1893.

NEW ZEALAND.

"THE NATIVE LAND (VALIDATION OF TITLES) ACT, 1892"

(REPORTS OF INQUIRIES HELD UNDER).

Presented to both Houses of the General Assembly in pursuance of Section 16 of the Act.

MOEHAU No. 1 BLOCK.

SIR,— Native Land Court, Paeroa, 25th July, 1893.

I have the honour to report for the information of the Hon. the Native Minister upon the circumstances attending the alienation of the shares of certain of the grantees in Moehau No. 1, this land having been the subject of an inquiry under "The Native Land (Validation of Titles) Act, 1892."

The inquiry in question was held before the Native Land Court, Auckland, on the 11th June, 1893. No objection was made on the part of the vendors to the application of the Kauri Timber Company for a certificate of the Court in their favour.

In the opinion of the Court the transaction is both fair and reasonable, so far as the interests purchased are concerned; but there was nothing in the transaction to show the value of these interests, for they have yet to be defined by the Native Land Court.

As the share of only a few of the grantees in this block have been purchased, the deed is at present worthless from a legal point of view, since the consent of the remaining owners has not been obtained, and probably will not be obtained, since they are rabid Kingites. This is therefore the matter that requires validation in order to give a good title to the Kauri Timber Company.

I have, &c.,

The Chief Judge, Native Land Court. W. E. GUDGEON.

RAMAHIKU No. 1 BLOCK.

In the matter of the application of Stephen Hooper, now of Waverley, under "The Native Land (Validation of Titles) Act, 1892," with regard to Ramahiku No. 1 Block.

WE, the undersigned, Judge and Assessor of the Native Land Court, being duly appointed under the first above-recited Act, and having in open Court inquired into the said application, do hereby report thereon as follows:—

We find that the title of the land in this case is an order for a memorial of ownership under "The Native Land Act, 1873." That all the Natives entitled, except two—namely, Meiha Keepa and Pita te Rahui—have transferred their interests in the said block to the said Stephen Hooper; the transfer is dated the 13th of October, 1886. We observe that at this date section 120 of "The Native Land Court Act, 1886," was in force, *vide* the case of Poaka *v.* Ward, reported in Vol. 8, "New Zealand Law Reports," p. 350.

We find in the application before us that there are no means under the existing law whereby the purchaser can complete his title.

We have already furnished to your Honour our certificate under section 5 of the above-mentioned Validation Act.

We think that some means should be devised whereby the interests of the Natives who have sold should be ascertained and awarded to the purchaser, and the balance of the land awarded to the two Natives who have not sold; and we venture respectfully to suggest that the Native Land Court be empowered to do this.

Given under our hands and the seal of the Court, at Wanganui, this 27th day of July, 1893.

ROBERT WARD, Judge.
IENI TAPIHANA, Assessor.

His Honor the Chief Judge, Native Land Court, Wellington.

OMARU BLOCK.

In the matter of the application of Stephen Hooper, of Waverley, under "The Native Land (Validation of Titles) Act, 1892," with regard to Omaru Block.

We, the undersigned, Judge and Assessor of the Native Land Court, being duly appointed under the first above-recited Act, and having in open Court inquired into the said application, do hereby report thereon as follows:—

This block was held by thirty-two Natives under a certificate of title issued under section 17 of "The Native Land Court Act, 1867." By transfer dated the 26th day of October, 1878, all the Natives named on the face of the certificate transferred their interests to the said Stephen Hooper; the transfer was passed by a Trust Commissioner. No steps whatever seem to have been taken towards obtaining the consent of the other Natives, who under section 17 are described as the registered owners.

We note the provisions of section 17 of the Act of 1867, and also sections 97 and 98 of "The Native Land Act, 1873," on the subject of alienation of lands held by Natives under the 17th section of "The Native Land Act, 1867."

It is abundantly clear to us that there are no means under the present law of completing the title of Mr. Hooper to this block.

We have already furnished to your Honour our certificate under section 5 of the above-mentioned Validation Act.

We think that some means should be devised whereby the interests of the Natives who have sold be ascertained and awarded to the purchaser, the balance of the land being awarded to the registered owners who have not sold or assented to the sale.

And we venture respectfully to suggest that the Native Land Court be empowered to do this.

Given under our hands and the seal of the Court, at Wanganui, this 27th day of July, 1893.

Robert Ward, Judge.
Ieni Tapihana, Assessor.

His Honour the Chief Judge, Native Land Court, Wellington.

KAINGAPIPI BLOCK.

In the Native Land Court, and in the matter of "The Native Land (Validation of Titles) Act, 1892," and of the application of John Kebbell (No. 51) for a certificate under the said Act in respect of the Kaingapipi Block.

This application came on for hearing at Otaki on Thursday, 13th July, 1893. The notes of evidence taken are appended. The applicant appeared in person, and produced an agreement dated the 19th day of July, 1893, purporting to be an absolute sale of and agreement to transfer to the said John Kebbell, in consideration of £68, the whole of Kaingapipi Block, containing 170 acres. The agreement appeared to be duly signed by all the owners of the block, and to have been duly interpreted and executed with all required formalities, and to have been a valid instrument within the meaning of section 4 of "The Native Land Act, 1869." There seemed no doubt that the price paid was a fair price, and that the Natives quite understood what they were doing; and that each of them received his or her share of the purchase-money. The difficulty really arose from the fact that, instead of taking a transfer of the land in the first instance, the purchaser (acting apparently under wrong advice as to the legal position) took an agreement only. This necessitated his subsequently applying to the Natives for a transfer, which they refused to execute, demanding to be paid at the rate of £1 per acre. From the evidence, there seemed no reason to believe that there was ever any such undertaking on the part of the purchaser, and the evidence given as to the value of the land rendered such an assertion very improbable. Had a transfer been taken in the first instance, the Court was of opinion that no such claim would ever have been heard of. The principal opposition emanated from one Piwiki Hone te Horohau, the successor of one of the deceased owners. The Court is of opinion that if Natives were allowed to dispute such transactions as this it would be useless to get any instrument executed by them. The Court is therefore of opinion that this is a proper transaction for a certificate under the above Act.

G. B. Davy, Judge.

LOT 16, TOWNSHIP OF MANGONUI.

Sir,— Native Land Court, Te Paeroa, 25th July, 1893.

I have the honour to report for the information of the Hon. the Native Minister upon Lot 16, Township of Mangonui, the alienation of which land was the subject of an inquiry under "The Native Land (Validation of Titles) Act, 1892."

The inquiry in question took place at a sitting of the Native Land Court, held at Auckland on the 9th June, 1893.

No one appeared to object to the claim made by William H. Prosser, the person now in occupation of and beneficially interested in the land.

During the hearing it transpired that the deed was not in accordance with the provisions of the Act of 1873, relating to the purchase of Native lands, inasmuch that a translation of the instrument of sale had not been indorsed thereon at the time the deed was signed, nor was the signature witnessed by a Resident Magistrate, as required by the law then in force. In all other respects the deed was good, and, in the opinion of the Court, the sale was a fair and *bonâ fide* transaction.

It was also the opinion of the Court that the omissions already mentioned are excusable, inasmuch that the deed in question was signed at Mangonui only six days after the Act of 1873 came into force, and it may therefore be fairly presumed that the persons who conducted the transaction were ignorant of the fact that the law had been altered by that Act.

I have, &c.,
W. E. Gudgeon, Judge, Native Land Court.

VALIDATION COURT, GISBORNE.

TIFFEN'S CASE.—JUDGMENT NO. .

[Before His Honour Judge Barton.—Reprinted from the *Poverty Bay Herald*, Tuesday, 28th March, 1893.]

ON the opening of the Validation Court at Gisborne yesterday morning by His Honour Judge Barton, Mr. W. D. Lysnar, solicitor, asked the Judge whether, in cases that were coming before the Court, he would accept copies of the evidence already taken before Mr. Booth when acting as Frauds Commissioner as being evidence sufficient for the Validation Court, and whether he would accept the certificate of Mr. Commissioner Booth as proof that the transaction was fair and square.

Judge Barton: On Thursday I said something respecting the evidence which ought to be brought before this Validation Court. I have since gone over the Act, and can now say that it imposes upon me the necessity of taking down the evidence of the witnesses in writing. That written evidence has to be signed by each witness and countersigned by me as Validation Judge, and attached to my certificate for consideration by Parliament. Whatever doubts may be entertained as to the general construction of this Act, two things appear very plainly by it. The first is that the Court must satisfy itself by witnesses examined before itself that the transaction is fair and square, and that the consideration to the Native vendors has been fully given. The other is that the Court shall not refuse to validate any honest and straightforward transaction by reason of technical defects. The intention of the Legislature with respect to these two matters I think perfectly clear, and Parliament has retained the whip-hand by compelling the Judge not only to send in the certificate expressing his opinion, but the whole evidence on which that certificate is based, attested by the signatures of the witnesses themselves, so that the grounds on which the Judge gave the certificate can be tested.

I do not know whether the other Judges of the Native Land Court—all of whom without any exception have been appointed special validators under this Act—take the same view of the purpose of the Legislature as that which I have just expressed, but all parties coming before me must make up their minds to a full investigation, and giving in evidence such testimony of living witnesses as will justify the Court in brushing technicalities out of the way of a transaction shown to be honest and straightforward.

This showing of the *bona fides* of the transactions, being the substance lying at the root of the statute, it appears to me that the Court is not permitted to take the statement of any Frauds Commissioner as the foundation of its certificate, and it also appears to me that I and my Assessor are bound to fully investigate the *bonâ fides* of every transaction for ourselves, and satisfy ourselves that it is *bonâ fide*; and if Parliament gives effect to our certificate it must be on the faith that we have so satisfied ourselves. The impropriety of our acting on conclusions already arrived at by a Frauds Commissioner may be tested very easily by assuming for a moment that my certificate might run thus: "Mr. Commissioner Booth has already investigated the matter in question as Frauds Commissioner, and has certified to my Court that the transaction was not shown to him to be fraudulent, and therefore on the faith of his negative certificate I now certify positively to Parliament that no fraud exists." Any member of Parliament reading such a certificate as that would see, and would probably say in debate, that that certificate was a farce, and that we had turned the Validation Act into a sham. Yet this is what it is proposed we should do when I am asked to accept the certificate of a Frauds Commissioner's Court, and base my positive certificate on his merely negative finding; and this in the face of the Frauds Commission statutes themselves, which expressly provide that the Trust Commissioner's certificate is not to be treated as proof in other Courts that any transaction was therefore fair and straightforward because it had passed successfully though that inquiry.

The *Canterbury Times*, in a recent paragraph respecting the Native Land Court, used the following pungent expressions: "This is the first time the operations of the Native Land Court have been brought under the shadow of justice. That no doubt accounts for the enormous amount of injustice perpetrated by that Court beyond the conception of any observer of the doings of modern Courts of law. We may reasonably doubt whether the worst Courts of mediæval times have ever perpetrated a tithe of the injustice done in the Native Land Courts."

