PETITION

OF

JOHN LUNDON AND FREDK. ALEXR. WHITAKER,

RELATIVE TO

"THE NATIVE LANDS ACT, 1869,"

TOGETHER WITH THE REPORT OF THE PETITIONS' COMMITTEE THEREON, AND THE JUDGMENT OF THE NATIVE LANDS COURT IN THE CASE DE HIRSCH V. LUNDON AND WHITAKER.

WELLINGTON.

1870.

No. 1.

PETITION OF JOHN LUNDON AND FREDERICK A. WHITAKER.

To the Honorable the House of Representatives in Parliament Assembled.

The Petition of the Undersigned, John Lundon and Frederick Alexander Whitaker, of Auckland, in the Colony of New Zealand,

HUMBLY SHEWETH,—

1. That in the month of January, in the year 1868, your petitioner, John Lundon, was resident in the District of Mongonui, in the Province of Auckland.

2. That your said petitioner then became aware that a gold field had been discovered, and was being worked at the Thames, and that certain Natives, with whom your said petitioner was well acquainted, were entitled to certain land at or near the said gold field which they were willing to sell or lease.

3. That in consequence thereof, your said petitioner left Mongonui, taking with him forty Natives from that district, for the purpose of mining for gold, and with the intention of purchasing or leasing land at or near the gold field.

4. That shortly after your said petitioner arrived at the Thames he entered into negotiations for the purchasing and leasing of certain lands from the owners thereof.

5. That your said petitioner was deterred from completing his negotiations in consequence of certain notices published by the Government Commissioner, and warnings given by the said Commissioner to your said petitioner that dealings with the Natives for their land would not be recognised by the Government.

6. That shortly afterwards notice was given by the Native Lands Court that the claims of certain Natives to some of the lands which your said petitioner was desirous of acquiring would be heard in the month of June, 1868.

7. That after the said Court was held your said petitioner from time to time made enquiries whether certificates of title had been issued, in order that he might carry out his intention of acquiring certain lands situate at Kauaeranga, then adjoining but not included in the Thames gold field.

8. That your said petitioner about the month of January, 1869, requiring some assistance to carry out his objects, made a proposal to your other petitioner, Frederick Alexander Whitaker, to purchase or lease certain land on their joint account, and it was agreed that your petitioner, John Lundon, should make purchases or obtain leases from the Natives at the joint expense and on the joint account of your petitioners.

9. That in the month of May, 1869, your petitioner, John Lundon, was informed in reply to enquiries made by him that certificates of title had been issued for some of the blocks of land which your said petitioner had previously desired to acquire.

10. That your petitioner then immediately renewed negotiations with the Native owners, when he found that certain persons had, prior to the issue of certificates of title by the Native Lands Court, obtained from the Natives leases of the said lands.

11. That your said petitioner, knowing that such leases had been obtained in defiance of the notices and warnings of the Government Commissioner, and believing such leases to be invalid, took professional advice on the subject, and was advised that all dealings with the Natives for their lands prior to the issue of certificates of title were void under the seventy-fifth section of "The Native Lands Act, 1865"; that consequently the leases already obtained by other persons of the lands your petitioners were desirous of acquiring were not binding on either party; and that the Natives had power notwithstanding to lease or sell such lands.

12. That your said petitioner, John Lundon, informed the Native owners of the position in which they stood, and that he was willing to deal with them for the purchase or lease of certain lands.

13. That the result of further negotiations was that leases were obtained in the names of your petitioners from the Native owners of several allotments of land, for which certificates of title had been issued, and your petitioners paid by way of rent, in advance, considerable sums of money.

14. That during the Session of the General Assembly held in 1869 a petition was presented to your Honorable House by Mr. Robert Graham, one of the persons who had dealt with the Natives prior to the issue of certificates, praying that his title, alleged to be invalid under the seventy-fifth section of "The Native Lands Act, 1865," might be made good by an enactment of the General Assembly.

15. That such petition was referred to the Committee on Public Petitions, who reported that, as it appeared that the petitioner had commenced proceedings in the Supreme Court for the purpose of substantiating his alleged invalid title, and that such proceedings were still pending, the Committee could not recommend any interference with the functions of the Supreme Court, which appeared to be the proper tribunal for the adjudication of the matter in dispute.

16. That subsequently thereto a Bill was brought into the General Assembly for the purpose of amending the Native Lands Acts.

17. That Mr. Daniel Joseph O'Keeffe, and Mr. James De Hirsch, and others, then exerted themselves to obtain the introduction of a certain clause in the said Bill, for the purpose of validating the titles to Native land acquired by them prior to the issue of certificates of title by the Native Lands Court.

18. That the said Bill was referred to a Select Committee of your Honorable House, who examined Mr. O'Keeffe and Mr. De Hirsch, and other witnesses, in support of the said clause.

19. That on such examination evidence was given which was wholly untrue, and in order further to

influence your Honorable House a solemn statutory declaration was made by Mr. De Hirsch, which was, in all its material allegations, false.

20. That, notwithstanding the proposed clause affected private rights of property by retrospective legislation, the same was passed into law without your petitioners having been heard against the same, and became section 8 of "The Native Lands Act, 1869."

21. That the result of the said clause has been in effect to determine in favour of one of the litigating parties' suits relating to the title to land, pending in the Supreme Court of New Zealand.

22. That your petitioners most respectfully submit to your Honorable House that such a mode of dealing with private rights of property is without precedent in the legislation of the Imperial Parliament, or in any community where the laws of England are in force.

23. That, morover, in your petitioners' case, no provision has been made for compensation, as is a standing rule when private property is taken away by legislation.

24. That in pursuance of the provisions of the said section 8, the Native Lands Court sat and adjudicated, amongst others, on three allotments of land, called Kauaeranga 14, Kauaeranga 16, and Kauaeranga 24, in all of which your petitioners were interested.

25. That the investigation in reference to 16 and 24, the first two of the three said allotments adjudicated on, was continued for several days, when the Chief Judge delivered a lengthened judgment, deciding to issue amended certificates under the said section 8, thereby in effect destroying your petitioners' title, and transferring the property lawfully acquired by them to their opponent, Mr. James De Hirsch.

26. That the case in reference to the said allotment 14 was then heard, and a similar decision given.

27. That the principal ground, as appears by the said judgment, on which the decision of the Court was based, was that the leases to your petitioners were made before the issue of Crown Grants, although such leases were made after the issue of certificates of title by the Native Lands Court.

28. That F. D. Fenton, Esq., the Chief Judge of the Native Lands Court, who had assisted in preparing the said section 8 of "The Native Lands Act, 1869," and was mainly instrumental in procuring the passing of the said Act through the Legislative Council, presided at the hearing of the case in reference to allotments 16 and 24, and was the sole Judge who heard the case in reference to allotment 14.

29. That the judgment given in these cases is of wide-spread importance, affecting the validity of a great number of transactions between Natives and Europeans in reference to land in cases in which such transactions have taken place after the issue of certificates of title, but before the issue of Crown Grants.

30. That your petitioners were advised, and believe, that the law laid down by the Native Lands Court upon which the judgment mainly proceeded is clearly erroneous. They, therefore, desired to appeal against the same under the eighty-first section of "The Native Lands Act, 1865," and applied to the Governor for an Order in Council to enable them to do so, but such application was refused, thus leaving your petitioners without any remedy, except an appeal to the General Assembly.

31. That, at the hearing of these cases by the Native Lands Court, it was clearly established that the evidence given by Mr. De Hirsch, before the Committee of the General Assembly, and the solemn declaration and affidavit made by him, were false in the most important particulars.

32. That, amongst other things, it was made clear that the dealings by your petitioners' opponents in reference to all the said allotments in dispute were entered into, not only before certificates of title were issued, but before the orders of the Native Lands Court were made (though deeds of confirmation were afterwards executed, but before the issue of certificates), and your petitioners believe and submit that such dealings were not intended to be validated by "The Native Lands Act, 1869."

33. That while your petitioners conformed to the law and the Government notices, and therefore abstained from dealing with the Natives till after the issue of certificates of title by the Native Lands Court, your petitioners' opponents, in defiance of the law and such notices, forestalled your petitioners by dealing with the Natives, not only before the issue of the certificates, but before the orders of the Court were made directing such certificates to issue.

34. That at the hearing of the said cases it was also clearly proved that the statements made by Mr. De Hirsch before the Committee on Public Petitions, in his affidavit and declaration in reference to Mr. Whitaker, senior, were without the slightest foundation in fact.

35. Also, that the statement made by Mr. De Hirsch that your petitioner, Frederick Alexander Whitaker, in his professional capacity, prepared a deed for him, and afterwards disputed its validity, and claimed the land included in it, was entirely devoid of truth; and, moreover, that an affidavit containing this statement was promulgated by Mr. De Hirsch with the full knowledge that it was false.

36. That Mr. De Hirsch before the Native Lands Court excused his conduct in this respect by denying that he made the solemn declaration containing the false statements, and accusing Mr. O'Keeffe of concocting, getting printed, and distributing a fictitious declaration with his (Mr. De Hirsch's) name attached, but without his knowledge or consent; whereas it now appears from the original declaration, of which your petitioners have been placed in possession, that Mr. De Hirsch made the declaration in the form in which it was promulgated by Mr. O'Keeffe, containing statements which he (Mr. De Hirsch) knew to be untrue, and which in his evidence before the Lands Court he has sworn to be untrue, and that he never made them.

