

never been ceded to the Crown of Great Britain; and a question has arisen whether the ownership or occupation of such lands by Natives under Native authority can confer the Electoral Franchise. Now, whatever may be the nature of the ownership of these lands by the Natives, it is clear in the first place that it cannot be described by the term "Freehold Estate" or the term "Leasehold Estate,"—these words are terms of Art in English Law, and plainly presuppose the existence and establishment of the English Law of Tenures in any place to which they can be considered applicable. It is plain that such Native ownership or possession cannot be denominated either Freehold or Leasehold. So far there can be no difficulty. But we suppose the chief difficulty arises under the third head of Electoral qualification—which is, the being a Householder within an Electoral District, occupying a Tenement within the limits of a Town (duly proclaimed) of the clear annual value of Ten Pounds, or without the limits of a Town of the clear annual value of Five Pounds, and having resided therein six calendar months before registration. First, we presume the question can never arise as to Tenements within the proclaimed limits of a Town. No Native Land can be supposed to be within such limits. The case is reduced, therefore, to the resident occupiers of Tenements of the clear yearly value of Five Pounds lying without the limits of any Town. Here again all the terms of description are taken out of the vocabulary of English Law, which is assumed by the Act to be applicable to the subjects of which it speaks. The Elector must be a Householder and the occupier of a Tenement. That is, there must be such a holding, habitation, and occupancy, as English Law would take cognizance of and protect. There is nothing to provide for many persons promiscuously using one common habitation. The occupancy spoken of is several only, and such as is known to English Law. But suppose, in a District of Native Land lying within the limits of an Electoral District, that one Native by consent of the rest is permitted to have exclusive possession of a piece of Land, on which he builds a native hut for his habitation, but is afterwards turned out, or trespassed on by another Native; could he bring an action of ejectment or trespass in the Queen's Court in New Zealand? Does the Queen's Court ever exercise any jurisdiction over real property in a Native District? We presume these questions must be answered in the negative, and that it must of necessity therefore follow that the subjects of Householding, Occupancy, and Tenements, and their value in Native Districts, are not matters capable of being recognized, ascertained, or regulated by English Law. But it seems to us to be clear that no Electoral Title can be conferred by the Statute, except in respect of property known to that Law and within the pale of its jurisdiction, and we therefore think that the Electoral Franchise as conferred by the Constitution Act (Sections 7 and 42) is constituted by the Ownership, Tenancy, or Occupation of such Lands and Tenements only, as are holden under a Crown Title; and in direct answer to the question put to us; "We are of opinion that Natives cannot have such possession of any Land, used "or occupied by them in common as Tribes or Communities, and not held under Title derived from the "Crown, as would qualify them to become voters under the provisions of the 7th and 42nd Sections of "the 15th and 16th Victoria, c. 72."

See the "Native District Regulation Act, 1858." The Colonial Act 21 & 22 Vict. No. 80, was not approved.

We have &c.,

(Signed)

RICHARD BETHELL,
HENRY S. KEATING.

His Grace the Duke of Newcastle,
&c., &c., &c.