Now, it is clear that the determination of the Legislature is that the proceedings of the Validation Court shall not be subject to any such sweeping censure. It intends that parties coming before the Court for validation of their now invalid transactions must show, by the class of evidence usual in such cases in other Courts of Justice, that their transactions have been honest and straight, and that those who seek to avail themselves of the advantages of this Act shall not avoid compliance with the conditions under which the advantages are offered.

As to technicalities, those who are familiar with the proceedings of the Native Land Court in this district under my presidency are well aware that no man coming to this Validation Court with an honest straightforward case has any reason to fear that I will allow his rights to be sacrificed to technicalities. Indeed, it appears to me that the Legislature has embodied in this Act the same hatred of rotten technicalities that I myself have so frequently expressed.

With regard to the other branch of inquiry, *i.e.*, whether the transaction is free from fraud, my endeavour will be that if any certificate of mine should unfortunately become the subject of debate by Parliament, no member shall be able to say that this Validation Court had acted like one of the mediæval Courts to which the *Canterbury Times* has compared us, and that, at all events, if any swindling transaction should succeed in passing undiscovered through the Court, it will not be for want of endeavour on our parts to carry out the clearly-expressed intention of the Legislature, that we should satisfy ourselves of the *bonâ fides* of every transaction brought before us by evidence given before us, according to the recognised rules of evidence in English Courts of law. Therefore, we cannot accept as satisfactory evidence in this Court mere notes of the translation of unsigned evidence taken before a Frauds Commissioner. Every witness, if his evidence be obtainable, must come here and give his evidence and sign it. The Court will, of course, accept

secondary evidence in instances where the living witness is not available, and when such evidence would be legally receivable in English Courts; but the profession must understand that when the primary evidence is fairly obtainable the Court will look upon its suppression, and the tendering of mere secondary evidence, as being in itself an indication that the transaction is unable to bear full light. Purchasers claiming the benefit of this Act must show the fairness of their transactions. If they fail to show that, they fail to comply with the condition on which Parliament allows breaches of former statutes to be ignored in their favour.

[By His Honour Judge Barton.—Reprinted from the *Poverty Bay Herald*, April 20th and 21st, 1893.]

ON last Monday, April 17th, Mr. Day, counsel for the Natives, requested that Mr. W. L. Rees, M.H.R., might be allowed to address the Court at that stage on the question of jurisdiction. Mr. Day said that this question was of importance, in cases like Mr. Tiffen's, throughout the district; and as a decision if now given in this case would guide the profession and their clients as to the bringing of similar cases before the Court, he hoped Mr. Rees would be heard. If Mr. Rees's contention should be sustained, it would save much expense to have the question decided on an interlocutory judgment.

Mr. Lysnar, for Mr. Tiffen, said he had no objection to Mr. Rees addressing the Court at this stage, though he should under any circumstances insist on his client's right to have the certificate sent to Parliament.

Mr. Rees then commenced his argument, which lasted all day. At its conclusion Mr. Lysnar declined to reply, stating his willingness to leave it to the Court to adopt whatever course it deemed best suited to the public interest. The proposal of Mr. Rees to have a case stated for the Supreme Court he was not willing should be adopted, as it would be an acknowledgment of the right of the Supreme Court to interfere between this Court and the High Court of Parliament. Let this Court (said Mr. Lysnar) give its decision, and then each party will be at liberty to take such steps as he may think proper to test that decision.

As the judgment of the Court deals with all the arguments urged by Mr. Rees on the main questions he raised, it is unnecessary to recapitulate them; but Mr. Rees desired particularly to state that he did not seek a decision now on minor points affecting only Mr. Tiffen's particular facts, but a broader decision upon the applicability of this validation statute to any case of violation of the Act of 1873. He had no wish to say that Mr. Tiffen's case was not a proper one for relief under some future Validation Act. He only desired to raise the question whether he could have relief under the present validation statute. In Parliament he (Mr. Rees) had urged the insufficiency of this statute to meet the wants of the country, and now he desired to bring that matter to the test of judicial decision.

The answer made to him by the Government majority was that this Act should be passed for what it was worth, and afterwards Parliament could see by the action of the Courts whether it was workable or not. This Court (said Mr. Rees) is now starting into action, and he had come to argue before it because the presiding Judge combines practical experience as a Land Court Judge with ability to deal with technical legal questions quite equal to that of any Judge now on the Supreme Court bench.

The decision of this Court (said Mr. Rees) will carry weight with Parliament, and, also, it can be further tested before the Supreme Court and Court of Appeal. He would suggest that Mr. Lysnar should agree to step at once into the Appeal Court with the decision now to be given, and thus save delay in the settlement of a question so important to have decided before the meeting of Parliament. He urged that the President of this Court can state a case or give a special judgment like a special report to Parliament without waiting for conclusion of Mr. Lysnar's cases.

These courses could none of them injure Mr. Tiffen; whereas, if the Court carries on Tiffen's case and exceeds its jurisdiction, and does acts that cannot be recalled, Mr. Tiffen and others may find disastrous consequences resulting to them.

Judgment of the Court.

His Honor Judge Barton delivered judgment as follows: In accordance with the request made to me from the Bar, I now proceed to give judgment upon the question whether this Validation Court, sitting under the Act of 1892, has jurisdiction to entertain Mr. Tiffen's application for a certificate in respect of purchases in Puhatikotiko No. 1, that being the first of Mr. Tiffen's cases in the five divisions of this block.

I should have much preferred to wait until the close of Mr. Tiffen's case, because many points arise in the different purchases which have each some bearing upon this jurisdiction question, and would illustrate by the living example the proper construction to be put on the words of the statute, but I am unable to say when Mr. Tiffen's case will close. The Act directs that the land recommended to be given to the applicant should be described in the certificate, and that a partition shall take place "forthwith" to enable that to be done. But a partition takes time. It cannot be made behind the backs of the owners who have not sold, and "forthwith" must mean after reasonable notice to them to appear and defend their rights. The definition of the purchased land being made a necessary ingredient in the certificate causes much delay; the inquiry needed for the validation of the purchases can be held without defining the locality of the shares, and the purchaser after the validation of his title by Parliament could come for a partition to the ordinary Land Court as others do, and his certificate need not have been delayed by such requirement. Contests on partition frequently consume much time, and therefore the partition in Mr. Tiffen's case may happen to be a long one. The requirements of the statute, however, must be complied with, and the certificate must wait until after partition, although the actual work needed for validation is now almost completed.

Mr. Rees in his very able and exhaustive argument has ranged over all the sections of the statute, comparing them with one another, and with those of repealed statutes, and, in illustration of his points, he has gone to some extent into the history of validating legislation. I shall have to follow a similar course when explaining my views, which differ somewhat from those of Mr. Rees. I will first shortly state the leading facts of Mr. Tiffen's case bearing on this point of jurisdiction.

Mr. Tiffen asks for a certificate under this Act of 1892 recommending the validation of his purchases of thirty-seven shares out of seventy owned in the block under memorial of ownership issued under the statute of 1873. His purchases are invalid because they were made contrary to sections 48 and 49 and 59 of that Act. Section 48 provides that to every memorial of Native ownership shall be annexed "the condition that the owners have no power to sell;" but section 49 provides that that annexed condition "shall not preclude a sale of the land comprised in the memorial when all the owners of the land agree to a sale thereof"; and section 59 provides that, if any less number than the whole desire to sell, a Native Land Judge shall first make inquiry into the particulars of the transactions, satisfy himself of their justness and fairness, and also satisfy himself of the assent of all the owners to the sale. If such sale be found by him to be just and fair, and if the "transfers are signed by all the owners," and the Judge is satisfied that every seller fully understood that he is parting with his rights, then he (the Judge) shall make entries accordingly on the Court rolls and on the memorial of ownership, and shall then transmit the memorial of ownership to the Governor with his recommendation that a Crown grant be issued to the purchaser. Now, Mr. Tiffen's purchases of land held under memorial of ownership were purchased from a less number of owners than the whole number, and were not assented to by the rest of the owners. They were never brought before any Native Land Court Judge to hold any preliminary inquiry and satisfy himself as to the facts above set forth. Therefore, these purchases were purchases made in violation of the expressed condition under which the Natives held their land—namely, that they should not sell except in the manner prescribed. Mr. Rees informs me that the judgment of the Supreme Court in Poaka *v.* Ward decides that such purchases are invalid; but even without that decision, the Legislature itself, in the twenty-seventh section of the Validation Act of 1889, enacted that they are invalid, and appointed a Commissioner to validate such of them as were made "in good faith and not contrary to equity and good conscience, and where the agreed purchase-money had been properly paid."

Now, on these facts, Mr. Rees's first point is that, inasmuch as that twenty-seventh section of the Validation Act of 1889 (which would clearly have included Mr. Tiffen's case) is repealed by this Act of 1892, no validation can take place under that repealed twenty-seventh section.

The words of that section, stripped of superfluous verbiage, are as follows: "If the Commissioners shall find that any intended alienation of land is likely to be impeached because such alienation being of land held under memorial of ownership did not include the whole of the signatures of the Natives owning under such memorial of ownership, and that the transaction was entered into in good faith, not contrary to equity and good conscience, and the agreed purchase-money paid, they may sign a certificate to that effect, and thereafter such intended alienation shall be valid and effectual."

Mr. Rees's second point is that the 4th section of the Act of 1892, the words of which approach most nearly to those of the repealed 27th section of the Act of 1889, nowhere repeats the provisions of the said repealed section, but, on the contrary, expressly limits the validation under this Act of 1892 to such lawful purchases as were "intended to enable the alienee to obtain *by due process of law* an estate of freehold in fee-simple." He insists that these words cannot be stretched so as to include *unlawful* purchases intended to enable the alienee to acquire an estate *against* "due process of law," and he says that if the Court so stretches the words of the statute it is legislating, not interpreting, and is usurping functions that do not belong to it. Then Mr. Rees turns to the 9th section of the Act of 1892, and shows that it too fails to reach Mr. Tiffen's case. It gives the Court jurisdiction to amend "informalities" and "irregularities" in the "signature and execution of documents of title," or "in the removal of restrictions on sale," or in "proceedings of the Native Land Court on which the title is based," or "through some doubt as to the power of a judicial officer to give title to the Natives." He points out that, even if any of the words of this section 9 could be racked and stretched until they touched a case like Tiffen's, Tiffen must nevertheless fail because the section requires the Court expressly to find that "there was no intention to evade any provisions of the law on the part of the alienee or his agent," whereas Mr. Tiffen's purchases were made in direct violation of a statute.

Now I begin my judgment by frankly confessing that, so far as I can see, Mr. Tiffen's transactions do not come within the express words of any section of the Act of 1892, but I do say that the whole history of Native Land Court reform proves that the chief object of the Legislature in passing validation statutes has been the validation of all honest and straightforward purchases, whether they are legal or illegal in their inceptions. It is objected that I have no right to go outside the words of the statute to find a meaning not shown in it, and I will fully admit that in the construction of ordinary statutes a Court (and especially a Court so discredited as the Native Land Court) ought not to do so. Mr Rees is entitled to argue that a Court described in a leading journal of this country as having done more injustice than ever disgraced the worst mediæval Courts of any known civilized nation ought not to be intrusted with any latitude of interpretation; but the construction of the statute law must in every Court be governed by the same principles, and it is, therefore, my duty to try to find out the intention of the Legislature, and when found to follow it. An Act that is so unique and unprecedented in its provisions as this Act will require unique and peculiar construction. It ought to receive the widest instead of the narrowest interpretation, and I will endeavour to show this, not only from the form and scope of the Act itself, but also from the whole history of this branch of legislation in the colony.