37. That the statement, sworn to by Mr. De Hirsch during the proceedings before the General Assembly, that your petitioner, Frederick Alexander Whitaker, acted as his solicitor in preparing a lease of certain lands, and afterwards, with others, took up the very same land under miner's right, has been proved to be destitute of a particle of truth.

38. That your petitioners are in a position conclusively to substantiate the foregoing statements, as the whole of the proceedings before the Native Lands Court were fully reported by a shorthand writer, who can testify on oath to the accuracy of the report.

39. That your petitioner, Frederick Alexander Whitaker, commenced a prosecution against Mr. James De Hirsch for libel in connection with his statements as to these matters before the House and elsewhere, which Mr. De Hirsch evaded by leaving the country clandestinely.

40. That your petitioners, since Mr. De Hirsch left New Zealand, have been put in possession of the original declaration made by him at Wellington, from which declaration it is now manifest tht Mr. De Hirsch gave false evidence before the Native Lands Court.

41. That the passing of the 8th section of "The Native Lands Act, 1869," by the General Assembly has resulted most injuriously to your petitioners, as they have thereby been deprived of valuable property by retroactive legislation of an unprecedented character, without any provision being made for compensating them.

Your petitioners, therefore, humbly pray that your Honorable House will be pleased to grant them such relief as the justice of the case fairly entitle them to and your Honorable House shall think fit.

And your petitioners will ever pray, &c.

JOHN LUNDON.
FREDERICK ALEXANDER WHITAKER.

No. 2.

REPORT

Of the Public Petitions Committee on the Petition of John Lundon and Frederick Alexander Whitaker.

11th August, 1870.

The petitioners, John Lundon and Frederick Alexander Whitaker, appeal to the House for compensation, on the plea that they have sustained loss by decisions of the Native Lands Court, given under clause 8 of "The Native Lands Act, 1869."

I am directed to report that the Committeee cannot recommend the prayer of the petitioners to the favorable consideration of the House.

J. CRACROFT WILSON, C.B.,
Chairman.

No. 3.

DE HIRSCH *V.* WHITAKER AND LUNDON.

The following judgment in the above case was given by F. D. Fenton, Esq., Chief Judge in the Native Lands Court, on Friday, 28th January, 1870:—

This is an application made by James De Hirsch to obtain an amended certificate of title for a piece of land at Grahamstown, known in the books of the Court as K 16.

Messrs. Whitaker and Lundon oppose the application on the ground that they have legal interests in the property, which would be destroyed if the application should be granted. The counsel for the opponents objects to the appearance of Mr. De Hirsch on the ground that he has not "entered into any transactions" about the land since the order of the Court; and that, therefore, he has no *locus standi* here. His argument is that the transactions which were effectuated by the lease made after the settlement of the case were entered into before that event, and he quotes a case (Fisher v. Bridges, 3, Ellis and B., 642) to show that a deed will not set up an invalid contract. On referring to that case, I find that the deed fell, not because the contract was invalid, but because it was, as the Court said, "tainted with illegality." If his argument is just, all deeds founded on contracts not made in writing must under the Statute of Frauds be invalid—a conclusion which is evidently unreasonable. But, without considering minutely the legal aspect of the point raised, I cannot doubt for a moment that Mr. De Hirsch's case is one which the Legislature intended should be heard and determined under the 8th clause of the Act of 1869, and that his lease was one of the "transactions entered into after the decision of the Court" to which it directed its legislation.

The course of events which have led to this litigation is as follows:—On the 23rd June, 1868, the Court sat at Shortland, and made an order for the issue of a certificate to Aperahama Te Reiroa and nine others for Kauaeranga, lot No. 16. On the 10th of July these owners executed a lease to the applicants for twenty-one years, at a rent of £22 per annum.

At different periods shortly after the issue of the lease De Hirsch made numerous sub-leases to persons, some of whom have again under-let, and buildings have been erected on the land to the value of £8,000 or £10,000.

On the 22nd of July the certificate of title was signed by the Chief Judge. On the 31st of July it was issued to the Governor. On the 29th of May, 1869, two of the Native owners executed a lease of the same lot of land to Messrs. Whitaker and Lundon; and on the 20th of August three others of them executed another lease of the same land at a rental of £100 per annum.

At an early stage of the proceedings it became evident to me that the "Constitution Act" would form a very important element in the question before the Court, and I called the attention of the several counsel to the importance of thoroughly arguing the effect which it would have on these transactions. Counsel intimated that when the proper time came they would treat the question. I was therefore very sorry to find, when they made their concluding addresses to the Court, that none of them were prepared to deal with it; that, as Mr. Rees expressed himself, the subject was so vast, and it required such a great knowledge of the antecedent history and legislation of the Colony, that a thorough and well considered argument could not be prepared in the time at their disposal. No doubt this is true; but the consequence is that the whole burden of investigating this question is thrown upon the Court, without the aid of

valuable assistance which counsel usually afford in important cases before the Courts. As my judgment is very greatly influenced by my opinion of the effect of the 73rd clause of the "Constitution Act" upon the transactions which we have to consider, I especially feel the pressure and responsibility which is thus thrown upon me; but, as a judgment must be given, I will proceed to set forth as clearly as the limited time which the avocations of counsel and the urgency of the parties to this and other applications have allowed me, the course of reasoning which has conducted my mind to the conclusions which I shall hereafter declare.

The ground on which Messrs. Whitaker and Lundon rest their objection to the claim of Mr. De Hirsch is simple and clear, viz., that that gentleman claims by a lease which, under the 75th section of the "Native Lands Act, 1865", is void, having been made before the issue of the certificate of title, and that they have a claim to the same land by virtue of subsequent deeds from the same parties, or some of them, which are valid and effectual, because made after the issue of the certificate, and that the Court ought not to interfere to upset a title which is alleged to be perfectly legal for the purpose of validating transactions which are clearly void. All the other arguments adduced by the opponents will avail nothing if their own position is not superior at law to that of the claimants; and this superiority, as it cannot have the advantage of priority of title or claim, must consist in superior virtue or validity, for otherwise "*qui prior tempore potior est jure.*"

It is, therefore, clearly necessary to ascertain, in the first place, the legal status of the parties; no one of *the circumstances* can, taken alone, have as much weight as having the law on one's side, and in the absence of some great public and general principle, or necessity, private wrongs in private cases can scarcely induce a Court to upset a man who has a clear lawful title in favor of one who by mistake, misapprehension, or negligence has failed to secure the protection of the law to his supposed rights.

There are two enactments bearing directly on the legal status of the parties—I., the 73rd clause of Con. Act (15 and 16 Vic. cap. 72) passed by the Imperial Parliament; and II., the 75th clause of the "Native Lands Act, 1865." I will consider the latter first. I. The 75th clause of the "Native Lands Act, 1865," is as follows:—"Every conveyance, transfer, gift, contract, or principle affecting or relating to any Native land in respect of which a certificate of title shall not have been issued by the Court, shall be absolutely void;" and "Native lands" are defined to mean "lands in the Colony which are owned by Natives, under their customs or usages." There can be no doubt whatever that the lease to Mr. De Hirsch, which is admitted to have been made before the issue of the certificate by the Court is, under this enactment, absolutely void, but there is no taint of illegality about Mr. De Hirsch's lease, or his antecedent negociations. I cannot find that such negociations are now, or were then, anywhere forbidden. The law simply is, that a man who undertakes such negociations undertakes them at his own risk, but if he negociate with the right parties, and they keep faith with him, he may, at the proper time, get the sanction and protection of the law to his acquirements. On referring to the "Native Land Bill, 1865," as originally printed, I find that it contained clauses similar to those contained in the Native Land Purchase Ordinance, provisions which made illegal all transactions with the Natives for their Native lands; but these clauses were struck out by Parliament, its intention being thus clearly shown. And the relaxation thus commenced has been since extended further by the Legislature. The "Native Lands Act, 1867," contains provisions very effectually protecting persons who negociate with and advance money to the Natives about their lands even previous to the sitting of the Court to investigate the titles to them, "notwithstanding," as it says, "the 73rd section of the Constitution Act, or any other law."

Mr. De Hirsch might have availed himself of this Act if he had thought fit, but he simply trusted the Natives, and, after the true owners were pointed out by the Court, got a lease from them in the usual form. His lease is therefore simply an ineffectual instrument, but in no way offensive to the law.

But there clearly existed in the mind of the claimant at the time he executed this lease a belief that by the operation of some statute, or by some means resulting from the practice of the Court, or of the Secretary for Crown Lands, his lease would become at a time then future a valid instrument; and I cannot doubt that, for some reason which does not clearly appear, that this belief was from the middle to nearly the end of 1868 very general indeed. Now, the effect upon my mind by what I have heard in this trial is that the Crown Grants Act was the original cause of this belief, and I am of opinion that if these Acts had not failed, from technical defects of language, to have carried out what I cannot but think was the intention of the Legislature, this belief would not have been ill founded. Lawyers, remembering what Lord Ellenborough said in Rex v. Skene, may object to this doctrine, but I cannot doubt that the Legislature desired by this Act to effect certain objects, which desire has not been expressed in language, and, as Lord Ellenborough in the same case added, "*quod voluit non dixit.*" I am the more confirmed in this impression from the knowledge that by the same Act, and by similar defect of language, Parliament divested the Secretary of Crown Lands of all power to charge fees for the preparation of grants of Native land, and, as a fact, none have since been charged by him. It is quite irrational to suppose that Parliament knowingly, and of judgment aforethought, would do such a thing as that.

