

stated, South of Auckland, at about fifty miles from the town, at a branch of the Waikato River, called Maramarua, embraces nearly the whole of the interior of the Island, and extends to the East Coast and to the West Coast, South of Kawhia.

No. 7.

COPY OF A LETTER FROM HIS EXCELLENCY THE GOVERNOR TO THE CHIEF JUSTICE AND THE JUDGES OF THE SUPREME COURT.

Government House,
Auckland, 6th May, 1861.

The Governor takes advantage of the meeting of the Judges of the Supreme Court in Auckland to beg the favor of their advice on a subject which has long engaged his attention, but which is surrounded with difficulties.

He alludes to the establishment of a Court which shall have jurisdiction in and be able to dispose successfully of questions relating to land over which Native Title has not been extinguished; and he begs the favor of the Chief Justice and the Judges of the Supreme Court to give him their opinion and advice on the following points, viz. :—

First. Whether the constitution and mode of procedure of the Supreme Court can be adapted for the investigation and determination of questions relating to Native Title?

If the answer to this question should be in the negative :

Second. Whether an efficient Court could be established for such purpose, and what should be the nature of its constitution and procedure ?

T. GORE BROWNE.

Their Honors the Chief Justice
And the Judges of the Supreme Court of New Zealand.

No. 8.

COPY OF A LETTER FROM THE CHIEF JUSTICE AND THE JUDGES OF THE SUPREME COURT TO HIS EXCELLENCY THE GOVERNOR.

Auckland, 9th May, 1861.

SIR,—

In answer to Your Excellency's letter of the 6th May, 1861, in which Your Excellency asks the Chief Justice and the Judges of the Supreme Court to give their opinion and advice on two points with respect to the investigation of questions relating to Native Title.

We have the honor to offer your Excellency the following answers :—

First. We think that the constitution and mode of procedure of the Supreme Court as it exists at present are not well adapted for the investigation and determination of questions relating to Native Title *generally*; although they may be sufficient for the purpose when such questions arise incidentally in the course of other proceedings.

We do not think the constitution and mode of procedure of the Supreme Court can be practically adapted so as to deal with the investigation of such questions *generally*, in a satisfactory manner, and without materially interfering with the efficiency of the Court in other respects.

Even with the element of a Maori jury introduced, and the treatment of Maori Customs as matters of fact and not of law, we think that the system of pleading and procedure, and the law of evidence, which bind the Supreme Court could not be practically applied in such cases to the satisfaction and with the concurrence of particular litigants or the mass of the Native community; so that the Court would have to set aside the general law of New Zealand in those respects, in order to enable it to deal efficiently with the great mass of investigations of this kind.

This we think it ought not to be called upon to do; as the status and organization of the Court would thereby be seriously affected. Moreover, the great practical inconveniences arising from the necessity of constant interpretation, and the large portion of the time of the Court which would be devoted to these questions, and the consequent delays to which other suitors would be exposed, are, we think, palpable and all but insuperable objections to any attempt to adapt the existing constitution or procedure of the Court to the purposes of the ordinary investigation of Native Title.

Secondly. In answer to your Excellency's second question, we have the honor to state that we do not doubt an efficient Court may be established for the purpose indicated; but we do not feel that we possess sufficient materials, either respecting the requirements of the Native Race, the policy of your Excellency's Government, or the means at its command, to be able to offer to your Excellency any specific suggestions as to the precise nature, constitution, functions and procedure of such a tribunal.

We think, moreover, the question seems so necessarily involved with political considerations, that it might be improper for us to give our opinion, as Judges, respecting matters more strictly within the duties of statesmen or politicians.

But treating the matter in the largest and most general way, we feel justified in suggesting that a competent tribunal might probably be established by the formation of a Land Jury, selected by lot or otherwise, from members of the various tribes in previously defined districts, nominated