I can speak with some confidence respecting the history of Land Court reform. My efforts

have been constant to make people see that the evils arising from former bad Native-land laws could be cured by workable Validation Acts, and therefore need not be endured by the community. I have preached this doctrine almost incessantly from the Bench, and also I have preached on that other cognate cause of unending litigation and paralysing precariousness of tenure—the absence from Native Land Court titles of the element of security. I have harped upon the fact that, although the orders of the Native Land Courts are by law made absolutely "final and conclusive," they are nevertheless treated by even the smallest judicial officers—Land Transfer Registrars—as settling nothing, and giving no title worth a straw. The doctrines of "judgment recovered," that great branch of jurisprudence, deemed so important in the Mother-country, are ignored in this country in their application to Native Land Court decisions, notwithstanding that statute after statute has declared them "final and conclusive." These facts lie at the root of validation legislation. These uncertainties and insecurities forced men into making illegal purchases. They were compelled to make them in obedience to the highest of natural laws—the law of self-preservation. Men who held under dubious Native Land Court titles (and all such titles were dubious), or who held under Maori leases of doubtful legality, were forced all over the country to enter the field in company with speculators and their agents, whose purchases, though illegal, ripened into indefeasible Land Transfer titles. The holders of doubtful Maori leases, or of titles defective by reason of technicalities which Native Land Court decisions were vainly supposed to have surmounted, thus found themselves ousted from their holdings if they abstained from entering into competition in purchasing, and it was not in human nature to expect that men so situated should sit still while others bought over their heads the fruits of their industry and capital. The day when the first illegal purchase was allowed to pass through the Land Transfer office inaugurated the scramble of illegal purchases which necessitates these validations.

The first statute in the nature of a Validation Act was the Poututu Jurisdiction Act, drawn by myself. Under that Act a complicated litigation that for years had defied settlement has been settled in every branch, with all its equities and cross equities, the machinery for which was provided in that Act. That statute was quickly followed by the Act of 1889, under which Act Mr. Justice Edwards sat. But the validating sections of that Act are repealed by the present Act of 1892, and unfortunately the substituted provisions, as pointed out by Mr. Rees, do not include in words the same class of cases. I cannot deny the force of Mr. Rees's argument from inference, that, inasmuch as the repealed section 27 was to have been carried out by a Judge with Supreme Court status, salary, and protection, whereas the provisions of this statute are committed to untrained and unprotected Judges, the Legislature could not have intended to intrust duties that ought only to be performed by a highly trained Judge to men who, to the timidity engendered by the want of legal training, add the fear of incurring the hostility of powerful suitors with fortunes at stake. I quite admit the impropriety of allowing Judges, selected for their skill in Maori language rather than for any other qualification, to be taken as guides through the difficult channels of English law, and that, too, without any appeal from them to those who are the skilled pilots in that law. But all that argument, however forcible, is really beside the question of the intention of the Legislature when that question is viewed from the only proper stand-point, and, besides, the argument goes too far, for if it avails to exclude Mr. Tiffen's case it ought equally to avail to exclude all other equally important cases. If untrained unprotected laymen, unfit to grapple with legal questions, are to be presumed not to have been intrusted with cases of the Tiffen class, how can it be admitted that they are intrusted with other classes of cases of equal magnitude and importance, and with complications not involved in Tiffen's class of case. If Mr. Rees's class of argument avails for anything, it shuts up the whole statute, except as to the merest trivialities, and then arises the question—What was the purpose for which the Legislature passed the Act? The really strong argument made by Mr. Rees is that the Legislature, having repealed the enactment whose words exactly met Mr. Tiffen's case, has substituted for it an enactment none of whose words will meet it; and if this were an ordinary statute giving rights to parties, that argument I admit ought to be fatal to my view. But the strength of my view lies in the fact of the peculiar nature of this statute, and that peculiarity taken in conjunction with the parliamentary history of its predecessors shows that the Legislature has all along intended progressive not retrogressive legislation, and I say that the English canons of construction of statutes do not forbid such view.

Those canons of construction are for the most part settled. It is well settled that if a matter be within the mischief intended to be remedied by the Legislature, even though there be no express words applicable to it, it should be held to be within the statute; and, on the other hand, it is equally well settled that if a matter be not within the mischief to be remedied it should be held to be outside their purview of the statute even though its words distinctly apply to it. I rely on these canons of construction as showing that the mere fact that there are no words in this present Validation Act covering Mr. Tiffen's case is not at all conclusive as to the intentions of the Legislature to exclude such cases from the benefits of validation. We have to look to other things as the words to enable us to judge of the intention of a statute.

I hold that this statute is so unique in its nature that it ought to receive the widest construction, for the following reasons: It appoints the Native Land Court Judges merely as the agents of the Legislature to inquire and report to both Houses of Parliament their opinion upon the cases presented to them. This agency for Parliament is the head and front of the whole statute. The Court cannot confer upon the applicant who comes before it any right or status whatever. It simply certifies that his transactions with the Natives are invalid: that they have been inquired into and found honest and straightforward, and recommends that they should be made valid by a Validating Act. This Act of 1892 is not in itself a Validating Act; it is only an "inquiring and reporting" statute. The 17th section expressly declares that the certificate given by the Native Land Court "shall be of no effect and shall remain in the office of the Court, and shall not be delivered to any person for any purpose whatever, or be capable of registration under any Act until

such certificate has been confirmed by Act of the General Assembly." Our recommendation, therefore, avails nothing until the Legislature takes further action. It is the Legislature that validates, not this Court. If we stretch our authority, as inquirers, too far, and inquire into matters not committed to us by Parliament, then Parliament still has the remedy in its own hands, and can refuse to take further action. But if it should so happen that, though we have acted beyond our delegation, and "recommended" in excess of our powers, and Parliament considers the case one that it ought to take further action upon, then it can act on our recommendation regardless of the verbal limits of this statute. I quite admit that such a doctrine as this would be a very dangerous one to apply to an ordinary statute conferring a right or giving a status, but this statute confers no right and gives no status. What we do is a mere shadow till Parliament chooses to give it substance by a further statute.

That type of legal mind which delights in narrow interpretation, and values the letter more than the spirit, will strenuously dispute this construction of the Act of 1892, and insist that whether it be unique or not, or whether it confers rights or not, should make no difference in the rules of interpretation applicable to it; but I contend that its peculiarity makes all the difference, and entitles us to enlarge rather than contract its operations. By enlarging them we cannot hurt any one, for the Legislature has still to come after us with its action. By contracting them we may do serious injury, for we not only prevent the possibility of remedial action by Parliament, but by our refusal we should actually deprive Mr. Tiffen (if this case be within our jurisdiction) of land which has cost him over £12,000, and that admittedly ought to be his, if his transactions are honest and straightforward. I have always maintained that Courts exist to uphold men's rights and not to sacrifice them to worthless technicalities. The hair-splitting arguments which still disgrace our Courts and pass for learning make one blush, especially remembering that there are Courts where the display of that kind of learning is scouted.

The 10th section of this Act provides that if we refuse our certificate "the shares in respect of which such certificate is refused shall be held by the Native owners freed from any liability in respect of such transaction." Thus our refusal carries serious consequences, though our granting of the certificate gives nothing. Therefore do I hold that the broad construction is the proper one, and that the narrow wording of the Act ought not to confine its operations only to transactions legal in their inception, and to deeds "intended to enable the alienee to obtain a freehold by due process of law."

Mr. Day, the counsel who preceded Mr. Rees in the conduct of this case for the Natives, referred to another matter which I ought to mention, for it bears on this question of construction. He urged that it would be simply outrageous that such a Court as the Native Land Court should be held to have power to construe this statute as they please without bridle of any kind, and he insisted that at all events the ordinary appeal must lie to the Chief Judge to grant a re-hearing before two other Judges and another Assessor. I hold that no appeal lies under this statute, and this very peculiarity adds to my proof that we are simply agents of Parliament for inquiry and report. Section 14, under which the only semblance of an appeal is given from this Court, shows that no appeal to two other Judges and an Assessor can lie. That section 14 authorises the Chief Judge to refer back to us our certificate "for further inquiry, with such directions as to the taking of evidence or otherwise as he may consider necessary." It is difficult to understand the drift of this provision, which allows the Chief Judge to compel us to vary our recommendation after it is once sent in with our "reasons for it, and the evidence upon which it is based," without any indication to the Legislature that it is no longer our decision, but that of the Chief Judge. But, whatever may be the effect of this clause, it is clear that the Chief Judge (not two Judges and an Assessor) is the only person who can come between us and Parliament.

I deny the right of the Supreme Court to intervene between this Court and Parliament, whose agents and delegates we are. If the Supreme Court by its prohibition forbids us to certify we shall of course obey; but if the Speaker of either House of the Higher Court of Parliament should, upon resolution of his Chamber, order us to send up our certificate notwithstanding that prohibition, we are bound to obey the Speaker also, and this class of jurisdictions appears to me patent proof that the Supreme Court cannot have power to forbid us to send up our certificate as the statute directs us to do. I hold that the Supreme Court must leave it to Parliament to deal with us as its agents. The whole framework of the Act forbids interference with us from any quarter except the Chief Judge, and also invites breadth of construction by us as to the performance of our duties to Parliament, and it is upon that basis and upon the history of validation legislation that I build my inference that the Legislature intended all invalid purchases, whether lawful or unlawful in their inception, to be dealt with under this Act, even though the language of the Act fails to express that intention.

Mr. Day said that it was only as to partition he had argued that these appeals existed to two Judges and an Assessor, not as to the rest of the statute. He never desired to state that two Judges and an Assessor were to re-hear the validation portion.

The Judge: The Act makes no difference. It is only the Chief Judge who can interfere between us and and Parliament under this Act at any stage of its work.

Judgment No. III.—Puhatikotiko No. 1.