It is not necessary for me to enter at length into an enquiry into these Crown Grant Acts. It appears to me sufficient to state that I am of opinion that Parliament intended to give a certain retrospective validity to transactions with Native lands; and, in fact, to relax still more the stringency of the old law which had been so greatly modified in 1865. But that this intention has not been expressed in language, and that, therefore, in a legal point of view, must be supposed never to have existed. Contemplating the case for the purpose of discovering what is justice in the premises, as the Court is by the Act required to do, I cannot think that the above referred to very general and not unreasonable belief can be ignored as an important element in the "circumstances of the case."

The lease to Messrs. Whitaker and Lundon was undoubtedly good and valid, so far as section 65 of the Act of 1865 is concerned.

II. What is the effect of the 73rd clause of the Constitution Act on transactions with Natives about their lands previously to the issue of Crown grants?

There are three distinct periods, representing three several stages through which land brought into the Native Land Court passes. 1. The period between the application and the order made in Court. 2. The period between the order of the Court and the issue of the certificate. And, 3. The period between the issue of the certificate and the issue of the Crown grant, which is the final proceeding. All transactions during the first two of these periods have been already declared to be invalid, save as excepted by the Act of 1867, and the question for consideration now is whether the issue of the certificate makes any such change in the legal character of the land and the capacity of the persons who are certified therein to be the owners, as would exclude it from the operation of the 73rd clause of the Constitution Act. And here I must state that there is not, in my judgment, any public or political grounds which should render the making of simple contracts respecting land during the second period less reasonable and proper than during the third period, although it is clear that the same principle cannot be applied to leases, conveyances, or any final instrument; because, notwithstanding that the owners are as distinctly ascertained in one case as the other, yet, from the imperfections of plans, and frequent alterations of boundaries ordered by the Court, it would generally not be possible to make an instrument which would be final between the parties, and not have to be followed by another until the issue of the certificate. In order to understand the 73rd section of the Constitution Act, it will be necessary briefly to glance at the common law regulating the acquisition of lands from aboriginal natives. "The general law of England," says Chief Justice Martin (in the Queen v. Symonds) "or rather of the British Colonial Empire, in respect of the acquisition of lands has from time to time stood as follows:—Whenever in any country to which, as between England and the other European nations, England had acquired a prior title, by discovery or otherwise, there were found lands lying waste and unoccupied, and the same came to be occupied and appropriated by subjects of the British Crown, it was holden that subjects did not, and could not, thereby acquire any legal right to the soil as against the Crown. And this rule was understood to apply equally, whether the country was partially peopled or unpeopled, and whether the settlers entered and obtained possession with or without the consent of the aboriginal inhabitants. Accordingly, Colonial titles uniformly rested upon grants from the Crown. This was the case with the oldest British Colonies in America, and it is notorious that the same rule has been acted upon without deviation or exception in the more recent colonisation of Australia."

And to such a length was this doctrine carried in Canada that according to the evidence of the Hon. Mr. Edward Ellice, given before the Committee on the Hudson's Bay Company, the Crown in that colony has not been in the habit of giving the Indians any compensation for the loss of their estate in the lands granted. Nor is this the rule and practice of England only, but (by derivation from England) of the United States of America. Chancellor Kent (vol. III., page 379) says in his commentaries on American Law:—"The European nations which established Colonies in America assumed the ultimate dominion to be in themselves, and claimed the exclusive right to grant a title to the soil, subject only to the Indian right of occupancy. The natives were admitted to be the rightful occupants of the soil with a legal as well as just possession of it, and they were allowed to use it according to their own discretion, though not to dispose of the soil at their own will, except to the Government claiming the right of pre-emption." Again (in p. 385), after speaking of the several local Governments both before and after the American Revolution, he says:—"Those Governments asserted and enforced the exclusive right to extinguish Indian titles to land by fair purchase under sanction of treaties, and they held all individual purchases from the Indians whether made with them individually or collectively as tribes, to be absolutely null and void." The statute law of New Zealand has throughout been framed in accordance with this doctrine. The rights of the Crown in the territory of the Colony have been uniformly maintained until 1862, when the Colonial authorities, having accepted the management of Native affairs, made a very considerable relaxation of the rule, but up to that time the statute law was simply in affirmance of the common law, and the rights of the Crown in the waste land of New Zealand, as between itself and its subjects of European birth and origin remained the same, although the views of the Imperial Parliament and of the Crown appear to have constantly varied with respect to the nature and extent of the territorial rights and interests possessed by the aborigines. At first the Maories were regarded by the Crown as an independent and organised State, capable of forming a treaty; and a treaty was formed with them on the 16th of February, 1840, by which they obtained "all the rights and privileges of British subjects," and a confirmation and guarantee of "the full, exclusive, and undisturbed possession of the lands and estates, forests, fisheries, and other properties which they collectively possessed, so long as they wished and desired to retain the same in possession," and they yielded to the Crown right of pre-emption "over such lands as they might be disposed to alienate," and ceded as well "all rights and powers of sovereignty possessed by themselves over their respective territories as sole sovereigns thereof."

The Charter of 1840, erecting the Colony of New Zealand, empowers the Governor to make and execute in Her Majesty's name and on her behalf, under the public seal of the Colony, grants of waste lands to her belonging within the same, "and provides that those letters patent should not effect the rights of any aboriginal Natives of the Colony, to the actual occupation or enjoyment in their own persons of the lands now actually occupied or enjoyed by such Natives."

The idea here seems to have been that the Governor might grant all lands except those actually occupied by Natives, and in accordance with this view he was instructed by the Crown in the same year "to cause a survey to be made of all the land within the Colony, and to divide and apportion the whole of the said Colony into counties." And Her Majesty declared "it to be Her will and pleasure that all the waste and unclaimed lands within the Colony belonging to and vested in Her Majesty, which should remain (after making certain reserves) should be sold and disposed of." At this time, then, all the waste lands were held to be in the Crown, with the exception of such land as might be reserved for the uses and in manner specified, and such lands as were actually used by natives.

A statute of 1841, passed by the Governor and Legislative Council, called "Land Claims Ordinance, No. 1," goes on the same principle. The second section says, "It is declared, enacted, and ordained that all unappropriated lands within the said Colony of New Zealand, subject, however, to the rightful and

necessary occupation and use thereof by the aboriginal inhabitants of the said Colony, are and remain Crown or domain lands of Her Majesty, Her Heirs and Successors, and that the sole and absolute right of pre-emption from the said aboriginal inhabitants vests in and can only be exercised by her said Majesty, her heirs and successors, and that all titles to lands in the said Colony of New Zealand which are held or claimed by virtue of purchases, or pretended purchases, gifts or pretended gifts, conveyances or pretended conveyances, leases or pretended leases, agreements, or other titles, either immediately or immediately from the chiefs, or other *individuals or individual* of the aboriginal tribes inhabiting the said Colony, and which are not or may not hereafter be allowed by Her Majesty, Her heirs and successors, are, and the same shall be absolutely null and void."

Under this the whole land of the Colony was declared to be demesne of the Crown, subject to certain or rather uncertain rights in the Maoris.

The Royal instructions of 1846 direct that such parts of the islands of New Zealand as were or should be owned or lawfully occupied by persons of European birth or origin, should be divided into municipal districts; and with reference to "waste lands of the Crown," provided that the charts of the New Zealand islands should be prepared, and especially charts of all those parts "of the said islands over which either the aboriginal Natives or the settlers of European birth and origin had established any valid titles, whether of property or occupancy," and natives, either as tribes or as *individuals*, claiming a a property or possessory title, were to send in claims and have them registered, and all lands not so claimed or registered should be considered as vested in Her Majesty, and constituting Her demesne lands in right of her Crown within the New Zealand islands, and finally all doubt as to what were the rights of the Natives is removed by the provision that no Native claim should be recognised except for "land occupied or used by means of labour expended thereon."

And the 13th chapter contains the following provision:—"No conveyance or agreement, for the conveyance of any of the lands of or belonging to any of the aboriginal Natives, in common as tribes or communities, whether in perpetuity or for any definite period, whether absolutely or conditionally, whether in property, or by way of lease, or occupancy which may be henceforth made, shall be of any validity or effect, unless the same be so made to or entered into with Us, Our Heirs and Successors, provided that nothing herein contained shall apply to any such conveyance or agreement if made or entered into by any such aboriginal Native or Natives in respect of any lands by him, he, or them, holden in severalty, or so holden under any title or tenure in use in and known to the law of England."

When we come to read the 73rd section of the Constitution Act, we shall find that that clause is almost an exact transcription of this provision, with the remarkable omission of the proviso referring to Natives who hold land in severalty.

The view thus taken by the Imperial Government of the respective rights of the Crown and of its aboriginal subjects in the territory of the Colony is clear and distinct; but it was objected to by the Natives, and was never carried into practice, and in fact could not have been in a peaceful manner.

By the 10 and 11 Vic., c. 122, the several provisions relating to the settlement of the waste lands of the Crown contained in 13th chapter of the said instructions of 1846, except such as relate to the registration of titles to land, the means of ascertaining the demesne lands of the Crown, the claims of the aboriginal inhabitants to land, and the restrictions on the conveyance of lands belonging to Natives, unless to Her Majesty, were suspended in New Munster.

Under this Act, the proceeds of land sales were, amongst other things, to be applied in and about the compensation to be made to the aboriginal inhabitants of New Zealand for the purchase and satisfaction of their claims, right, or interests in the said demesne lands.

