Assuming the evidence given to be in the main correct, which we saw no reason to doubt, the case illustrates the imperfect working of the proviso to section 23 of the Native Lands Act, 1865, "that no certificate shall be ordered to more than ten persons."

In the present case the Court has issued a certificate, that the ten persons named "are owners according to native custom" of the block in question, in the face of proof, the validity of which is admitted by the Court itself, that more than ten are in truth "owners according to native custom." This is done without affording to those excluded the protection provided by section 17 of the Act of 1867. The right of Hokomata is to an unascertained, and perhaps to a very small part of the land in question, but to some share it appears that she is justly entitled, and the action of the Court has given to others, without any sufficient consent on her part, the power of defrauding her of this share.

C. W. RICHMOND.

NOTE.—This Report is concurred in by Mr. Commissioner Maning.

REPORT ON CASE No. X.

COMPLAINT No. 13.—*Ex parte* PAORA AND OTHERS *(Moeangiangi)*.

We were able to devote to hearing this complaint only a short interval on one of the days which the Heretaunga Case occupied. The complainants, who seemed poor people, were exceedingly anxious that their case should be investigated, and had travelled in vain more than once a considerable distance to obtain a hearing. Seeing that the case is against the Government, and at Mr. Locke's special request, we consented to let the case come on. We did not hear the answer of the Government. In my opinion our investigation was incomplete; but it seems desirable to put on record the nature of the complaint.

The land in question was a Native Reserve of 1,092 acres, which was exempted from sale on the cession to the Crown in 1859 of the Moeangiangi block. It seems that in 1866 Mr. M'Lean bought the reserve, or rather, as it turned out, certain shares in the reserve, from two of the natives interested, Pitihera Kopu and Winiata te Awapuni. Soon after, apparently in accordance with the new usage of passing through the Court all land contracted for by the Crown, these two persons applied to the Native Lands Court for a certificate of ownership, with a view to obtain a Crown Grant. Kopu, it should be mentioned, is since dead, Winiata is still living, and resides at Mohaka, some distance from the reserve.

The complainant Paora Hira and his people, who live at Arapawanui, close to the reserve, declare that they were in complete ignorance of the intention to apply to the Native Lands Court. This is quite possibly untrue, but it is also, I presume, quite possibly true; as the Court was sitting at Napier, and these people living at some distance, in an out-of-the-way place, might easily fail to see the public notices of cases to be heard.

On the hearing of the application, a certificate of native ownership would, it seems, have issued to the two vendors, but that there chanced to be in Court a young man named Te Retimana Ngarangipai. He put in a claim, which was admitted. A certificate of title was issued in favour of Te Retimana, jointly with the two men who had sold to the Crown. Subsequently, a Crown Grant, dated 22nd May, 1867, was issued to the three. I believe it has been the practice of the Native Lands Court at Hawke's Bay, if not in other districts, to confine its attention to the claimants in Court, or represented there; and that in the present case it was, as this young fellow gave us to understand, a mere accident that the grant did not issue to the two vendors alone. The Court, as I understand its practice, undertakes no independent investigation of native title, yet acts on the maxim, "that what does not *appear* is to be treated as if it did not *exist*;" according to the law maxim "*de non apparentibus et non existentibus eadem est ratio.*" All outsiders are supposed to be barred by non-claim; and the Court is ready to certify, that those who claim are sole owners according to native custom.

Yet in a case like the present, where the land in question was an old Native Reserve, it would be pretty certain that a great many more than the three claimants in Court were in fact interested; and none could be better aware of the likelihood of this than the experienced judges of the Native Lands Court. The practice of the Court is however, I believe, to ignore the most notorious facts as to native title unless they are formally in evidence; the Court following in this (whether appropriately or not) the practice of the Supreme Court.

The result is, that the Crown has acquired a legal title to two-thirds of the former reserve. Whether it has a true title to that, or any other fractional part, or to the whole, depends on circumstances which we had not the opportunity of fully enquiring into. The matter must be left to adjustment by the Executive Government.

I have only further to remark, that in my opinion, lands in the predicament of this reserve should be dealt with most cautiously, and certainly should not be left to the chances of such a procedure as I have described. Where a reserve has been made on a sale of a block, the probability is that a whole commnnity is interested and attaches a peculiar value, or regards with a special affection, the excepted land. It is the common interest of both races that the alienation of lands in this position should be watched over by some department of the State with particular vigilance—not to say jealousy; and the official guardians of such reserves should at least have special notice of proceedings affecting the same.

I beg to refer to the Report on the Wharerangi Reserve (Report, No. IV.) for further observations on the alienation of this class of lands.

C. W. RICHMOND.

VIDE.—Mr. Commissioner Maning's separate Report on this case.