His Honour Judge Barton delivered the following judgment on Monday, the 15th May, 1893:—

The Court has now to decide which of Mr. Tiffen's purchases it will recommend for validation and which it will not recommend. The difficulties arising under this Act, partially explained in our former judgment, have compelled us to adopt a construction bold for any Court, but doubly so for a Court so constituted as the Native Land Court. Our only alternative course would have been to

declare the Act unworkable, and close our doors. If Mr. Rees had carried our judgment of the 17th April, on the question of jurisdiction, to the Supreme Court, as Mr. Day originally proposed to do, the decision of that Court would either have stopped our proceedings or else cleared our path; for with the sanction of the highest Court we should no longer feel hesitation in compelling the words of the Act to fit purchases violating the statute of 1873 as well as other purchases. But Mr. Rees's clients have altered their tactics. Instead of taking the question of our jurisdiction to deal with purchases illegal under the Act of 1873 before the Supreme Court, they force from us our decision upon the delicate points that arise upon Mr. Tiffen's deeds and various purchases. The Supreme Court Judges, whose daily business it is to deal with such questions, are able to devote to the consideration of them the requisite time and thought. The Judges of the Native Land Court, to whose daily business this class of inquiry is entirely foreign (and who have this validation work thrust upon them in the midst of their usual work), have neither the leisure nor the facilities for considering abstruse questions and mastering legal authorities, as they must do if they are to give correct decisions under this Act. In this very judgment we shall have to deal with abstruse questions of English real property law—a law ruled by rigid precedent, the very antithesis of the "give and take" principle on which the Native Land Court acts in its ordinary work of apportioning land between Native tribes, or partitioning blocks between Native sellers and non-sellers. We therefore proposed that, instead of giving our decision upon these points of real property law, we should state cases for the Supreme Court, but Mr. Lysnar declined our proposal, and we have no right to force him to accept it. It must indeed be admitted that if the Judges of the Native Land Court were entitled to shift all their difficulties into the Supreme Court, it would virtually turn the Supreme Court into a Validation Court, whereas the Government and Legislature have placed these matters (proper only for the highest Court) in the hands of the Native Land Court, and, competent or incompetent, the Native Land Court must decide them.

When in our judgment of the 17th of April the Court declared that this peculiar statute required peculiar treatment, we assumed from the history of validation that the intention of the Legislature is that we shall recommend for validation all honest purchases, no matter what statute rendered them illegal. Mr. Day has ever since the delivery of that judgment been endeavouring to prove to us that such a construction raises insuperable difficulties in our way, and that, if the Court gives Mr. Tiffen a certificate, it must do so without the sanction of any clause in this Act, and even in actual violation of some of its clauses; and it may be asked us how under such circumstances we can possibly hold that the Act applies. But the Court must point out that Mr. Day's argument is only the same in principle as Mr. Rees's argument, founded on the general purview of the statute. If, as Mr. Rees contended, the general words of the statute fail to include purchases illegal under the Act of 1873, then the particular words of the several clauses will also necessarily appear to exclude them. If Mr. Rees's arguments be right, then we have no jurisdiction over such cases. If, on the other hand, we possess the jurisdiction we have declared ourselves to possess, then it follows that we must find the means of applying the statute to such cases; and Mr. Day's arguments to show the impossibility of so applying it must be erroneous. Our construction may be a bold one, but every one must see that if Mr. Tiffen's cases are properly before the Court, our business is to find the means of relieving them, be the language of the statute applicable to other classes of cases what it may. Mr. Day complains that by taking this course we pass out of our province as interpreters, and become legislators. I admit that if this statute were an ordinary statute, enabling us to confer rights or give a status, we should not dare to step beyond its literal words. But when we now step beyond the words we still keep within the directions given by the Legislature. Those directions are that we shall "inquire and report" to the Legislature itself what illegal transactions have been honest and straightforward in themselves, and whether they have been carried out in an honest and straightforward manner; therefore, if we are right in holding these "transactions" under the Act of 1873 to be within the statute, it is our duty to bend its provisions to meet the circumstances of such transactions. With these observations on Mr. Day's argument we will now proceed to the facts of the case.

Mr. Tiffen has abandoned one of his purchases, and claims validation for the remaining thirty-four. Mr. Day's objection to these thirty-four are of two classes. One class includes the whole thirty-four, the other class affects only nine and does not affect the remaining twenty-five.

Mr. Day's first class is again divisible into two classes of objection. His first is: That as the Supreme Court decision of Poaka *v.* Ward has declared that purchases like these of Mr. Tiffen of undivided shares held under the Act of 1873 are unlawful, this Court must hold them to be still unlawful, there being no statutory provision authorising their validation. This argument is only another form of Mr. Rees's former argument, and would be just if it were this Court that had to validate the purchases; but this Court validates nothing: it is the Legislature, and not we, that will have to validate them, and in that fact lies the distinction. We simply recommend them as honest transactions which are therefore suitable for validation if the Legislature chooses to override Poaka *v.* Ward. It is urged that the Court should not ride roughshod over every sort of illegality and over all laws forbidding improper transactions, and I entirely concur in that. This judgment later on will show that we claim no such right.

The second division of Mr. Day's first class of objections is more formidable. He has shown us that since Mr. Tiffen's deeds of purchase were signed by the Maoris they have been altered in many material points. There is no doubt about this fact. It is admitted by Mr. Tiffen's counsel, but even if not admitted it is shown by the attested copies lodged in Mr. Justice Edwards's Court that the condition of the deeds when those copies were so lodged differed very materially from their present condition. Mr. Day contends that it is the settled policy of English Courts of Justice that if a suitor is shown to have altered in any material part a deed on which he relies he cannot enforce it against the opposing party, it being no longer the contract of that party, and Mr. Day says that this law has been based on an obvious ground of public policy to compel persons in possession of documents to refrain from tampering with them.

Mr. Day insists that these deeds have been so seriously altered that no Court could do otherwise than treat them as void. He showed that, as they originally stood, some had no Maori translation certified by the signature of the licensed interpreter indorsed upon them, others had no translation at all, none had any description of the land sold, some had no consideration in the body of the deed, some had no "duplicate," and in scarcely any did the duplicates agree in their text as required by law; on some the Frauds Commissioner's certificate was placed before the date when certain of the signatures now appearing upon it were affixed, &c. On account of these things, and because none of these deeds had been submitted to a Judge of the Native Land Court for his assent under sections 59 and 60 of the Act of 1873, Mr. Day insisted that the deeds must now be treated as absolutely void, and that the Court ought to refuse to recommend to Parliament as proper for validation the transactions on which such deeds were founded.

We do not take this view. We think that what this statute of 1892 requires us to investigate is not the mere deeds, but the "transactions" of sale and purchase that took place before those deeds. If we find that those transactions were without fraud or wrong of any kind, we think we ought to certify that fact to Parliament; for however improper it may have been to tamper with these deeds, it may by Parliament be considered that, looking at all the circumstances of this case, the transactions on which the deeds were founded ought nevertheless to be validated.

Mr. Day called our attention to section 9, as applying to these improprieties in the deeds. But that section refers to "formalities not complied with at the time of signing the deeds," and to "irregularities in the procedure prescribed in respect of the execution of the deeds," and it only authorises the Court to recommend validation, notwithstanding such improprieties, "if they occurred through inadvertence or misapprehension, and without any intention to evade the law." We think, however, that section 9 was not intended to apply to tampering with deeds after they were executed. It refers to formalities and irregularities not after but at the time of the execution of the deeds. Mr. Day's complaint is, not that these deeds were left informal and incomplete with a fraudulent intention, but that they were, many years afterwards, tampered with in order to make them more formal and more complete, and section 9 does not touch such a matter at all. It is the common law and not this statute that deals with matters of that kind.

As we have already said, these deeds are *ex concessis* illegal, and for that very reason the transactions they represent are brought before this Court, for ultimate validation by Parliament. Whether the deeds be illegal for few reasons or for a multitude of reasons should make no difference in our estimate of the honesty of the original transaction of sale and purchase before the deeds, except in so far as the conduct of the purchaser's agents in tampering with the deeds may throw back a light on the honesty of the original transaction. If this Court were giving Mr. Tiffen a title, we should, of course, have to refuse to give effect to his illegal deeds, but we are not required to give him any title whatever. That will be for Parliament.

We come now to the nine purchase transactions objected to, on the ground that they were unfair and invalid in themselves, independent of the illegality of the deeds. In two of these transactions the Native vendors appeared in person to object. In the remaining seven Mr. Day, as counsel, objected.

I.—*Panopa Waihopi's Case.*

The question in this case was (1) whether Panopa was paid the consideration, £148, set out in a conveyance from him to his brother-in-law, Dan Jones; and (2), if not paid, then whether, under the circumstances related, he ought to be not bound by the alleged sale to his brother-in-law, and by the subsequent sale by his brother-in-law, with his assent, for £45. The Court believes that the alleged consideration to Panopa from his brother-in-law of £148 was colourable, and intended merely to enable Jones, who lived with the Maoris, to sell the share, as agent for Panopa, at a higher price than could otherwise have been obtained for it. Jones purports to have bought from Panopa for £148; then Jones resold to McPhail for £45, Panopa being a party to that resale. Afterwards McPhail sold to Tiffen for £60. Now, Panopa's own evidence reveals the dishonesty of his present conduct, and how impudent is his endeavour to get back the land by avoiding the sale to Jones, his brother-in-law. Before Jones completed his resale to McPhail, Panopa was required to attend at the office of Mr. Finn, solicitor for McPhail, and satisfy Mr. Finn that the sale to Jones was a *bonâ fide* sale. Panopa did so. Panopa also went before Mr. Price, the Trust Commissioner, and swore and signed the following statement: "The price I sold for is £148. I received all the money with the exception of £20. I received £128 in cash, and the balance I now receive from Mr. Jones—making in full £148—one cheque £10, one cheque £5, and five notes." Panopa now boldly declares in this Court that all this very circumstantial statement on oath before Mr. Commissioner Price was "false." "I did say before the Commissioner I had received the whole £148, but it was only to please the Commissioner," and he further declares that what he said before the Commissioner had been arranged outside the Commissioner's Court between him and his brother-in-law; and then he tells us that what he actually received from his brother-in-law, Dan Jones, was only £10 and two horses.

Upon these facts Panopa's law-point was that the 5th section of the Validation Act requires it to be shown that "each Native owner has received the purchase-money to which he was entitled, or other amount agreed upon," and that it had never been paid to him. The Court believes that Panopa never did get the £148, but that he got all the money he was entitled to receive; and we think that Panopa, having been a party to the resale to Mr. McPhail for £45, and having sworn that he received the whole £148, is now estopped from denying that he did so receive it, and that, whether he received that £148, or only £10 and two horses, he is equally bound by his sale to Jones, and by Jones's resale with his assent, and must stand by both sale and resale. We will therefore certify that this transaction ought to be validated.

II.—*Hohepa Waikori's Case.*

Hohepa's dog worried and killed nine sheep on a station, and Hohepa was threatened with legal proceedings, and consequent imprisonment, and his dog was confiscated. Hohepa went into Gisborne, and arranged to give his share in this block, Puhatikotiko No. 1, "in payment for the crime of his dog." The value of the nine sheep was not proved to us, nor was it shown that any sum was agreed upon as the value of the share; but Hohepa stated that he was "satisfied his dog did the damage," and also satisfied that "his share should be given in payment for that damage," and "was quite satisfied with the transaction when it was completed," and he said that he signed a conveyance selling the share for £12, the price then current for shares in No. 1.