In 1846 an Ordinance of very remarkable stringency was passed by the Colonial Legislature. This Ordinance, called "The Native Lands Purchase Ordinance," after reciting the common law as before stated, ordained very severe penalties on persons who either purchased or occupied land the property of aborigines. I will quote the preamble, for it shows clearly the law, and the reason for enactments of this description:—"Whereas it is essential to both the peaceable and prosperous colonisation of New Zealand that the disposal of land therein should be subject to the control of the Government of the Colony: and to that end the right of pre-emption in and over all lands within the Colony hath been obtained by treaty, and is vested in Her Majesty, Her Heirs and Successors: And all lands alienated without the sanction of the Crown by any person of the Native race to any person not of the same race, do, by virtue of such alienation, vest in the Crown as part of the domain lands thereof: And whereas divers persons have, without the sanction of the Crown, entered into contracts for the purchase, use, or occupation of lands, which private contracts are not, and in most cases cannot be made with due regard to the validity of title to the land comprised therein, and are often defective by reason of a want of a clear understanding by the parties to the contract of the terms and meaning thereof: And whereas by such secret and irregular purchases, not only is the law sought to be evaded, but the general tranquillity of the Colony is liable to be seriously endangered." "The Crown Titles Ordinance," passed in 1849, uses the phrase "extinguishment of the Native title," and makes no distinction between ownership by tribes and by individuals. We now come to the Constitution Act, 15 and 16 Vic., which was passed in 1852, and which repealed, with much previous legislation, the Royal instructions of 1846. It contains four provisions referring to Native lands. Clause 19 prohibits Provincial Legislatures from making laws affecting lands of the Crown, or lands to which the title of the aboriginal Native owners have never been extinguished. Clause 62 authorises the Government, out of revenue and money arising from the sale of waste lands of the Crown, to pay such sums as become payable under the provisions thereinafter contained (section 73) for or on account of the purchase of land from aboriginal Natives, or the release or extinction of their rights in any land. This provision is remarkable, not only as affording a means to the Crown to exercise its right of pre-emption, but as using, in describing the Native ownership, alternative words suitable to a greater or lesser interest in land. Clause 72 empowers the General Assembly to make laws to dispose of

the waste lands of the Crown, and defines waste lands to be *(inter alia)* all lands wherein the titles of the Natives shall be extinguished, as thereinafter mentioned. The aftermention is in clause 73.

Clause 73 is in the following words :—"It shall not be lawful for any person other than Her Majesty, her heirs and successors, to purchase, or in any wise acquire or accept from the aboriginal Natives land of or belonging to, or used or occupied by them in common as tribes or communities, or to accept any release or extinguishment of the rights of such aboriginal Natives in any such land as aforesaid, and no conveyance, or transfer, or agreement for the conveyance or transfer of any land, either in perpetuity or for any term or period, either absolutely or conditionally, and either in property or by way of lease or occupancy, and no such release or extinguishment, as aforesaid, shall be of any validity or effect unless the same be made to, or entered into with and accepted by, Her Majesty, her heirs or successors." Then follows a power of delegation.

I must here again notice the omission of the remarkable proviso to the clause in the 13th chapter of the Royal Instructions of 1846, making an exception in favor of the Natives holding in severalty :—"Whether any aboriginal Natives do hold in severalty will be a matter of subsequent enquiry." Before considering the effect of this provision of the Constitution Act upon our case, I will continue my cursory review of the legislation affecting the wild lands of the Colony, for the meaning of words and phrases in a statute must be ascertained from the statute itself and previous decisions of the Courts, and the use made of such words and phrases in statutes *pari materia. Com: Dig:* tit. Parliament R. 15, Regina v. Leeds and Liverpool Canal Company, 7 A. and E. Jones v. Smart, 1 T. R., 45. In Rex v. Hall, 1 B and C., 123, Abbot, Chief Justice, said :—"The meaning of particular words in Acts of Parliament is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object which is to be obtained."

To proceed, then. "The Land Claims Act, 1865," rapeats the phrase, "the extinguishment of the Native title," several times, but without any reference to individual or communal holdings ; and in clause 39 very clearly recognises the law as already stated :—"In any case of claim or grant, heard or examined by the Commissioners, in which the Native title shall not be proved to have been extinguished over the lands comprised in such grant, it shall be lawful for the Governor, on behalf of Her Majesty, on payment by the claimant of the estimated cost of extinguishing the Native title to such lands, to extinguish such title and obtain a cession of sush lands to Her Majesty, and thereupon to make a grant of the same, in like manner as if the Native title had been proved to have been extinguished."

The "Native Reserves Act, 1856," several times uses the same phrase, and contains a provision, which as it will, considered with a subsequent amendment, bear upon a point which seemed to trouble Mr. Hesketh, I will quote in full :—

"14. Where any lands shall have been set apart or reserved for the special benefit of aboriginal inhabitants, or where upon any sale of lands by Natives, a certain portion of the district sold shall have been or shall be specially excepted out of such sale, but on which land so reserved, set apart, or excepted, the Native title shall not have been extinguished, it shall be lawful for the Governor, with the assent of such aboriginal inhabitants, to declare such land to be subject to the provision of this Act, and to appoint Commissioners for the management thereof in like manner as if such Native title had been extinguished.

"Any set of Commissioners appointed under this Act or with the assent of the Governor may make a conveyance or lease in severalty of any lands within the limits of their jurisdiction to any of the aboriginal inhabitants for whose benefit the same may have been reserved.

"Section 17. Provided always that whenever such assent shall have been ascertained as aforesaid, the land to which the same shall relate shall be conveyed to Her Majesty, her heirs or successors, and shall then become subject to the provisions of the Act."

Several Acts affecting Native lands followed, which have no bearing upon this question, and are only remarkable in the use of the phrase "extinguishment of Native title," which seems to have been generally adopted since 1849, and lasted till 1865. These Acts I will no more than name—"The Land Claims Settlement Extension Act, 1858 ;" "Native Circuit Courts Act, 1858 ;" "The Native Districts Regulation Amendment Act, 1862 ;" "The Public Works Lands Act, 1863 ;" and "The Outlying Districts Police Act, 1865."

In 1862, "The Native Reserves Amendment Act" was passed. This, as far as I am aware, is the first statute which introduced the system which formed Mr. Hesketh's difficulty in understanding how the Governor could make grants of Native lands which had never been ceded to the Crown. It will be remembered that the previous Native reserves Act provided that land should come under its operation when ceded to Her Majesty for the purpose by its owners, and it was doubtless to prevent the trouble and inconvenience which had been found to arise from the necessity of getting a deed executed in every case that the Legislature enacted that such cession should be made by operation of law as effectually as if deeds had been made and executed. I will quote the provision, for it is strictly *in pari materia* with the 48th section of the "Native Lands Act, 1865" :—

"Where, under the provisions of the said Act (1856) the assent of the aboriginal inhabitants is required to bringing land under the operation of the Act, the Governor may, by order in Council, declare such assent to have been ascertained, and thereupon the title of the above inhabitants to the land to which the same shall relate shall be deemed to be extinguished, and the land shall from the date of such order in Council vest in Her Majesty for the purposes and subject to the provisions of the said Act as altered by this Act, and that as effectually as if the same had been ceded and conveyed by such aboriginal inhabitants to Her Majesty."

There can be no doubt that the Native title in lands thus operated upon would exist as fully as it ever did until the making of the order in Council, notwitstanding that an enquiry must have been previously made into the ownership, and the proper owners ascertained and their consent obtained in a manner strictly analagous to the proceedings under the "Native Lands Act". In the same year, 1862, was also passed the "Native Lands Act, 1862", the consideration of which I will defer.

There was also passed in the same year by the Imperial Parliament an Act empowering the General Assembly to alter or repeal the 73rd section of the "Constitution Act", which had by the "Constitution Amendment Act", 20, 21 Vic., chap. 33, been declared to be unalterable by the General Assembly. This Act was assented to on the 29th July, and the "Native Lands Act" of that year was reserved for Her Majesty's pleasure on the 25th of September; but was read a first time on the 18th of August, so that at the time it was introduced into the Assembly the passing of the Imperial Statute could not have been known here.

The legislation of 1865, affecting the territorial and other rights of the Natives, was very important. The "Native Commission Act" of that year contemplated the conferring upon the Natives the electoral franchise in right of "their customary titles to lands", a right which the Law Officers of the Crown in England had held that their Native ownership did not confer upon them, as it is not a "tenement" in the technical sense of the "Constitution Act."

This year is also remarkable as inaugurating a new and more expressive phrase for the definition of the Native interest in land. Thus, in the above Act, the words used are "their customary titles to land". In the "Native Rights Act, 1865, the phrase is, "land held under Maori custom or usage." In the "Native Lands Act, 1865," Native land is defined to be "lands in the Colony which are owned by aboriginal Natives under their custom or usages;" and the "East Coast Act, 1868," uses the phrase "land owned according to Native custom."

