of the cost, of roading under this Act. (3.) The amount of any moneys certified by the Surveyor-General to be owing by the owners in respect of any surveys.

## APPENDIX A.

### Procedure for the Investigation of Title to Native Lands.

Be it enacted that, in all cases where the Natives claiming to be owners of or interested in Native land are desirous to have the title thereto investigated, the procedure shall be as follows :—

1. The leading Natives of the tribe claiming to be the owners of the land in question shall memorialise the Board in the form in the First Schedule hereto.

2. Upon receipt of such memorial the Commissioner shall instruct the District Commissioner in whose district the lands are situated to arrange with the memorialists to hold a meeting by a certain date in their runanga (meeting-house) for the purpose of electing in his presence a tribal Committee, such Committee to be composed of one leading chief of each hapu or sub-tribe claiming to be owners of the lands the subject of the memorial.

3. When such Committee is duly elected the District Commissioner shall place at their disposal the District Surveyor, to assist them in settling the external boundaries of the land in question as between their own tribe and any adjoining tribe. Should any difference arise between any tribe and another, or any hapu and another, regarding boundaries, the District Commissioner shall go into the matter in dispute *on the spot*, on a day to be fixed by him, and his decision in the matter shall be final.

4. When the boundaries are agreed upon, the District Surveyer shall make a survey of the lands and construct a map therefrom on a large scale, showing their position in the provincial survey district, their natural features, mountains, hills, lakes, rivers, streams, swamps, and forests; highest and lowest altitudes above sea-level, and general geological formation; also the sites of pahs, cultivations, eel-weirs, fishing villages on the sea coast, if any, and burial-grounds in use or abandoned. Such map to be used for setting out and fixing on it the hapu or sub-tribal boundaries as between each hapu.

5. When all such boundaries are fixed and delineated on the map, and the same agreed to and signed by the Committee, a fresh map is to be made therefrom and certified by the surveyor, and such map shall be the basis of and accompany the application of the Natives to the Native Land Court expressed through the Committee in the form of the Second Schedule hereto.

6. Two copies of such application and map shall be transmitted by the Committee to the District Commissioner, who shall without delay record and forward the same with his report thereon to the Board.

7. The Board, on the receipt of duplicate copies of the application and relative maps, shall, if such are in order, forward without delay one set to the Chief Judge of the Native Land Court, with the request that the application may be dealt with by a Court to sit within the district and as near as conveniently may be to the lands the subject of this application.

8. The District Commissioner and surveyor shall attend the Court at the time of the hearing of the application and render every assistance in making matters clear to the Court.

9. When the Court has finally settled the title to the lands in question, the Registrar of the Court shall, without delay, transmit to the Commissioners a certified copy of the order of the Court therein.

10. Costs of preliminary surveys and other expenses to be a first charge on the lands after the title is ascertained.

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## APPENDIX B.

### Providing for the Management and Disposal of Native Lands.

Be it enacted that, when any Native land has finally passed through the Court, and a certificate of title thereto has been issued, if the owners thereof are desirous of disposing of any land exclusive of what is amply sufficient for their own use, the procedure shall be as follows :—

1. The District Commissioner shall, in the form in the Third Schedule hereto, call upon the owners set forth in the certificate of title to authorise, in a meeting called for the purpose, the Committee first chosen, or, if deemed expedient, to appoint a fresh Committee, such Committee to be composed and elected in the same manner as the first, to act as

managers for the whole tribe in regard to (1) the reservation of such portion of the lands of each hapu that should be considered sufficient for their respective pahs, cultivations, eel-weirs, fishing reserves, and burial-places; (2) the setting apart of whatever lands—provided he is of opinion, after due inspection and inquiry, that they are suitable for settlement—the Native owners would be disposed to lease or sell. The District Commissioner, on receiving from the Committee a request in the form in the Fourth Schedule hereto, shall again place a surveyor at their disposal (*a*) to lay off and survey the reserves they wish to retain for their own use; and (*b*) to subdivide into convenient areas and survey the lands they wish to dispose of, and also to lay off roads to give access to the same. An assent to a sale or lease once given shall not be revoked.

2. When such surveys have been completed, and a map thereof on a large scale has been constructed, two copies of such map, together with two copies of a requisition addressed to the Board in the form in the Fifth Schedule hereto, shall be placed by the Committee in the hands of the District Commissioner, who shall without delay transmit one copy of each to the Commissioner, with a report on and an estimate of the minimum value of the lands set apart for lease or sale, classifying the same into three classes, and at same time stating his opinion on the question of lease or sale, or both, of any of the lands to be so dealt with.

3. The Board, on receipt of the map and report from the District Commissioner, shall proceed to consider the same and decide on the several points set forth in the premises submitted to them. As soon as a decision is come to they shall proclaim in the *Gazette*, Maori *Kahiti*, and the local *Gazette* or newspaper circulating in the district, respectively, the lands as open for either lease or sale, as the case may be, in the same manner as is the practice with Crown lands; and direct that a sufficient number of copies of the *Gazette* and *Kahiti* be forwarded to the District Commissioner for distribution in his district.

For further action see sections 28 to 33 of "The Native Land Administration Act, 1886."

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