It is urged against this purchase that section 5 is not complied with, because "the Native owner has not received the £12 stated in the deed as the consideration for the alienation intended to be effected." This transaction, however, appears to the Court just the same in effect as if the purchaser had spoken to the vendor as follows: "Your dog worried nine sheep—our damage for that worrying is £12. We are buying shares in Puhatikotiko No. 1 for £12. If you sign a conveyance of your share for £12 it will square the transaction. When you sign the deed I will hand you £12 for the price of the share, and you will then immediately hand me back the same £12 as the price of the worried sheep." Now the parties do not appear to have gone through this pantomime, for they did not foresee in 1882 that in 1892 an Act of Parliament would be so worded that the omission of this empty pantomime could be raised as a fatal objection to an exceptionally honest and straightforward transaction.

We shall therefore certify that this transaction ought to be validated. It is certainly within the spirit and intent of this Act, although outside the words of section 5.

III.—*Hemi Tutoko's Case.*

Hemi Tutoko owed William Cooper £45 15s. 6d. on a promissory note, dated the 30th July, 1880. He came down to Gisborne on the 21st March, 1882, to sell his shares in this and another block to pay Cooper a part of his debt then due. Cooper says that he and Hemi Tutoko went together to the office of Mr. Goudie, who was purchasing these shares. Cooper waited outside while Hemi went inside for the purpose of selling, signing the deeds, and receiving his money. After a while Hemi came out and paid him (Cooper) £20 on account of his debt. Hemi Tutoko denies this statement, and his version is as follows: He swears that his debt to Cooper was only £3, and not £47, and he says that Cooper went in along with him to Goudie's office, and that it was Cooper who received that £3, and not he (Hemi). Hemi's version of the facts appears to us to be untrue for the following reasons: Hemi knew at the time that the price of the shares was at least £10; for his wife signed her name next below his, and he further admits that she received her £10 in his presence, and that he again signed his name below her name to signify his assent as her husband. His daughter also sold her share at that time, and she received £10 to his knowledge. Yet he now swears that at that time he did not know the price of his own share, and that what he parted with it for was only £3, and that Cooper received that £3 from Goudie. Finally, after much cross-examination, he falsified all these particulars by giving a different version of his "agreement with Cooper." He said that his agreement was "that Cooper should receive £10 (not £3), and return him (Hemi) £7." "But," said he, "I won't stick to that agreement now. I now want my land back." Our conclusion from the evidence is that Hemi was paid his £23 purchase-money fully and fairly, and we shall certify this sale as proper for validation.

IV.—*Pera Tutoko's Case.*

Mr. Day, the counsel for the Natives, did not call our attention to any circumstances of this case as taking it out of the statute, and he called no witnesses in respect of it. Mr. Charles D. Bennett, on the purchaser's side, swore positively as to the signing of the deeds, and also to the payment of the purchase-money, in these words: "I swear that the money put in the column opposite their name [three names, including Pera's name] as the consideration was paid in my presence—that is to say, £12 in each case."

We shall therefore certify this sale as proper for validation.

V.—*Rena Parewhai's Case.*

In this case a judgment was recovered in the Supreme Court against Rena Parewhai, and her individual share in this block, held under memorial of ownership under the Act of 1873, was seized and sold by the Sheriff to William Cooper in 1890. It was admitted that the judgment and Sheriff's sale were all in regular form, so that had the defendant been a European the property would have passed. But Mr. Day argued that inasmuch as this undivided share could not have been lawfully sold by Rena Parewhai herself without the assent of the other owners, &c.; and as section 88 of the Act of 1873 prevented such a share being lawfully seized and sold by a Sheriff under judgment of any Court, and as since the repeal of that section of the Act of 1873 the share would still be unsaleable by a Sheriff, at all events without the like assent and compliance with requirements as on a sale by Rena herself, therefore the seizure and sale by the Sheriff in this case must be treated as unlawful, and the Sheriff's deed could pass no estate, and Parliament could not have intended that this kind of illegality should be validated.

Mr. Day cited many cases decided in the Supreme Court, showing that Rena Parewhai's share would not have passed to her assignee in bankruptcy (a bankruptcy being a general execution for all creditors) and argued that these cases all applied as much to Sheriffs' seizures and sales as to seizures and sales in bankruptcy. He cited the Interpretation Act of 1878 to show that the repeal of the Act of 1873 could not affect the nature and incidents of titles held under memorial of ownership, and that as no execution under a judgment could during the lifetime of the statute affect such

a title, neither could it after its repeal. He cited also cases in the Supreme Court showing that land under restrictions is not seizable and saleable by the Sheriff; and, lastly, he cited Poaka *v.* Ward to show that no subsequent legislation has altered the status of any title under the Act of 1873, and therefore (in spite of section 16 of the Act of 1888) such title remains unsaleable by the owners and unseizable by the Sheriff.

It certainly appears to me that if this Court is to be guided in this matter by the decisions of the Supreme Court, then the seizure and sale of Rena Parewhai's share by the Sheriff ought to be held unlawful; but we may be asked why we should follow these decisions (affecting only one purchase in this block), while at the same time we consider ourselves entitled not to follow Poaka *v.* Ward, which decision avoids every sale of every share?

Our reply to these questions is: That, although we decided that this statute authorises validation notwithstanding the case of Poaka *v.* Ward, or rather perhaps in consequence of that decision, it does not follow that the Legislature intended us to treat as proper for validation every kind of illegal transaction. The Sheriff is a public officer deriving his right of sale from the law only. He is not an agent of the defendant Rena Parewhai to sell with her assent. The law gives him a power to convey estates compulsorily under certain circumstances to a purchaser against the owner's will. Such power can only exist where the law gives it, and, therefore, if in Rena Parewhai's case the law gave no power to the Sheriff, we could not treat his sale as a transfer of her interest. The law gave no such power to the Sheriff. This Validation Act would apply to sales voluntarily made by the parties themselves, unlawful, it is true, but made *bonâ fide* and in an honest and straightforward transaction agreed to by all the parties at the time it was made. Rena Perewhai's was not such a sale. It was an illegal compulsory sale by a person who was not her agent, nor in any way empowered by law to sign for her.

We now come to four shares claimed against Mr. Tiffen on behalf of minors.

VI.—*Hoera Ranginui's Case.*

There are two Native owners in the Puhatikotiko Blocks, both of whom claim the name and shares of Hoera Ranginui. One is a grown man named Ranginui Pero, but, according to the evidence of Mr. Tiffen, he also calls himself Hoera Ranginui. The other is an infant named Hoera Ranginui. The infant and the adult are both in the list of No. 7 Block under their respective names of Ranginui Pero and Hoera Ranginui. Only one of them is in this Block No. 1, and is called in the list Hoera Ranginui, and the question is whether the name in No. 1 belongs to the adult or the infant. Mr. Woon, as agent for J. G. Kinross, bought these two shares standing in the name of Hoera Ranginui, one in No. 7 and one in No. 1, from the adult Ranginui Pero; but Mr. Woon took Pero's signature to both deeds of sale in the name of Hoera Ranginui, and not in the name of Ranginui Pero. In the form of declaration, however, that was signed by that vendor when he was signing the said deeds of sale, Mr. Woon describes him as "Hoera Ranginui, or Pero." It is therefore quite clear that Woon knew at the time of the transaction that the man selling to him was Pero, and that his signature in the No. 7 block was for the share owned in that block in the name of Ranginui Pero. It is likewise probable that Woon then also knew that there was an infant, "Hoera Ranginui," an owner in the same Block No. 7, whose share Pero was not entitled to, for as purchase-agent Woon must have supplied himself with a list of owners from the Court files, as all purchase-agents necessarily do. But, whether Mr. Woon was deceived or not, he could not buy from Pero what belonged to the infant Hoera Ranginui in No. 7; therefore the only question for the Court is whether the share in No. 1 in the name of Hoera Ranginui belonged to the infant or to the adult.

We have considered the voluminous evidence given on both sides as to the identity of this Hoera Ranginui, and we have no doubt whatever that the Hoera Ranginui who owned in No. 1 was the minor, and not Ranginui Pero. When he conveyed his share in that block as Hoera Ranginui, instead of the name in which his own share stood, we believe he did it to give a colour to his sale in the other block, and to his pretence that the share in that block belonged to him. A number of small circumstances, too numerous to be set out here, have satisfied us that Hoera Ranginui in the No. 1 Block was the infant, and therefore that Ranginui Pero, when selling that share, sold it without right to sell it.

We will therefore certify that the shares of Hoera Ranginui in both blocks belong to the infant Hoera Ranginui unsold; and we will certify in the No. 7 Block that the share sold by Ranginui Pero in the name of Hoera Ranginui was the share of Ranginui Pero himself, held in his name of Ranginui Pero, and that the said share ought to pass to Mr. Tiffen under the deed signed by Ranginui Pero in the name of Hoera Ranginui.

VII.—*Mini Kerekere's Case.*

Mini Kerekere, a married minor, nineteen years of age, sold to Mr. Ferris, as agent, a share then vested, by order of the Governor in Council, in his father, Peka Kerekere, as trustee. By the statutes then in force relating to the estates of Maori infants, the share of the infant Mini was, by virtue of such order, absolutely vested in the trustee, with full powers of management, and also full powers of sale. During the minority the infant had no right whatever left in him. The trustee was entitled out of the proceeds of the estate to pay what he pleased for the support or education of the minor, and the rest he was bound to invest in securities; but the minor had no right during his minority to interfere in any way, either in the management or in the sale, or in the application of the proceeds of sale.

When Mr. Ferris was negotiating with Mini Kerekere for the purchase, he had full notice from Mr. Frederick Jones that Mini was under age; but, notwithstanding that notice, and although he (Mr. Ferris) might have settled the question by stepping across the road from his own office to the Native Land Registry, he preferred to act on his own unassisted judgment concerning Mini's age.

He took Mini's signature, and paid him the purchase-money, £12; but he also took the very

unusual precaution of putting a clause in the statutory declaration signed by the minor that he, the minor, was of full age. A few days after the sale Peka Kerekere, the father and trustee, having heard of the transaction, went to Mr. Ferris, upbraided him for taking his son's signature to a transfer, and he (Peka) as trustee verbally repudiated it as a transfer of any interest in the share. The deed of sale signed by the minor was afterwards taken before a Frauds Commissioner, and is alleged to have been passed by him without any notice to the trustee, Peka Kerekere, and thus Peka Kerekere did not attend and resist the Commissioner's certificate being given.

Mini is now of full age, but he has never during the interval between the end of his minority and the sitting of the Validation Court (seven years) taken any steps to set aside his deed of transfer or repudiate the sale. His own statement is that he did not do so because he was ignorant that he had any right to do so.