This cursory review of the legislation affecting Native lands must demonstrate absolutely the truth of the position that, with the exception of the temporary proviso contained in the royal instructions of 1846, no difference has ever existed in contemplation of law between land owned by aborigines according to their customs as communities, or as individuals; and I apprehend that the real reason for this remarkable consistency is the fact that no Native land is, according to Maori usage, owned by any individual. Judgments have been repeatedly given by this Court affirming the doctrine that individual ownership of land amongst the Natives is unknown to Maori usage, and, in truth, reflection upon the mode by which the Maoris were compelled to assert and maintain their title to land, must convince us that such a thing as an individual or sole possession would be contrary to the character of Native ownership; and would, in fact, have been in former days, when their common law was in process of formation, impossible. The title deeds of aboriginal tribes to their lands were, as Chateaubriand says, "the bones of their ancestors," and present possession; and the only law for enforcing this title was force. The strength of a tribe was, therefore, necessary to maintain the possession of the lands of the tribe, and even the life of each individual composing it. It is true that the right of an individual to use a particular piece of land solely, and after the fashion of property, was recognised by the tribe as against the other members of the tribe, but the collective individual holdings with the uncultivated or wild lands formed the tribal estate, and only one estate as against all outsiders. Many authorities could be quoted in support of this doctrine. I will content myself simply with the testimony of the Hon. D. M'Lean, who for many years filled the office of Chief Commissioner for the Extinguishment of Native Titles (printed in Parliamentary Papers, 1860, page 303).

He says, "I do not think it practicable to give Crown grants to natives by defining the boundaries of individual rights to land; it would be productive of quarrels and disputes, as there is really no such thing as individual title that is not entangled with the general interests of the tribe, and often with the claims of other tribes, who may have migrated from the locality.

"I have tried this system at the suggestion of the Bishop at Taranaki. It gave me considerable insight into the state of Native tenure; but, in endeavoring to carry it out, I found it took about thirty days to define the boundaries of the claims of forty individuals over an extent of forty acres; and even then they regarded the arrangement as altogether imaginary, and it did not appear to affect, in the estimation of the Natives, the general or tribal right. When I considered the title settled, of some individuals on this basis, I found the Natives quarrelled amongst themselves about the boundaries, and prevented any definite arrangement being carried out, until I afterwards purchased the whole of the tribal claim, in order to secure a clear title.

I wish every Native could get a Crown grant; it would be the means of dissipating many jealousies, and breaking up their confederacies. It is absolutely necessary that the tribal claim to such land should first be perfectly obliterated by previous sale to the Government."

The decisions of this Court have, as far as my knowledge extends, never swerved from the maintenance of this doctrine. Numerous precedents could be quoted, but I will content myself with one which was delivered in a very important case—Heremia Moutai v. Regina—at Christchurch, in the year 1867. "The Court cannot recognise individual ownership of Native land. The strength of the tribe, before the arrival of the British Government, was required to maintain the title of a tribe, and the land belonged to the tribe. The contrary doctrine was endeavoured to be set up by the Government in the celebrated Waitara case, but all aboriginal New Zealand protested against it, and a long and expensive war ensued. We cannot allow Heremia to set up a doctrine because now it suits his interest, against which all his fellow countrymen have so energetically protested. *Qui sentit commodum sentire debet et onus* is the maxim—and the Maori custom is, that the individual must (as regards Native land) be bound by his tribe, in their external relations."

The sum, then, of the preceding investigation is that the statute law, the common law, and the decisions of this Court, all concur in the doctrine that Native land is Native land, whether possessed by tribe or individual; and that the thing remains the same, although the words used to describe it may greatly vary. "Land over which the Native title is not extinguished," "land owned by Natives according to their custom or usages," and "land belonging to, or used or occupied by, aboriginal Natives in common, as tribes or communities," are several phrases which all mean the same thing, viz., Native land as defined in the "Native Lands Court Act, 1865."

Our enquiry will, therefore, be much narrower, and will simply be: Does the issue of a certificate of

title make any statutory change in the legal character of the land comprised in it, such as would exempt it from the operation of the 73rd section of the "Constitution Act?" The form of certificate is contained in the schedule to the Act, and is to the effect that the Judge signing it certifies that the persons therein named are the owners, *according to Native custom*, of the land therein described. Now, it does appear to me that our enquiry might end here; for, as I have already intimated my opinion that the words "according to Native custom, means "subject to tribal or communal right," it seems a mathematical deduction that the Natives named in the certificate still own the land, subject to tribal right, or, as the "Constitution Act" expresses it, "in a tribe or community." But, without relying simply upon the wording of the statutory form of certificate, I will enquire whether the Legislature can be supposed, apart from that instrument, to have meant that any change in the character of the land should be worked by the issue of the certificate of title.

The first Act (the Act of 1858) passed by the General Assembly on this subject was entitled "An Act to enable the Aboriginal Natives of New Zealand to have their territorial rights ascertained, and to authorise the issue in certain cases of Crown grants to Natives." This Act was prepared by the ablest real property lawyer in the Colony, and is admirable for the clear and logical manner in which the first step in the great change in the laws affecting the territorial rights of the aborigines was proposed to be taken. It was, unfortunately, disallowed by Her Majesty; and the war, which shortly afterwards commenced at Waitara, from that moment became a question of time. This Act did not constitute any Court for the investigation of titles, but gave authority to the Governor to ascertain the ownership in his own way. It enabled him, upon the application of any tribe, community, or individuals of the aboriginal inhabitants, upon being satisfied that such tribe, community, or individuals were entitled, according to Native custom, to the exclusive use and occupancy of any lands within the Colony, over which the Native title existed, to issue to such, tribe, community, or individuals a certificate of title; and he was authorised to grant lands over which the Native title should have been duly ceded to Her Majesty for the purpose, unto, or in trust for the benefit of any person or persons of the Native race, either in fee simple or for any lesser estate or interest. The certificate under this Act did not enable the Natives in any case to sell their lands to Europeans, and the Act still made it penal to purchase or occupy land belonging to Natives before the issue of a Crown grant. The "Native Land Act, 1862," made a step further in advance. Courts were constituted to ascertain and declare who, according to Native custom, were the proprietors of any Native lands; and to grant to such proprietors certificates of their title to such lands, which certificates should be conclusive as to the Native proprietors of the land affected thereby. And in the case of a certificate issued to less than twenty persons, the Governor had power to endorse thereon his signature, and to cause the public seal of the Colony to be affixed thereto; and every such certificate thus endorsed and sealed was to have the same effect as if the same were a grant from the Crown in fee simple. The persons named in such certificate might then dispose of their estate or interest therein. And the Governor, upon receiving the instrument of sale, or the certificate, might exchange the same for grants under the public seal of the Colony; such grants to be as effectual as if the land had been ceded by the Native proprietors to Her Majesty. It will be remembered that it was in this year (1862) that the same principle of enabling the Governor to make grants from the Crown of Native lands, without previous cession by the proprietors, was adopted in the "Native Reserves Act."

Sections 29 and 30 of the "Native Lands Act, 1862," contain the provision on which section 75 of the Act of 1865 was founded. The words are, "No person shall be liable to any penalty for the purchase, lease, or occupation of any Native land, if prior to such purchase, lease, or occupation, the Native proprietors thereof shall have obtained a certificate under the provisions of this Act, anything in the Native Land Purchase Ordinance to the contrary notwithstanding. Every contract, promise, or engagement, for the purchase, lease, or occupation of any Native land, or of any interest therein, made prior to the issue of a certificate of title under this Act, shall be absolutely void." It must here be remarked that in this Act the Native Land Purchase Ordinance was not otherwise interfered with, and that the certificate of title was an instrument of a higher character than the certificate under the Act of 1865. The certificate of 1862, when endorsed by the Governor, and sealed with the great seal of the Colony, possessed by statute the force and effect of a Crown grant, and would operate in destruction of the Native title. It is very probable that the framers of this Act of 1865, when they transcribed the clause, which became clause 75 of the Act of 1865, failed to observe that the certificate of title under their Act was an instrument of greatly inferior character, and of very ephemeral existence compared with the certificate referred to in the clause they were copying. It escaped their observation that no notice need be taken of the 73rd section of the "Constitution Act" in the Act of 1865, for the certificate under that Act operated as on a Crown grant. It is a reasonable conjecture that the authors of the Act of 1862, not being aware of the passing of the Imperial Act, which enabled the General Assembly to alter the 73rd section of the "Constitution Act," so carefully framed their Act as to avoid the obstacle occasioned by that clause. And the framers of the Act of 1865 copied the clause, failing to observe the difference of the character between their certificate and the instrument referred to in the Act of 1862.

The "Native Lands Act, 1865," commences with a definition—land in the Colony is divided into two classes.

1. Native land or lands in the Colony owned by Natives under their customs or usages.
2. Hereditaments, or land the subject of tenure, or held under title derived from the Crown.

