

1875.

NEW ZEALAND.

CLAIMS UPON LANDS TAKEN OVER BY THE PROVINCE OF
AUCKLAND FROM THE GENERAL GOVERNMENT.

(CORRESPONDENCE RELATING THERETO.)

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

His Honor the SUPERINTENDENT, Auckland, to the Hon. the COLONIAL SECRETARY.

SIR,—

Superintendent's Office, Auckland, 19th May, 1875.

I have the honor to submit, for your consideration, a proposal for modifying certain arrangements authorized by the Minister for Public Works on the 4th March, 1872.

Mr. Mackay, who had apparently been acting as a private agent, was at that time about to be employed by the Government in the purchase of Native lands, and he, in his letter to the Minister for Public Works of the 24th January, 1872, suggested, in reference to the large blocks of land which he was to purchase from the Natives, that in some cases Europeans had claims to the timber on such blocks, and in other cases had made agreements with Natives regarding lands contained in the blocks, some of which leases or agreements might be valid, having been made subsequent to the issue of certificates of title by the Native Land Court, whilst others were invalid and unlawful, the agreements regarding them having been made previous to the issue of certificates of title for the lands comprised in such agreements.

Mr. Mackay admitted that a majority of the leases and agreements he alluded to were neither legal nor valid, yet many of these, he said, had been made by and with the assistance of officers of the Native Department.

The Minister for Public Works, in his letter of the 4th March, 1872, apparently undertook that the Government would respect all such claims, whether they were legal or equitable, or the contrary, because he was fully aware of the influence which the holders of such claims might exercise in opposition to the sale of the lands by the Natives to the Government.

What I would propose is this: that whenever the Provincial Government takes over from the General Government a block of land purchased from the Natives, it should take it over subject to all agreements and leases with which it may be encumbered. In this case it, of course, would only be bound to respect those agreements and leases which were really legal and valid, and which had not been similarly made to appear to be so, whilst those leases and agreements which were not legal or valid could in no way bind the Provincial Government; but I would suggest that every such case should be referred to the Legislature, or to the Committee which represents that body, or to some Court, that it should be fairly and openly heard, and the amount of compensation to which the holder of it might be entitled, if any, should be ascertained, and be liquidated by a money compensation, voted by the General Legislature.

I propose this, because I think all the reasons that have been alleged for requiring the province to respect the leases and agreements I allude to would be of no force if they were illegal or invalid in themselves.

For instance, in your telegram of the 6th instant, you make it appear that a reason for recognizing such agreements might be that the land included in them is, as the Government believes, swamp, unfit for the location of small settlers, and which would require a large expenditure of capital in draining it before it would be fit for occupation. But the Government can have no knowledge whether one or more of Her Majesty's subjects really possess capital or not, and lands in which the population of this province have a direct or contingent interest cannot be lawfully dealt with on any suppositions of this kind. The united capital of a number of small settlers may far exceed that of any one settler, and privileges of this sort ought not to be recognized, and cannot be maintained against the general rights of the public.

Again, if the agreement or lease was originally illegal, the approval of the Agent of the Government, or of the Minister for Public Works, cannot stamp such lease or agreement with legality. They are mere executive officers to carry out the law, not to make new laws to suit their own views. Any attempts to make such invalid leases or agreements legal can only produce a bad impression upon the public mind, as these attempts would possibly constitute a manifest evasion of that law which it was the duty of those authorities who allowed the evasion to have supported.

To make such unlawful leases legal would also be to reward wrong-doers and law-breakers, by recognizing their illegal acts, and this would be done at the expense of the rest of Her Majesty's subjects, who had faithfully observed the law, and who deserved, in recognition of their conduct, to have been protected in the rights which the law secures to them, rather than to be deprived of those rights in order that privileges of great, possibly of enormous, value may be given to those of their fellow-subjects who had set the law at defiance.

I pass over the statement of the Minister for Public Works that it will be necessary to reward these breakers of the law to prevent them from exercising their influence over the Natives to the detriment of the Government and their fellow-settlers, by preventing them from selling lands which the public necessity require should become the property of the community at large. Certainly people who could be guilty of such conduct ought to be punished instead of receiving large rewards.

I think, also, that in each instance of the unlawful leases and agreements to which Mr. Mackay alludes, he should be directed forthwith to supply the Superintendent of this province with the name of the officer of the Native Department who broke the law by negotiating such unlawful lease or agreement, in order that inquiries may be made as to whose authority this was done by, and why such exclusive privileges were given to some of Her Majesty's subjects, and why—whilst the inhabitants of this country at large were, by carefully framed laws, shut out from dealings with the Natives regarding certain lands—other individuals, who were favoured, were allowed to carry on such dealings, and were even granted the assistance of those officers of the Government to aid them in these transactions, whose duty required them to prevent such dealings from being carried on. The more fair and legal any such transaction may have been, the more reason is there that a full inquiry should be made into it, in order that the blamelessness of the parties concerned in it may be openly and fairly established beyond all future question.