Under these circumstances, Mr. Day insists that Mini Kerekere's transfer conveyed nothing. Secondly, that the transaction was at once repudiated by the trustee, and that such repudiation renders the transfer void: that, even without any repudiation, such a contract by a Maori minor is absolutely void, and not (as was formerly the case with similar contracts under English law) voidable only; and that, to treat it as only voidable and now confirmed because Mini has allowed seven years to pass without repudiating it, would be contrary to New Zealand public policy. That policy, Mr. Day contends, is shown all through the legislation affecting the Maori race to be a policy of protection to the Maori against his own imprudence, and his liability to be cheated by the more cunning if not more unscrupulous European. Mr. Lysnar, *contra* for the purchaser, insisted that the minor could sell and did sell by a voidable contract, and that not having avoided it for seven years it would be according to English law valid and beyond repudiation by him. Numerous authorities, both English and of the New Zealand Courts, were cited by Mr. Day and Mr. Lysnar. The English cases showed that it was the law in England up to the year 1874 that if a minor sold real estate *then vested in himself* his contract was not void, but voidable only, and that such contract, not repudiated by him within a reasonable time after he came of age, would be treated thenceforth as binding upon him. No case, however, was cited to show whether a sale by a minor, whose whole estate, both legal and equitable, was at the time of the contract of sale vested in a trustee, would or would not avail to pass any estate or interest either present or prospective. There are no recent English authorities, because the English people overruled the previous decisions of English Judges, and declared in 1874 through their Legislature by statute that all such contracts by minors are absolutely void, and no longer merely voidable—a fact which shows that the current of English thought is against allowing usurers and unscrupulous speculators any longer to tempt youths of fortune to part with their estate before they have reached years of discretion.

One colonial authority was relied on by Mr. Lysnar: Johnston *v.* McKay, L.R. 2, Supreme Court, 156 (year 1884, N.Z.), as showing that a sale by a Native whilst he was a minor was held to be only a voidable contract, and therefore good against a purchase from the same Native after he came of age; but that authority is not in point to the present case. The only point decided in that case was that the "Statute of pretenced Titles" (passed in the reign of Henry VIII.) forbids and renders void any transfer of his interest by an owner whose land is out of his possession, and held by some person adversely to him; and the Chief Justice in that case held that the possession by the plaintiff Johnston, whether that possession was founded on a good title or not, was adverse to the Maori minor from the date of Johnston's purchase from him, whether that purchase was lawful or not, and that such adverse possession rendered void the subsequent sale by that same Native to Mr. McKay. The decision simply amounts to this: that, even if the Maori might himself have ejected Johnston—which clearly he could do if he had done nothing to validate the voidable contract—purchaser McKay could not eject Johnston. That is all that the case decided. But, even if it decided, as it is contended, that the contract of a Maori minor to sell his estate vested in himself was voidable and not void, such decision would still fall short of this case of Mini Kerekere, for his estate when he contracted to sell it was not vested in himself, but in his trustee. I see no words in the judgment of the Chief Justice in the above-cited case of Johnston *v.* McKay showing that, if Johnston had purchased from the infant an estate then vested in his trustee, the contract so made would have passed any estate whatever to Johnston. Johnston *v.* McKay is therefore not an authority governing this case. We think, also, that to certify in favour of this sale would be to tear up by the roots all the statutable provisions for the protection of Maori minors. Even after Maoris arrive at man's estate they are, as Mr. Day urged upon us, looked upon as still under tutelage and protection. They are frequently restricted from selling at all. They can make no transfer, except in presence of special classes of witnesses selected as reliable persons, who will see that they are treated fairly. Even then the sale is not complete, for an examination has still to take place before a Frauds Commissioner, whose very designation tells us what his duties are as to the protection of the Maori. If such be the provisions of the law as to adult Maoris parting with their estate, what a mockery it would be to hold that a Maori youth just arrived at the time of life when money is eagerly sought for for his pleasures, and when he is most sure to listen to the voice of the tempter, may sell his estate, even though that estate be then vested in a trustee for protection against that very contingency. Ferris bought from Mini Kerekere, knowing him to be a minor. He pretended to disbelieve Mr. Jones's warning, but he took care to make Mini's declaration state that Mini was of full age, so that he could prosecute Mini for perjury in case Mini, when he reached majority, should repudiate the bargain.

A point was made by Mr. Lysnar that the Order in Council appointing Peka Kerekere as trustee was not in existence at the date of the sale by Mini. Mr. Day, however, showed us that according to New Zealand decisions the estate was in anticipation of the Order in Council, contingently vested in Peka Kerekere by the recommendation of the Native Land Court that an Order in Council should be issued, and the subsequent issue of the Order in Council confirmed that recommendation, and gives a title from its date just as a decree of a Court of justice will defeat every attempt pending litigation to render such decree ineffectual when it comes.

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

take those rights away from them "forthwith" behind their backs. Such a proceeding would so clearly be a violation of natural justice that we have felt compelled to read the word "forthwith" as meaning "forthwith" after due notice to all interested persons. To read the word "forthwith" without this addition would practically enable the European purchaser to select whatever part of the land he chose behind the backs of the owners. The injustice of such a proceeding is aggravated by the fact that being also authorised to vary any former partition, we may take from any Native the piece of land already given to him by a former Court, and without his knowledge hand it over "forthwith" to the European.

JUDGMENT No. IV.

22nd May, 1893.

Most of the legal principles involved in Mr. Tiffen's five applications have been settled in our three judgments in the No. 1 Block. It will, therefore, not be necessary to dwell at any length upon the legal points involved in the disputed cases in the Blocks 3, 4, 5, and 7, the subject of this judgment.

Mr. Day's objections to the deeds of conveyance in these blocks are similar to his objections in the No. 1 Block, and the Court will therefore overrule them. The only important law-points remaining undecided are points respecting Maoris under disability. We have in the No. 1 Block decided that the contract of a Maori infant whose estate is at the time of sale vested in a trustee transfers no estate to the purchaser. It yet remains for us to declare whether an infant whose estate has not been transferred to a trustee, but remains vested in himself, can provisionally pass that estate to a purchaser; in other words, we have to decide whether his conveyance is void or only voidable, and therefore capable of confirmation. This point is of such importance that I have taken long to consider it, and have consulted all the legal authorities—English, American, and Colonial—accessible to me. I have had on the one side to weigh the evident policy of the New Zealand Native code, a policy of protection of even adult Natives against the wiles of Europeans, and on the other the English and American authorities declaring the common law affecting minors in those countries; but these authorities must be read coupled with the significant fact that in England the National Council has now by statute overruled the common-law decisions of their Judges, and has declared such contracts thenceforth absolutely void. There is no New Zealand direct decision upon this subject, so far as it affects Natives, but there are *dicta* in cases where the point was not so much involved as to make the *dictum* a decision upon it. These *dicta* are therefore not of such a character as to afford guidance to this Court now called upon to decide the very point itself, and I have therefore ventured to think out my own conclusions. I have not allowed myself to be too strongly influenced by the principles laid down by English Judges, as applicable to the social state of a highly civilised people: for when considering what ought to be the common law regulating transactions between Europeans and a race only just emerged from barbarism a Judge ought to keep in view many considerations that are absent in the English cases.

I shall hold that the conveyance by an infant Maori, whose estate is not vested at the time in a trustee, is a contract that transfers to the purchaser a voidable estate which the Maori infant can avoid after he comes of age, and, in so far, I am following the English and American judicial decisions; but I shall also hold that mere quiescence on his part for a lengthened period after he comes of age ought not necessarily to amount to a confirmation of his sale. One reason why mere quiescence ought not necessarily to amount to confirmation is that if the Maori on his arrival at majority should apply to us to eject his purchaser, we could not entertain his case, because the Legislature has not empowered the Native Land Court to deal with this class of Maori rights. Maoris come to our Court as their proper Court for relief; and when we inform them we have no jurisdiction they go away under the belief that as we have no jurisdiction no remedy is open to them in any Court. Hence, they are apt to remain quiescent so far as Court action is concerned. I do not by this statement mean to convey the impression that Maoris never bring cases before the Supreme Court, but generally, if not always hitherto, the real suitor has been the European, prompting their proceedings for his own benefit. This Court, therefore, when considering the question of Maori quiescence, must take into account the fact that the Supreme Court has not in the past been regarded by Natives as having been open to them in the same sense as it is open to a European. There is another element to be considered when declaring the common law that should govern such contracts, and that is the extreme unreliability of Maori evidence. Maoris enter the Land Court resolved to succeed by stratagem or treachery, just as they would in war. For instance, in this very case of Tiffen's, several adult Maoris, finding that it was decided in the No. 1 Block that Mini Kerekere, born at the date of the battle of Waerenga-a-hika, could not sell and convey the land vested in his father as trustee, falsely pretended that they too were born just at the date of that battle, and therefore were minors when they signed, thus endeavouring to deceive the Court into giving them back the land they had fairly sold. Even where there may be no direct disproof of an alleged minority, the circumstances may show a conspiracy to defraud the purchaser. In such cases the Court ought to be able to protect the purchaser by treating a long quiescence of the vendor after his admitted date of legal majority as a confirmation of the contract made during his doubtful minority, even though it has not been properly disproved.

With these remarks I will now proceed to give the judgment of the Court upon the individual cases objected to in the Blocks 3, 4, 5, and 7.

BLOCK III.

I.—*Iopa te Hau's Case.*

This owner admits that he sold, and signed the deed. But he says that the consideration (£6) put in the deed is not the amount for which he agreed—it was £20. He signed a declaration before a solicitor, in which he declared that £6 was the amount; but he says that although he signed that

declaration there was nothing in it about £6 at the time he signed it. He persisted throughout his examination in declaring that no money whatever was paid to him, except £2 given to him by Ferris, the agent, on account of the £20, but he did not explain why he swore and signed a declaration which he had observed at the time did not state the amount of the purchase-money. The evidence given in contradiction of his story fully proved that he had been paid £6, and the Court does not credit his statement that £20 was the purchase-money agreed upon. We can see no reason why Iopa should receive £20 when the price paid for similar shares to all the other vendors in the block was only from £5 5s. to £6.

We shall therefore certify that this sale is proper for validation.

II.—*Mihaere Parahi's Case.*

This Native signed the conveyance and received payment on the 19th January, 1885. He was then about twenty-five years old. He is now alleged to have been a minor at that time, aged about twenty.

On the 9th July, 1883, this vendor was appointed successor to Heterika te Oikau, and on that occasion he was represented to the Court as being eighteen years of age; and an application was made for appointment of a trustee for him. The order was granted, but it was so granted on a misrepresentation to the Court, and therefore, as against third parties whom it is now sought to injure by it, it should be treated as a nullity. The share to which Mihaere succeeded on the occasion when he was declared to be under age was not the share in dispute between him and Mr. Tiffen. The share he sold to Mr. Tiffen is a share he has all along held in his own right; therefore it would not be proper that we should treat the statement of his age in the order appointing the trustee as an estoppel upon Mr. Tiffen, because section 9 of the Act of 1878 created a statutory estoppel. That section says that "for all purposes the time at which the minor shall be deemed to have attained his majority shall be computed from the age fixed by the Court." But those words "for all purposes" must be read to mean all purposes connected with the "share of interest in land" then being dealt with by that Court. To stretch the words so as to include shares that the Court was not then dealing with would be contrary to the usual canons of construction of statutes, and it would impose upon every purchaser of Native land the necessity of searching the records of every Native Land Court throughout the island to see whether some trustee-order, hidden away in some distant block, might not affect the land he was purchasing. In addition to these reasons for not treating the trustee-orders as an estoppel beyond the lands then before the Court, there is this further reason: These trustee-orders are, so far as purchasers are concerned, made *ex parte*. It is impossible for a Court to save itself from being imposed upon as to the age of the alleged minor if the parties before it combine to do so. Therefore, in cases where a Court has been imposed upon, we must permit any subsequent purchaser, who would be injured, to give evidence showing the fraud, and if it is proved to us, we ought to prevent any such fraud from being hurtful to him.