The "Native Land Purchase Ordinance" and "Native Lands Act, 1862," are repealed, and a Court is established for the investigation of the claims of persons to land under the Maori proprietary customs. The form of proceeding is thus:—Any Native may give notice that he claims to be interested in a piece of Native land, and that he desires that a title from the Crown may be issued for it. A Court is then fixed for hearing the applicant, and at the sitting it decides the title of the applicant and all others, and orders in favor of whom it thinks fit a certificate of title to be made and issued, specifying the names of persons, or of the tribe, if a tribal grant is asked for, who, according to native custom, own the land. A certificate in the form provided is then made out and forwarded to the Governor, who, on the receipt

thereof, is authorised to make a Grant from the Crown to the persons mentioned in the certificate of the lands comprised therein; and it is provided in section 48 that such grants shall be as valid to all intents and purposes as "grants made by the Governor of waste or demesne lands of the Crown, and as if the land comprised therein had been ceded by the Native proprietors to Her Majesty, and shall bar all estates, rights, titles and interests of all persons whomsoever therein, except the grantees, their heirs, &c." I here state broadly my opinion that it is on the execution of the Crown grant that the Maori proprietary customs become extinguished. The issue of the certificate to the Governor is an act of no public significance whatever. If any intermediate change in the legal quality of the land were affected by any operations previously to the issue of the Crown grant, the most important and significant operation is surely the enquiry in open Court, and the order then made, by which the owners are ascertained and published to all persons interested, who are there to question and contest any point they think fit. On the other hand, the issue of the certificate to the Governor by the Chief Judge, is a private administrative act, of which the public has no knowledge, and which indeed would be scarcely necessary at all if boundaries could be perfectly set out and plans in all respects completed at the sitting of the Court. But, again, if it is urged that some difference in the character of the land after the issue of the certificate must exist, or section 75 would not have been enacted, I would ask what is the difference? What legal change is effected by the certificate? I can discover no intermediate, or purgatorial state. The Act speaks of two classes of land, viz., Native land or land before grant from the Crown, and hereditaments or land after grant from the Crown. I am quite clear that if this land does not come under one of these two classes, it must come under the other. In my judgment, land passing through the Court possesses all the characteristics and attributes of Native land, until a Crown grant, under clause 48, has extinguished the Native title. The true idea of Parliament in passing clause 75, had no reference to the legal aspect of the question. Parliament was simply influenced by convenience, or rather by the physical impossibility of making a conveyance or lease, or any other final instrument, until a plan of the land, accurately showing its metes and bounds had been completed; and that is the period when a certificate is made and issued. I would here notice that the "Native Land Act, 1866," contained a provision to the effect that section 75 of the "Native Land Act, 1865," shall not apply in the cases of conveyances or transfers made to, or contracts made with, the Superintendent of any Province. But objection being made that clause 73 of the "Constitution Act" would still prevent such transactions, the objections were admitted, and the clause has never had any operation.

There is no doubt that section 75 of the Act of 1865 cannot be held inferentially to repeal the 73rd clause of the Constitution Act, so as to destroy its operation on transactions after the issue of the certificate. Indeed, Mr. Rees very properly admitted that he could not contend that such repeal was effected. He doubtless remembered what Lord Denman said in Haworth v. Ormerod;—"If the Legislature intended more, we can only say that according to our opinion they have not expressed it."

Another rule of law should here shortly be noticed. The sole right of Her Majesty to acquire lands from the aboriginal inhabitants of the Colony, or, as it is phrased, to extinguish the Native title, has already been shown to be an ancient prerogative right of the Crown, part of the common law of England. We have also seen that this right was judicially maintained by the Supreme Court in Regina v. Symonds; it has been upheld by this Court in Heremia Mautai v. Regina, and the Colonial and Imperial statutes, with one exception, which was repealed by the Constitution Act, have been strict and constant in affirmance of it.

If any doubt remains upon the mind of any person who has followed the reasoning I have endeavored to state, it must be removed by the recollection of the rule that the Crown is bound by no statute unless expressly named.

Plowden lays it down, p. 109 Rep.:—"It is most convenient that things appropriated to the Crown and to the Royal prerogative should tarry with the Crown, and not be severed from it without special word." (See Brown's Leg. Max. Tit.; "*Roy n'est lie per ascun statute siil ne soite expressement nosme*, p. 60, Com: Dig. R. 21, tit, Parliament, Pl.: Com: 11 A., 3 co. Rep 327, Chitty Prerog., cr. 381).

"But as to the King, nothing shall ever be taken by equity against him in the construction of a statute," Pl: Com: 11 A. On this ground also the rights of Her Majesty, not only under section 73 of the Constitution Act, but at common law, remain as they were before the passing of the Act of 1865, except when affected by section 48, authorising the issue of Native grants. I am, therefore, of opinion that the leases to Messrs. Whitaker and Lundon, having been made before the extinction of the Native title, are contrary to the common law, and in disobedience of the Constitution Act, and therefore void; and as the claim of these gentlemen for consideration rests entirely on the assumed legality of their position, their right to interfere with the consideration of the application now before the Court cannot be allowed. But that application must rest simply on its own merits, and must be determined according to "justice and the circumstances of the case." What now remains for consideration, therefore, is very simple. The lease made by Mr. De Hirsch was a fair and complete transaction, but was invalid from misapprehension or ignorance of the law, though I believe that at the time the transaction was entered into, none of the parties to it were aware of its invalidity. And in construing the 8th clause of the Act of 1869, I think it is the intention of the Legislature that, in the absence of cogent objections, this Court shall validate all such transactions made in good faith and according to justice. And indeed much that has been urged as a reason for upsetting Mr. De Hirsch's lease would, if I could have considered the question as between Mr. De Hirsch and Messrs. Whitaker and Lundon, have operated in my mind in a contrary direction to what was intended. For instance, when the Natives came to Mr. Lundon and complained of an alleged non-payment of rent by Mr. De Hirsch, I cannot avoid thinking that it would have been more just and proper, not only on private but public grounds, for Mr. Lundon to have advised them that the true course to be taken was to sue Mr. De Hirsch, when the question of validity of the lease and covenant to pay could have been properly determined, rather than for him to propose that a new lease should be made to himself. The Maoris are a people who, as to their territorial rights, are

only just coming under the operation of law, and I can imagine nothing more detrimental to the public interests, or to public morality, as effected by these questions, than to teach the Natives that the proper step to be taken in the case of a European not performing covenants which he has entered into with them is to make another contract with a third party. It does not appear from the evidence that Mr. Lundon urged the Natives to make a new lease to him on the ground that the prior lease to Mr. De Hirsch was invalid. And there is no doubt that the influence that worked upon their minds was a certain dissatisfaction with Mr. De Hirsch, arising partly from irregular payments or ill-kept accounts, and partly from trifling affronts, but more especially the prospect that was before them of getting larger rents. The evil effect of this teaching upon the Native mind was well shown in the Court. Hirawa Te Moananui said that although he had signed two leases, he considered himself still at liberty to make a third if he could get a rent in advance of what Messrs. Whitaker and Lundon had agreed to give him. He also said, "I consider the lease given after the sitting of the Court (Mr. De Hirsch's) valid still. And in reply to the question, "Do you consider Mr. Lundon's valid?" he said, "They are the same." We heard from Mr. De Hirsch, also, how, when he asked the Natives for a confirmatory lease, one of them asked him £250 per annum rent for his share alone. Now, if my opinion of the legal position of the parties, as already declared, is correct, and neither of them have valid instruments from the native owners, what, I would ask, will become of the numerous sub-lessees if I refuse to make this order? They will be entirely at the mercy of the Natives, and how cruel these mercies will be we may judge from the demand mentioned above. I have no doubt in my mind, therefore, that the opposition having failed to establish its own legal position, this Court will be carrying out the intention of the Legislature by making an order as asked for, and I so determine. I refrain from expressing any opinion as to whether I should have thought proper or otherwise to make this order if the opponents had succeeded in establishing an unassailable legal right. And I must confess that the narrowing prejudices of a legal education would have made it a matter of very great difficulty for me to determine what would have been "justice" between the parties under the "circumstances of the case" placed before the Court if the opponents had been right in law. What is justice in the abstract, and apart from any laws which might guide the understanding in coming to a judgment, is a matter of philosophical enquiry upon which scarcely any two minds would come to the same conclusion. Justice must vary with every condition of society, and what would be justice to a member of a civilised state might be extreme cruelty to a barbarian. And I think that a lawyer constitutes a very bad tribunal before which to bring such questions. He, of all men, is to my mind the least fitted to determine, as an abstract question, where proper assertion of legal right ends, and where sharp practice begins. One of the most acute thinkers and observers of the last generation (Disraeli: "Curiosities of Literature") says:—"The truth is that lawyers are rarely philosophers; the history of the heart, read only in statutes and law cases, presents the worst side of human nature. They are apt to consider men as wild beasts." Still, as the Legislature gave me no choice, I have been compelled to sit, and have executed the duty thus imposed, according to its intention, as nearly as I can discover.

No. 4.

DE HIRSCH V. WHITAKER AND LUNDON.

The following Judgments in the above case were given by H. A. Monro, Esq., Judge, and Wiremu Hikairo, Assessor, in the Native Lands Court, on Friday, 28th January, 1870:—

This is an application to the Court for an amended certificate for Kauaeranga No. 16, and Kauaeranga No. 24, in accordance with Section 8 of the Native Lands Act, 1869.

This case is remarkable as being one in which the interference of the Legislature has been sought, on the ground that it could not be decided on its merits, or in accordance with the moral equity of the case, unless certain technical difficulties were removed.

The question was entertained by three several Committees of the House of Representatives; also by a Select Committee of the Legislative Council, the result being that what now stands as Section 8 of the Native Lands Act, 1869, was recommended by a Select Committee of the House of Representatives as a clause to be inserted in the Bill; it was inserted accordingly, and became law.

It is evident that the object of the Legislature in their procedure was to enable the Court to decide the case upon its merits, without being hindered by a legal technicality. In coming to a decision on the case, I shall follow out the manifest intention of the Legislature, which is to the *bona fides* of the transaction, rather than to any enactment which may have been imperfect or may have been misunderstood. By the Act of the Legislature itself I am relieved from difficulty in this respect.

The first question which arises is this:—Was De Hirsch's contract with the Natives fair in itself, and understood by them?

I have no doubt that it was fair, and that the lessors distinctly understood the nature of the bargain. Indeed, no attempt has been made to impugn the fairness of the transaction. The defendants take up other ground.

The next question is this:—Did De Hirsch believe that the transaction was good in law, as well as in conscience?

I think the evidence is conclusive that he did so; and if the presumed and believed intention of the Legislature had taken effect in the Crown Grants Act, his title would have been good.

