VIII.—*Mutu te Ua's Case.*

Mutu te Ua was another minor whose estate was vested in a trustee at the time when her signature was taken to a deed of sale. The reasons given in our decision upon Mini Kerekere's case apply to the facts in this case, and must prevent our certifying.

IX.—*Wi Kihitu's Case.*

Wi Kihitu was a minor whose estate was vested in Wi Mahuika as trustee. Wi Mahuika sold the share, and the question is, was he ever paid for it?

The evidence *pro* and *con* is voluminous and contradictory; and, on the whole, the Court believes the money never was paid, and that literal fact would place the purchase outside the words of the 5th section of the statute. But the reason given by Mr. Goudie for postponing the payment was a satisfactory one. We therefore think, notwithstanding that non-payment, the case is within the relief intended by the Legislature, and we shall therefore certify that the sale ought to be validated on condition that the purchase-money be now paid, with interest at 8 per cent.

This is one of the numerous instances in which the narrow wording of the statute operates to prevent justice from being done. But we hold that the duty which the Legislature has really committed to the validating Court is to ascertain whether the transaction is fair and straightforward in itself. The draftsman of this Act appears to have been unable to imagine a transaction being fair and straightforward unless the consideration was given at the time of the sale. But there are many transactions in which the consideration cannot be given at the time; and this appears to be one of them, the law requiring that a Judge's sanction to the contract made must be obtained before it shall operate as a bargain and sale.

If we were strictly to confine the relief of the statute to cases where the money is paid on the spot we should be shutting out a great number of honest every-day transactions. The only principle on which we can make the section apply to many ordinary transactions is to assume that by words such as those of the 5th section the Legislature did not mean to confine us to those words, but meant merely to indicate a typical instance of the transactions intended to be relieved. This is the third purchase in this single block out of Mr. Tiffen's five blocks in which the Court has to certify in favour of validating purchases in spite of the narrow wording of the 5th section. Indeed the whole Act is full of expressions which, taken literally, would compel the Court to violate common-sense; and in one glaring instance, which will presently appear, the words would compel us even to violate natural justice.

The infant Wi Kihitu being now dead, the question yet remains, to whom this purchase-money ought to be now paid. No successor to the infant has been appointed in this block, but we have power to appoint successors when required. Wiremu Mahuika, the trustee who made the sale, and who now objects to carry it out, is himself the father and sole heir to his deceased child. He has already been appointed as his sole successor in other blocks of Puhatikotiko Nos. 3, 4, 5, and 7, and he is also sole successor in eight other blocks as well, and is therefore clearly the person to be appointed successor in this No. 1 Block. We appoint him successor, and declare the payment to him of the amount due shall be a sufficient discharge of the debt to the deceased infant. The amount of principal and interest from 15th April, 1882, to 15th April, 1893, is £22 12s., and on payment of that sum to Wi Mahuika or his solicitor, with further interest at 8 per cent. added on the whole sum till payment, we think the purchase ought to be validated.

Since the above judgment was written, Mr. Day has brought to the Court a decision of the Court of Appeal in the case of Piripi *v.* Stewart, just published. By that decision it appears that a conveyance by a Maori vendor upon which no Maori statement was written in accordance with section 85 of the Act of 1873 is declared void and of no effect, and Mr. Day pressed upon the Court that this very recent case ought to prevent the Court from giving any effect to those of Mr. Tiffen's deeds which are open to the same objection.

But this is only adding one more reason to the numerous similar reasons already existing that make these deeds illegal, and I already explained in the above judgment why the Court will recommend Mr. Tiffen's purchases for validation, notwithstanding the illegality of his deeds. If the deeds had been legal Mr. Tiffen would have had no need to come before this Court.

This judgment completes the validation work in Block No. 1, and the Court would now be in a position to transmit its certificates to the Chief Judge, were it not that the statute requires the area of land and its locality to be stated, and directs us to partition the block for that purpose. This provision is entirely unnecessary as an element in the decision of Parliament to validate or otherwise; but, as regards the interests of both purchasers and Natives, it is even hurtful. A moment's consideration will show that the rational basis of partition should be the validation by Parliament, which is final, not the validation as recommended by us, which may be final or not, as Parliament may decide. If Parliament should disallow a single purchase among those we recommend, the partition we now have to make would be entirely inapplicable, and a new partition would be necessary. But, here again, the statute fails. It not only makes no provision for such repartition, but in section 7 it specially provides that our premature partition "shall be as valid and effectual as if made in pursuance of an application for partition under 'The Native Land Act, 1886.'" Thus no fresh partition could possibly be made except by authority of a statute passed expressly for that purpose.

There is another question affecting these partition matters—viz., the construction to be put on section 7. If the words of that section are to be taken literally they would compel the Court to act contrary to natural justice. The section requires us, so soon as we have decided what purchases to recommend and which to refuse, "forthwith to make a partition or amend a partition already made." Thus this statute apparently requires the Court to partition the block in a proceeding with which the Maori non-sellers have nothing to do, and which they have not been summoned to attend, and empowers us, even in cases where a Court has already given men rights of property, to