We shall certify that Mihaere Parahi was of full age when he signed the deed, and that this sale is proper for validation.

These are the only two shares in No. 3 Block contested on their individual merits.

We shall therefore certify for all the purchases made in that block.

BLOCK IV.

In this block there were fifteen sales, of which only the following one is disputed:—

I.—*Eruera Taituha's Case.*

This Native sold his share on the 20th August, 1885. His mother swears that he was born in 1865 at the Waerenga-a-hika pa, two days before the battle, and was therefore at the date of the sale only twenty years of age. This statement by his mother was shown to be untrue. He was born several years before 1865, and must therefore have been of full age when he signed. A witness called to corroborate Eruera's mother swore that she and her husband used to live in a house situated within 10 chains of the pa. Both were persons of high rank. Now, wherever a child is born in or near a pa, to parents of high rank, the event being one of importance is immediately made known to every family in the pa. But it was conclusively proved to us that at the date in question the birth of any child to these parents was unknown in the pa.

Eruera's estate was vested in himself at the time he made his sale. It is a noticeable fact that when Wi Pere, Paterongo Noti, and Tipene Tutahi, as conductors in those blocks, applied to the Court on the 24th November, 1883, for the appointment of trustees for a large batch of Maoris, no application was made by any of them on behalf of Eruera Taituha, but Eruera's name was left undisturbed among the names of owners who had reached majority.

The Court will certify this case as proper for validation.

BLOCK V.

No special objection has been made to any sale in this block, and all the purchase-money has been admittedly paid, and all the proper signatures admittedly signed to the deeds.

There were twenty-six purchasers, possessing the interests of twenty-five owners and one-third of the share of a twenty-sixth owner.

We shall certify in favour of all these purchases.

BLOCK VII.

In this block Mr. Lysnar claims ninety-eight purchases; out of these ninety-eight, nine are specially objected to by Mr. Day, and will now be dealt with.

I.—*Ranginui Pero's Case. Hoera Ranginui's Case.*

We have discussed this case in our judgment in the No. 1 Block, and have there decided that Ranginui Pero fraudulently signed the conveyance of a share in this block in the name of the minor, Hoera Ranginui, thereby attempting to sell her share while retaining his own.

We certify that Ranginui Pero has sold his own share in this block and has been fully paid for it, and that the sale from him to the purchaser ought to be validated.

II.—*Taraipene Tutahi's Case.*

It was shown to the Court that Taraipene Tutahi was born at latest in 1860 or 1861, but she was more probably born in 1858 or 1859. She sold her share and signed the deed of sale on the 3rd April, 1882, and was therefore of full age when she signed. She is now alleged to have been a minor when she signed. No trustee has ever been appointed for her. Her father, Tipene Tutahi, who came to prove her minority, admitted when under cross-examination that his first evidence proving her to be a minor was a fabrication. We have since searched the records of the Court and found that when on the 24th November, 1883, Wi Pere, Paterengo Noti, and this same Tipene Tutahi as conductors applied for a large batch of appointments of trustees for minors in these blocks they did not apply for a trustee for Taraipene, although she is Tipene Tutahi's own daughter; and there is this further significant fact, that Tipene Tutahi did on that occasion apply for a trustee in this block for his son Mohi Tamati, aged twelve years, although he made no application for his daughter Taraipene, and on the same day he applied in two other blocks for the same son and still omitted to apply for his daughter.

We certify that this woman was of full age when she signed, and that her sale ought to be validated.

III.—*Mihaere Parahi's Case.*

We have discussed Mihaere Parahi's case in this block when considering his sale in No. 1 Block.

We shall certify, for the reasons there given, that the sale in this block ought also to be validated.

IV.—*Mini Kerekere's Case.*

This is the same Mini Kerekere whose sale in No. 1 Block we have refused to certify for validation.

But there is an important difference in the facts concerning the sale in No. 1, and the sale in this No. 7 Block (made on the 10th September, 1884). In No. 1 the estate was at the time of sale vested in Peka Kerekere, his father, but in this No. 7 the estate at the time of sale was vested in Mini himself. Therefore his deed of sale in this block, though a voidable contract, conveyed an estate. This difference in the facts reduces the point to the question, "Whether Mini has or has not since his majority acquiesced in that cenveyance?" In the No. 1 Block the father was the owner, and objected to Mini's sale. He was the trustee in whom the estate was then vested, and he was by law required to protect the estate. But with respect to this share in No. 3 Block it was not vested in him, and he had no duty and no right with respect to it. Why he did not get himself appointed as trustee for this share, as well as for the share in Block 1, was not explained to the Court, but it is open to the supposition that Mini, being a married man, his father may have purposely left this share within his control, that by the sale of it he might be able to raise money for family needs. It must be borne in mind that the Maoris allow uncontrolled action by their children at a much earlier age than Europeans do. According to Maori custom a young man of nineteen years, and especially one who was pursuing a separate family life, would be allowed to take his place as a man and manage his own affairs. The colonial law has adopted for the Maori the European standard of twenty-one years, but this has probably been done merely to bring him in line with the European. This Court is, of course, bound by the law as it stands, but we ought nevertheless to take into account the Maori habits and customs when considering the contracts made by a minor at an age and under circumstances in which Maori custom would recognise his right to act as a responsible person.

We think, therefore, that the fact of this share being left unprotected by the father Peka Kerekere when he carefully placed the other share beyond the reach of the minor, coupled with Mini's own statement that he himself has never objected to any of his sales, and with all his conduct since coming of age, requires the Court to treat this sale as having been acquiesced in by Mini. Even Maoris must know that if they intend to object to a transaction of sale they ought not in the meantime to stand silently by as Mini Kerekere did. In this instance, though Mini lived close by Mr. Tiffen, he never complained to him or repudiated the transaction during the seven years that have elapsed since he came of age.

V.—*Mata Parerata's Case.*

This woman is alleged to be so weak of intellect that she is incapable of making a contract for sale of her estate, and that her incapacity to contract would be obvious to the person purchasing from her. But we find that she is sufficiently strong in intellect to have been accepted as a wife by successive Maori husbands, and that she is now living as wife to one Meka Kawhena at Taihomiti, not very distant from Gisborne. All that has been satisfactorily proved against her intelligence is that she has an impediment in her speech; but the evidence was strong to show that she fairly understands her own interests and quite understands the value of money, and that her alleged weakness of intellect is not obvious to those who have business dealings with her. She has not been brought before the Court so that we might judge of her intelligence, and we again notice that Wi Pere, Paterengo Noti, and Tipene Tutahi, when applying on the 24th November, 1883, for

appointment of trustees for persons under disability, made no application for a trustee for Mata. The Maoris are quite aware that this Court has the power to vest the estates of persons so wanting in intellect as to be unable to protect their own interests in trustees who can protect them.

We shall certify that this case is one proper for validation.

VI.—*Hemi Tutoko's Case.*

The facts of this case have already been fully dealt with in the sale of Hemi's share in Block 1, and we shall, for the reasons there given, recommend this sale also for validation.

VII.—*Rena Parewhai's Case.*

This was a Sheriff's sale, the law and facts are fully set out, and the sale dealt with in the similar case in Block 1, and we shall for the reasons there given abstain from recommending this sale for validation.

VIII.—*Harawera Putiki's Case.*

Harawera Putiki sold his share and signed the deed on the 1st October, 1886. He was then about twenty-seven years old, having been born in 1859.

An order was made on the 24th November, 1883, vesting his estate in a trustee. He was alleged in that order to be only eleven years of age. He was then, in fact, about twenty-four years of age. That order, Harawera being of the full age at the time it was made, was a fraud on the Court, and therefore a nullity so far as Mr. Tiffen (who was no party to it) is concerned. Harawera did not come to the Court to allow us to judge of his age.

We shall certify this as a proper case for validation.

IX.—*Herewini te Awariki's Case.*

In this case the objections made to the sale were withdrawn. Herewini appeared before the Court, received from the purchaser £10 in our presence, and stated that he is now quite satisfied that his share should go to the purchaser.

We accordingly shall certify that this sale ought to be validated.

PUHATIKOTIKO PARTITION AND FINAL JUDGMENT (No. 5.)

Karaka, June 27.

His Honour Judge Barton delivered the following judgment:—

The validation and partition with Mr. Tiffen in this case are at last completed, after an investigation lasting three months. Under a proper Act three weeks should have more than sufficed, and the fact that the inquiry has occupied so much time will doubtless be used by the opponents of legitimate validation. From my knowledge of business in this district, I have little hesitation in saying that, under a proper statute drawn by a practical person acquainted with the class of work to be done, the whole validation required on the East Coast could be completed in little over three years. In making that statement, I am presuming that the Act would be confined to validation alone, and that the Judge would be occupied in validation only, leaving the subsequent partitioning to the Native Land Court, whose proper work it is. The Judge of the Validating Court ought not to be interrupted by being called away to ordinary Native Land Court work, as was my own case so frequently during the Poututu inquiry. That inquiry is reputed to have lasted nearly four years, and to be still unfinished. But the truth is that the validation work of all the Poututu case has long since been completed, the whole time occupied at different intervals in contests in Court under the Poututu Jurisdiction Act being in all only nineteen days. During all the remainder of the four years I was occupied in other business and elsewhere, *i.e.*, in the extreme North, in the King-country, in Wairarapa, in Tolago, in Wairoa, and in other places. The rights of the Poututu litigants are even now hung up by applications for re-hearing made a year ago, and still unheard.

In this case of Mr. Tiffen's the Native non-sellers have agreed upon a division of these blocks, and all opposition to the giving of a statutory title to Mr. Tiffen is now withdrawn.

But this agreement, not being signed by all the persons interested in the block, is under our Native-land code insufficient to bind the parties. Nevertheless, I shall not hesitate to add this feature to the other illegalities in this case. It is an agreement which, if made before the Supreme Court, or any other Court in the civilised world except this Native Land Court, would be binding on the parties to the litigation. Business would be at a standstill in any other Court but the Native Land Court, if the persons representing suitors could not enter into compromises and submit them for the approval of the Court. The settlement now made between Mr. Tiffen and the conductors being just such a settlement as this Court would have made had the matter been left in its hands, we shall certify that these lands so agreed to be given and accepted ought, in our judgment, to be granted to Mr. Tiffen by the Legislature, independent of any arrangement between them. The remainder of the blocks shall belong to the non-selling Natives, and be divided amongst them in the relative proportions arranged amongst themselves. Formerly in this district I found these "voluntary arrangements" most convenient for the settlement of titles invalid by reason of trivial technicalities, or because of pernicious requirements of dead statutes; but now the Court is prohibited from approving such arrangements unless every man, woman, and child in the block signs an agreement—a condition almost always impossible of performance. Thus the useful "voluntary arrangement" clauses are rendered inoperative not by repeal (that

would be too straightforward a course for Native legislation), but by annexing an insurmountable impediment.