It is argued, however, on the other hand, that De Hirsch had violated the law by an antecedent transaction in negotiating with the native owners for a lease before the order of Court was made. It is alleged that this transaction was illegal. It is not necessary for me to enquire whether such transaction took place or not, for the question is immaterial. I do not consider that such transaction would have been illegal in the sense of its being forbidden by the law. It would have been merely void. The law, possibly for political reasons, refuses to recognise such dealings with the Natives, and in my opinion very

rightly, seeing that otherwise such bargains would be enforceable by law, and the Government might be called upon to support the law in cases from which disturbances might be expected to arise. The law declares such bargains void, and the bargainers are left to run the risk without other security than dependance upon mutual good faith. All necessary forms for the transfer of the property by lease are shown to have been gone through after the Order of the Court.

The first lease to De Hirsch was made in July, 1868. Messrs. Whitaker and Lundon's leases were not made until April, 1869, before which time sub-leases had been given, and many buildings (it is alleged of great value) had been erected on the ground. Messrs. Whitaker and Lundon were aware of the previous lease and sub-leases, and ought to have seen De Hirsch before they made fresh contracts. On the contrary, they took advantage of petty quarrels, and, while the leading Native was *pouri* at a supposed affront, induced the principal owner to sign.

Messrs. Whitaker and Lundon appear to have proceeded on the assumption that the original lease was technically illegal; but I consider it my duty to take a broader view of the transaction, and it is quite clear that the Parliament intended that the Court should do so. I think that the obtainining of the second leases from the Natives under the circumstances was repugnant both to public and private morality.

It is unnecessary to enlarge upon the subject, but I think it my duty at least to observe upon the impropriety, and even danger, of encouraging Natives to break their bargains; one of them said that he would make a third lease if he could get a better price, throwing over Messrs. Whitaker and Lundon, as well as De Hirsch.

The case made out before the Select Committee of the House of Representatives is somewhat altered, but its general character remains unchanged.

I, therefore, think the Court ought to exercise the powers conferred by the "Native Lands Act, 1869, and order that new or amended certificates be issued in respect of Kauaeranga No. 24 and Kauaeranga No. 16, vesting the legal estate from date of the order of the Court.

WIREMU HIKAIRO, ASSESSOR.

Many difficult words have been used by the lawyers during this investigation, which I have been unable to catch or to understand. The things I have caught are these:—

1. Mr. De Hirsch named the amount of rent money that he would give.
2. The Maoris heard the amount named.
3. On hearing the amount, they agreed to lease the land.
4. They themselves wrote their names in the lease.
5. They received the money which they had agreed to take.
6. These things were done immediately after the order of the Court was made.
7. It was after Mr. De Hirsch had made improvements on the land that it was leased to Lundon and party.
8. The high rent given by Mr. Lundon and party was heard of.
9. The Maoris offered the land to Lundon, and he accepted it with the knowledge that those were the same parties who had leased the same land to De Hirsch.
10. They were afraid, but their fears were overcome.

Now, I have carefully considered these words, and I see—

1. That according to Maori custom a man is always ill-spoken of who deals a second time with a thing which he has fairly and openly parted with. Hence the Maori proverb—"A patiki (flat-fish) is the only thing that returns to its own mud."
2. The point of the Crown grant is the order of the Court.
3. The Maoris hesitated (to lease the land a second time) because of the first lease. They were rebuked, and their hesitation ceased.

I say, therefore, that the first lease should hold good, and that this Court should make it valid.

No. 2.

PETITION OF OAMARU LAND AND BUILDING INVESTMENT SOCIETY.

To the General Assembly of New Zealand in Session assembled,

The Humble Petition of the Committee of "The Oamaru Land and Building Investment Society.

SHEWETH,—

1. That many shares in the said society and in other building societies are held by minors.
2. That circumstances frequently arise, under which it is for the advantage of minors holding shares that such shares should be sold or withdrawn; for instance, in cases where a minor or his parents are about to leave the district or Colony, or are unable to continue paying the subscriptions.
3. That your petitioners have taken the advice of their solicitor, and the opinion of eminent counsel, and have been advised that "The Building and Land Societies Act 1866 Amendment Act, 1867," does not enable minors to withdraw or sell their shares, and that the notices of withdrawal and transfer of shares, which are required to be signed by a minor withdrawing or selling his share, are not "necessary instruments" and "necessary acquittances" within the meaning of the said Act.
4. That the said Act is also vague and unsatisfactory, in that no distinction is made therein between acts which may be done by minors arrived at years of discretion and minors of tender years; and that no provision is made for the protection of minors by enabling the trustees of any society to pay their shares to their parents or guardians, or to invest the same for the benefit of a minor who may be of tender years, or who may have no parent or guardian living, or whose parent or guardian may not be a fit and proper person to receive the share of such minor.

Your petitioners therefore humbly pray—

1. That your Honorable Assembly will cause an Act to be passed empowering minors to withdraw from any building and land society, or to sell their shares therein, subject to such restrictions and under such provisions, by providing for the investment of the share of any minor, or otherwise for the protection of minors, as your Honorable Assembly shall think fit.
2. That your Honorable Assembly will also, by Act, provide for the payment or disposal of the shares of minors on the winding up of any society, subject to such restrictions and under such provisions as hereinbefore mentioned.

And your petitioners will ever pray. Signed on behalf of the said Committee,

JNO. WAIT,
Chairman.

No. 3.

PETITION OF THE MAYOR AND TOWN COUNCIL OF CROMWELL, OTAGO.

To the Honorable the Speaker and the Honorable the Members of the General Assembly, Wellington,

The Memorial of the Mayor and Councillors of the Incorporated Town of Cromwell, in the Province of Otago.

HUMBLY SHEWETH,—

That, at a public meeting of the residents of this district, held here on Saturday last, the 18th instant, for the purpose of taking into consideration the subject of commonage, the following Resolutions were passed, viz.:—

1. This meeting views with alarm the gradual curtailment of what was hitherto looked upon as the Cromwell Commonage, and that the time has now arrived when some decided step should be taken to secure to Cromwell the just privilege of a real commonage, and that the Cromwell Corporation be asked to assist in obtaining the same.
2. That the attention of the Government should be called to the fact that the land hitherto used as a commonage by the inhabitants of Cromwell, and known as the Lower Flat, is being fenced in, thereby locking up the river frontage, preventing persons from landing timber if they wish access to the road, and also keeping from the said inhabitants the only valuable piece of grazing land in the district.
3. That the Government be memorialized to the effect that a certain portion of country be declared a commonage for the use of the Cromwell District; and that the head of the Five-mile Creek, Clutha River, be the boundary on the north, to Scrubby Gully on the Kawarau River.
4. That the Resolutions passed by this meeting be left in the hands of the Chairman, with the request that he will bring the same before the Town Council at its next meeting.

Your memorialists therefore, in accordance with the wishes of the meeting, most respectfully beg leave to impress upon your Honorable House as strongly as possible, the absolute necessity of granting to this district the area of land asked for in the Resolution passed by the meeting; and, in doing so, will call your attention to the fact of this Council having continually, for the last two years, solicited your Honorable House and the Provincial Council to set apart an area of land for commonage, always pointing out that, unless the district had one of some extent, the residents who had cattle could not exist, and consequently would be obliged to leave the district; and it has as often been promised by the Provincial Council, they having said that they were in communication with Mr. Loughnan, the resident runholder, and made no doubt but that a suitable arrangement would be come to, and that Cromwell should have a commonage.

Your memorialists trust that your Honorable House will see that this very rapidly rising and important district must have a commonage, and that your sense of justice and right will cause you to insist on the Provincial Council laying off the area asked for from Mr. Loughnan's run, and pay him compensation at once, so that this most serious and vital question may be settled, and the intense excitement which exists may be allayed.

And your memorialists, as in duty bound, will ever pray, &c.

[Here follow 5 signatures.]

No. 4.

PETITION OF NGATIRAUKAWA TRIBE.

To the Honourable the House of Representatives for the Colony of New Zealand,

The Humble Petition of the undersigned Aboriginal Natives, members of the Ngatiraukawa Tribe or of Hapus connected therewith.

SHEWETH,—

That your petitioners and other members of the said tribe or hapus connected therewith are interested in lands situated between the Rivers Manawatu and Rangitikei, in the Province of Wellington.

That the claim of your petitioners to the said land was by an order of the Governor of New Zealand, made under the provisions of "The Native Lands Act, 1867," referred to the consideration of the Native Lands Court, and appointed to sit in the City of Wellington, in the month of July, 1869; but such order was made without any application on the part of your petitioners.

That your petitioners nevertheless appeared by counsel before the said Court, and thereupon certain issues touching the right to the lands in question were submitted to the said Court.

That the following is a copy of the issues so submitted:—

1. Did Raukawa, prior to the year 1840, by virtue of the conquest of Ngatiapa by themselves or others through whom they claim, acquire the dominion over the land in question, or any and what part or parts thereof?
2. Did that tribe or any and what hapu acquire, subsequently to conquest thereof, by occupation, such a possession over the said land, or any and what part or parts thereof, as would constitute them owners according to Maori custom; and did they, or any and what hapus, retain such possession in January, 1840, over the said land or any or what part or parts thereof?
3. Were the rights of Ngatiapa or any of them completely extinguished over the said land so acquired by conquest and occupation, or over any and what parts thereof; or did they in January, 1840, have any ownership according to Maori custom over the said land, or any and what part or parts thereof?
4. Was such ownership of the Ngatiapa hostile to, independent of, or along with that of Ngatiraukawa, or any and what hapu or hapus thereof?
5. Have the Ngatiapa or any of them, since January, 1840, acquired by occupation or otherwise any and what ownership according to Native custom of the said land so acquired by Raukawa, or of any and what part or parts thereof?
6. What persons, if any, of the said Raukawa Tribe (if the said tribe acquired ownership), or what persons of any hapu or hapus thereof which acquired ownership, if any, over the said land or any part thereof in January, 1840, have not signed or assented to the cession to the Crown of the land owned by them?