Having, so far as this Court is concerned, settled the rights of the parties, I have now to enter upon another matter which, if left without full explanation, might greatly prejudice Mr. Tiffen's interests when they go elsewhere.

When at the beginning of this inquiry I overruled Mr. Rees's arguments against the jurisdiction of the Court, I did so in error. I held that the omission from this Act of words applicable to cases like Mr. Tiffen's must have been accidental, and being fully impressed with that belief I acted upon it, although in doing so, I was obliged to stretch the rules of statutory construction to their extremest verge, and I urged that, even if my decision was erroneous, that error could not inflict harm on any one, inasmuch as Parliament still held the full control over the ultimate fate of the case; while if I dismissed the case without inquiry, my judgment, if erroneous, would be productive of great injury not only to Mr. Tiffen, but to the innumerable persons throughout the country who are anxiously awaiting relief.

I have now within the last few days seen for the first time the debates in Parliament on this statute. I find that not only was I wrong in supposing that the words in the repealed Act of 1889, fitting such cases as Mr. Tiffen's were omitted accidentally, but that the very contrary was the case; and I further find that the Government gave an undertaking in both Houses that if the Bill were allowed to pass it should not be used in the Native Land Court to validate purchases illegal in their inception. The Hon. the Native Minister expressly stated (*Hansard*, 29th September, 1892) in the Lower House that the Court should only deal with purchases by persons who in so purchasing "had broken no law," but had their estates withheld from them by reason of technicalities or irregularities, or through some change in the law intervening between the commencement and the completion of their transactions, and, he added, "There is no doubt many have broken the law openly and knowingly, trusting their influence or some change of Government would put the matter right. This Bill proposes to give no relief to this class of people."

Afterwards, on the 6th of October, 1892, the Hon. the Attorney-General when introducing the Bill into the Upper House on the day before the prorogation, and asking them to pass it notwithstanding the very late stage of the session, and the impossibility of considering its provisions, gave the Council a distinct pledge. He said (*Hansard*, 6th October, 1892): "We propose to repeal all the provisions dealing with the Commission under the Act of 1889, and to enable the Native Land Court Judges to be appointed specially for the purpose of a Commission to inquire into titles in dispute, with full power to report on all those cases where there has been no breach of the law, . . . but where through some irregularity registration has been refused." He then, doubtless with the view of assuring the Council that the Government had no intention to intrust work so important as the validation of purchases made in spite of statutory prohibition to such a Court as the Native Land Court, proceeded to disparage that Court, and to express his disapproval of the whole existing Native-land system. He said, "The condition of our Native-land legislation is simply disgraceful, and year after year we have nothing but scenes in our Courts of gross fraud. Justice is done to neither European nor Maori, and there is no finality. It is almost impossible for any one, however clever he may be, to fully understand the Native land-laws."

It was in ignorance of these pledges that I construed this Act as intended to confer jurisdiction over the cases which the Government undertook should not be dealt with, nor was I aware that the Lower House had carefully eliminated from the Bill every word deemed capable of being construed as an authority to the Judges of the Native Land Court to recommend the validation of such cases. I then believed their omission to be purely accidental, and I felt it to be my duty, for strong public reasons, to give the Act the widest construction possible, and so prevent the collapse of this the first case in the first Validation Court under this Act. I felt that if the miscarriage of the Edwards's Validation Court under the Act of 1889 was followed by a similar miscarriage in this Court, such second miscarriage would greatly dishearten, if not exasperate, the public, who look only to results and seldom make any allowance for lack of means to produce results. I therefore acted boldly, and held this inquiry, throwing upon the Legislature the responsibility of settling finally what should be done with such cases as the one which I am now sending up to them for their consideration.

Had Mr. Rees disclosed to me in his argument the pledges given by the Government, it would have completely answered my suggestion that the omission to re-enact the fitting words of the statute of 1889 must have been accidental, for they would have shown to me that that omission was of set purpose. Probably Mr. Rees abstained from such disclosure, because it is a rule of the Courts not to allow their judgments as to the proper construction of statutes to be warped by anything said in debate in Parliament. But this was not matter of debate, and it would have been perfectly legitimate for Mr. Rees to have drawn my attention to what had taken place. Then I should have seen that the purchases of Mr. Tiffen were not purchases within the pledge given by the Hon. the Native Minister, *i.e.*, purchases by a person who in purchasing "*had broken no law.*" Nor were they within the pledge of the Attorney-General, *i.e.*, "cases where there had been *no breach of the law*, but where through some irregularity registration had been refused." But at this stage I cannot, in common justice to Mr. Tiffen, stop these proceedings, or hesitate for one moment to send on the case to Parliament for its consideration. Both Mr. Tiffen and the non-selling Natives have, through my erroneous decision and as a consequence of the passing of this worthless and useless statute, been plunged into these proceedings, and it is now too late for them to retrace their steps, abolish the partition, and rescind the settlement of the rights of all persons interested, and stand again where they stood before any step had been taken. The thing is impossible, and I think Mr. Tiffen has a right to expect that the Legislature will give effect to the agreement made between the non-selling Natives and himself with the approval of this Court. It appears to

me that, even on the assumption that these litigants have now no better standing before Parliament than the promoters of any private Bill would have, they have at least the same rights as such promoters, and under all the circumstances have an irresistible claim to ask the Legislature to carry out their agreement. The very fact that the great public good done by all this discussion has been obtained at Mr. Tiffen's expense gives him a strong claim. The Hon. Mr. Carroll, when present at a deputation to the Premier, in Gisborne, on the 16th June, stated that my judgments in this case "have revealed the whole thing to daylight, and will be a great instruction to Parliament," and the Hon. the Native Minister has written concerning these judgments: "I have carefully read Judge Barton's letter, and also the judgments he has given, and I must say that I feel very pleased at the common-sense view he has taken of the cases." These statements show that, even though my view of the law was unwittingly erroneous, the course I took was judicious. My object all along in these judgments, and in the Poututu judgments, has been to "reveal the whole thing to daylight," and strip from Native-land proceedings the veil of mystery in which unscrupulous persons have shrouded them for their own purposes. Many members of Parliament, unable to pierce that veil, look so suspiciously on all Native Bills, and are so convinced that the Native Land Court is a mere tool for improper uses, that they refuse their confidence to every measure introduced, lest some innocent-looking clause should conceal sinister provisions perpetuating instead of preventing the continuance of past evils. It is with regret I admit the justice of their fears, and the truth of the words of the Attorney-General when he said that the condition of the Native-land code is disgraceful—that there is no finality—that no one, however clever he may be, can understand it; and that our Courts are scenes of gross fraud, where justice is done to neither European or Maori. My long judgments in this and the Poututu inquiry were laboured by me solely for the purpose of affording practical illustration to Parliament of these very things. Had I not had that object in view, a few lines would have sufficiently expressed the decisions of the Court.

When the Attorney-General was informing the Council that "the condition of our Native-land legislation was simply disgraceful," he was not aware that the Bill he held in his hand and was pressing on the Council contained provisions quite as "disgraceful" as any in preceding legislation. One of these clauses authorises the Validation Court to partition the block "forthwith" without any requirement to give notice to the absent non-selling Natives, who, not being interested in the transactions before the Court, cannot be expected to come there—at all events, without a special summons to do so. But this is not all. Incredible as it may seem, the Court is not only authorised to cut up and distribute the block "forthwith," without notice to the absent owners, but it is even empowered to abolish a subdivision already made by a former Court and substitute its own—thus depriving people of the holdings given to them by Court orders which by statute were made "final and conclusive"—holdings they may have built upon, or may even have sold to other persons who accepted these "final and conclusive" Court orders as being indefeasible titles. Such a provision is contrary to natural justice, and is thoroughly illustrative of the Attorney-General's words, "There is no finality."

But, bad as this section is, it pales before the 14th section, which openly treats the Native Land Court Judges as mere puppets. It provides that, after a Validating Judge has forwarded his certificate to the Chief Judge to be laid before Parliament, together with the reasons on which it is based, and the evidence justifying the giving of the certificate to the successful suitor, the Chief Judge may refer back that certificate "for further inquiry or for further consideration, with such directions as to the taking of evidence or otherwise as he may consider necessary." That is to say, the Chief Judge may "direct" the certifying Judge to sign another and different certificate giving the land to a different person. The section is capable of no other reasonable construction than this. The Chief Judge is empowered to "direct" the certifying Judge to alter his certificate. Only two alterations are possible—one, to alter the land given; and the other, to alter the person to whom it is given.

Now, if the statute had provided an appeal to some higher Court, authorising that Court to rehear the case, and substitute its responsibility and its certificate for those of the Judge appealed from, such a provision would have been legitimate; but under this Act there is no such appeal. Instead of such open appeal, this proceeding is provided by which the certifying Judge may be compelled in secret to eat his own words and sign a certificate not his own, to be presented to Parliament as his own and ostensibly on his responsibility. The hand would be the hand of Esau, though the voice would be Jacob's voice, and the part of Parliament would be that of the aged and blind Isaac. Can a Court of justice be more deeply degraded than to be required by statute to lend itself to such a fraud as this? Or can any of the legislation referred to by the Attorney-General better fit his descriptive epithet, "disgraceful."

No one who has not made the endeavour can appreciate how difficult it is for a Native Land Court Judge, without status, without even the protection which publicity of the Court proceedings gives to other Judges—to resist the influences brought to bear upon him. He is harrassed with applications to the Supreme Court; prohibitions, mandamuses, even actions are showered upon him by those against whose interests he has given judgment, and, while his work is thereby stopped or delayed, he is accused in Parliament and elsewhere (as happened to myself regarding Poututu) of being guilty of these very delays. My Court orders in that litigation were obstructed even in the other Government departments, and in one instance obedience to an order of my Court had to be enforced by a protracted and costly proceeding in the Supreme Court.

A Judge subjected to such obstacles and to such influences, not to mention others not alluded to here, must at last in sheer despair let things slide rather than court his own destruction by futile resistance to the frauds and wrongs of powerful persons.

The Supreme Court Judges, who deal with interests far inferior in value to those dealt with in the Native Land Court, are by special statute absolutely protected against attack from any quarter. The Judges of the Native Land Court have no protection whatever, and if any swindling transaction

is laid bare and public indignation demands a victim, the very rascal who is decamping with the booty raises the cry of "Stop thief!" against the Judge, so that attention may be diverted from himself. The warm appreciation of my efforts to guide things into a better channel, testified in the encouraging words of the Hon. Mr. Carroll and the Hon. the Native Minister, are an assurance to me that I, at all events, have nothing to fear from the calumniator in my efforts to enforce honest dealing and independence of judgment in Native Land Court transactions. It is a great relief to feel that this is so, especially when it is remembered how easily the Native race can be used for any purpose in an attack on a Judge.

In future the operations of this Court will be confined to such cases as come within the words of the Act of 1892, and suitors will therefore understand that no purchases made regardless of statutory prohibition can henceforth be recommended for validation under this Act.

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