That, after hearing the evidence and counsel on both sides, the Court gave decisions upon the said issues as follows:—

As to the first issue—No.

As the second issue—The words "subsequently to conquest thereof" must be erased; Ngatiraukawa as a tribe has not acquired by occupation any rights over this estate. The three hapus of Ngatiraukawa, Ngatikahow, Ngatipawahawaha and Ngatikawhawha, have by occupation and with consent of Ngatiapa acquired rights which will constitute them owners according to Maori custom. Three hapus retained such rights in January, 1840. There is not evidence before the Court which should cause it to limit these rights to any specified piece or pieces of land. The Court is not quite clear whether the hapu Ngatihihi should be also included, and will, if the parties desire, hear further evidence with regard to that hapu.

As to the third issue—The rights of Ngatiapa were not extinguished, but they were affected in so far as the three above hapus have acquired rights.

As to the fourth issue—The ownership of the above three hapus was along with that of Ngatiapa.

As to the fifth issue—It does not require answering.

As to the sixth issue—It cannot be answered yet.

By Ngatiapa is meant all Ngatiapa, including those persons called half-castes. Rangitane (properly so called) and Ngatiupukiwi are excluded.

That afterwards inquiry was instituted by the said Court as to the persons, being members of the three admitted hapus of Ngatiraukawas, who should be recognized as the persons entitled to the land to be thereafter allotted to the said three admitted hapus, and on the 28th day of August, 1869, your petitioners and certain other persons were admitted as persons so entitled, as belonging to the said admitted hapus.

That on or about the 3rd day of September, 1869, the said Court made a further order in relation to the said matter, which is in the words and figures following:—

That no further claims of individuals of Raukawa who have been rejected (permitted on the 28th ult.) will be received after the 17th inst., when the Court will sit to hear and determine all applications of persons in the list who were absent on the 28th ult. and previous days, and have been rejected. That the Court adjourn to the 17th inst.

Then the Court will adjourn for a further period, to enable the parties to agree upon the boundaries of the lands to be allocated to the three hapus of Raukawa, comprising the persons who shall have been recognized as owners, and who shall not have signed the deed.

That, at the sitting of the said Court, on the 17th day of September, 1869, pursuant to the said last-mentioned order, no further claims of individuals of Ngatiraukawas were made.

That the said Court did thereupon, in further pursuance of the said order, adjourn *sine die*, in order to enable parties who were adjudged to be entitled to the said lands to agree upon the boundaries of the lands to be allotted to the three admitted hapus of Ngatirakauwas; but before any sufficient time had been given to the said parties to investigate and agree upon such boundaries, the said Court at the instance of the Agent for the Crown, and without any notice whatsoever to your petitioners, held a sitting on the 25th day of September, 1869, and without hearing any evidence on the part of your petitioners or others, being members of the three admitted hapus of Ngatiraukawas, made a final decision in relation to the matters referred to them, and allotted certain lands in manner set forth in a judgment then given, but of which judgment your petitioners have no copy.

That your petitioners dispute the justice of the said judgment upon the following amongst other grounds:—

1. That they had no notice, that there was to be a sitting of the Court upon the 25th day of September, 1869, for the purpose of making a division of the land or for any purpose, and that consequently they were entirely unrepresented upon the occasion.
2. That the award of land then made is not in accordance with the judgment on issues, viz., to three hapus of Raukawas, but to certain individuals of these and other hapus.
3. That the award is not made upon evidence or only on *ex parte* evidence as to the quantity and situation of the land to which the parties are entitled.
4. That the three hapus of Raukawa were at the time of the judgment honestly engaged in terms of the order of the Court of the day of September, 1869, in endeavouring to agree with Ngatiapa as to their respective boundaries, and failing an agreement within some reasonable time would have submitted to a ruling of the Court upon the point,—such ruling to be made of course upon evidence, after due notice.

That after the delivery of such judgment, a Proclamation was issued by the Crown, pursuant to the said Act, declaring the Native title in the lands in question to have been extinguished, thereby precluding your petitioners from any further recourse to the said Court in relation thereto.

That your petitioners are greatly aggrieved by the position in which they have thus been placed.

Your petitioners therefore humbly pray that your Honorable House will be pleased to afford them such redress as to your Honorable House shall seem meet; and your petitioners will ever pray &c.

[Here follow 33 signatures.]

No. 5.

PETITION OF WARDENS AND FELLOWS, CHRIST'S COLLEGE, CANTERBURY.

To the Honorable the House of Representatives, in Parliament assembled,

The Petition of the Warden and Fellows of Christ's College, Canterbury.

HUMBLY SHEWETH,—

That your petitioners are aware that a Bill is now before your Honorable House, by which it is proposed to create a New Zealand University, and that, conditionally on agreement between the Council of the said University and the Council of the University of Otago, it is proposed to fix the seat of the New Zealand University at Dunedin.

That your petitioners, while they recognize the great advantage that would be derived by the Colony from the establishment of an examining body which might form the nucleus of a future University, do not consider it advisable to attempt to localize a University under the existing circumstances of New Zealand.

That, under the existing circumstances of the Colony, it would be premature to expect any considerable number of students to be collected in one place from the different settlements in New Zealand, or that they would submit to such lengthened course of instruction as would justify the conferring of degrees.

That, for the present, we must rely upon local schools and colleges to do the teaching work, looking to the future affiliation of such colleges to a New Zealand University.

Your petitioners would most respectfully suggest that a "University Commission" be appointed by authority of Parliament.

That such "University Commission" be not connected with any particular locality as the probable seat of the future University.

That its functions should be—(1.) To hold in trust any public or private endowments for the foundation of a University; (2.) To confer with, advise, and assist the Managers of existing educational institutions; (3.) To fix a standard of attainment in the ordinary branches of a liberal education to be reached by those who are candidates for admission to the legal and medical professions and to the Civil Service of the Colony, due regard being had to the requirements of such professions and employments in England; (4.) To make provision for periodical examination throughout the Colony, and to confer certificates of proficiency.

Your petitioners conceive that a "University Commission," constituted by Act of Parliament with such functions as are described above, would be a powerful means of improving the standard of a liberal education, and would tend to hasten the time when a University in the highest sense may be founded with the greatest advantage to all parts of the Colony.

That the progress of time will show what particular locality will be the most convenient seat of the University of New Zealand.

Your petitioners therefore pray that the scheme for the immediate foundation of a University, as embodied in a Bill now before Parliament, intituled "An Act to establish a University for the Colony of New Zealand," may not be carried out, but that some such plan may be adopted, as your petitioners have ventured to suggest.

And your petitioners will ever pray, &c.

[Here follow 13 signatures.]

No. 6.

PETITION OF RESIDENTS IN MOUNT BENGER DISTRICT.

To the Honourable the Speaker and Members of the House of Representatives for the Colony of New Zealand, in Session assembled, at Wellington,

The Petition of the undersigned Residents in the District of Mount Benger, in the Province of Otago.

RESPECTFULLY SHEWETH,—

That the system at present in operation with respect to leasing of land for agricultural purposes on the gold fields is highly unsatisfactory, and does not tend to promote the permanent settlement of miners and others.

That your petitioners regret to point out that vexatious and most unwarrantable delay is caused by the Provincial Government in placing applicants for agricultural leaseholds in possession of the land applied for by them.

That your petitioners desire to point out as an instance, the case of the block of land adjacent to the Township of Roxburgh, situate on Run No. 369, every available acre of which was applied for by parties desirous of settling on the land immediately the block was declared open, upwards of nineteen (19) months since.

That, notwithstanding such applicants paid their deposits and complied in every respect with the provisions of the Act, and have in nearly every instance expended large amounts of money and labour in cultivation and improvements, they are still without any protection, and liable to be turned off the land at the caprice of any Provincial Executive, as was done in the instance of the "Island" Block in this district.

That your petitioners would respectfully desire to make the following suggestions, as being a most desirable method of satisfactorily and permanently settling the population on the gold fields:—

That blocks of land should be set apart for agricultural leasing on the gold fields in like manner as provided by "The Hundreds Regulation Act, 1869," so as to secure a suitable amount of commonage in connection with all agricultural leaseholds.

That provision should be made whereby the rents payable in respect of any agricultural lease shall be held as payment on account of the purchase of such land.

That so soon as possible after any person may apply for any land, all possible expedition may be used to place such party in possession of the land so applied for.

That your petitioners respectfully venture to express a hope that provisions may be made during the present Session of your Honourable House, for giving effect to their wishes as herein set forth, and for remedying the grievances referred to.

And your petitioners, as in duty bound, will ever pray, &c.

[Here follow 185 signatures.]

No. 7.

PETITION OF INHABITANTS OF CANTERBURY FOR REPEAL OF THE THISTLE ORDINANCE.

To the Honorable the House of Representatives in Parliament assembled.

WE, the undersigned inhabitants of the Province of Canterbury, pray that your Honorable House will be pleased to repeal "The Thistle Ordinance, 1866," passed by the Provincial Council of Canterbury, the same being inapplicable to the present state of the Province, and repugnant to the law of England.

[Here follow 27 signatures.]