Upon the whole, therefore, I think I am doing that which is, in every respect, for the public interest, in recommending that, whilst all legal and valid agreements and leases should be scrupulously observed, all those regarding which any doubt exists should be strictly investigated, and that only such a money compensation should be given to the respective claimants as a full and impartial inquiry may prove them to be entitled to.

My observations apply equally also to all exchanges of land which the General Government propose to carry out without a full and open inquiry. I do not think that the Government will be justified in taking lands from any of the blocks purchased with public money, and giving them in exchange, at the will of the Native Minister or any other person, to Europeans or Natives, until a full and open inquiry has been made into the circumstances of each case. Land is now so essential to the interests of this province, for the purpose of settling intending immigrants upon, or those of our population who have hitherto been unable to obtain land, that I earnestly request that the recommendations I have made may receive the approval and sanction of the General Government, and that I may be authorized at once to give effect to them.

I would yet add another reason, of a general nature, in favour of the cause I recommend.

The rights of property disposed of, under the arrangements made by the Minister of Public Works and Mr. Mackay, must be very great indeed.

The parties interested in these are the public, the Native owners, the European claimants.

Clearly such rights ought not to be dealt with secretly, in a private room, by one man. To expose him, under such circumstances, to the solicitations of private friends, or of the political supporters of the Government he serves, is a wrong to human nature, to independence of character, to public rights, to the interests of the Native owners, for there is no fair competition for their property and to the mass of Her Majesty's subjects, because their interests are not fairly protected. A consideration of this will, I hope, make you feel that this system should be instantly stopped, and that perhaps upon the whole the proper course would be that an open inquiry should at once be instituted into each past transaction.

The Hon. the Colonial Secretary, Wellington.

I have, &c.,
G. GREY.

Referred to Mr. Mackay for remark.—DANIEL POLLEN, 28th May, 1875.

No. 2.

MEMORANDUM for the Hon. the COLONIAL SECRETARY.

SIR GEORGE GREY's letter of the 19th May last purports to be a request for a modification of the arrangement made by the Hon. the Minister for Public Works with me on the 4th March, 1872, for the purchase of Native lands in the district of Hauraki.

Sir George Grey is quite correct in assuming that I was acting as a private land purchase agent at the time the Hon. Mr. Ormond requested me to undertake the acquisition of Native lands for the General Government. I had been acting in that capacity from the 1st August, 1869, and my professional earnings amounted to upwards of £1,500 per annum. I was, in January, 1872 engaged in business negotiations with private individuals and associations to undertake the purchase of the whole of the Coromandel Peninsula, subject to the right to mine acquired by the Crown, or the rights to timber of private persons or companies; and capital was at my disposal for the purchase of the whole at a maximum average rate not exceeding 5s. per acre. I waived these arrangements at the urgent request of the Hon. Mr. Ormond, backed by the personal influence of Mr. Gillies, Superintendent of the Province, and that of Dr. Pollen, then Agent for the General Government. Messrs. Preece and Graham had been offered the business, but declined to do it for a less commission than 6d. per acre. I arranged to take a commission of 4d. per acre for all lands purchased by me. I however objected to acquiring any land unless the prior rights of Europeans to kauri timber were conserved.

In considering the proposals made by Sir George Grey, it is necessary, in the first instance, to confine my remarks to the arrangement before mentioned, as set forth in my letter of the 24th January, 1872, and in Mr. Under Secretary Knowles' reply of the 4th March. In order to do this properly, Sir George Grey's quotation of a portion of my letter requires amendment, by striking out several words which are not to be found either in the original or the published copies of it. I wrote as follows, viz.,—

“With reference to the vested interests and claims of Europeans to kauri timber situated within the blocks of land proposed to be purchased, some of which are held under valid leases made subsequent to the issue of certificates of title by the Native Land Court, and others by agreements made previous to the issue of certificates of title for the lands comprised in such agreements, I would beg to recommend that in all cases where the parties are in actual possession of the timber, and do not obstruct the Government in negotiating for the purchase of the lands, that all such agreements, leases, and private interests shall be respected, and the conveyances by the Natives to the Crown shall take notice of and confirm all such reasonable and fair leases, agreements, and transactions. I would point out that the timber trade is of vital interest to the gold fields, and is one of great importance to the Province of Auckland, and very large capital is invested in it; and although the agreements for the acquisition of timber are not, in the majority of cases, strictly legal or valid, yet many of these so-called illegal agreements have been made by and with the assistance of the officers of the Native Department. If the Government acquired the kauri timber it would only be destroyed by miners and bush fires. At the present time where the kauri timber is not the property of millowners, it is a fruitful source of discontent between the Miners, Government officers, and the Native proprietors.”

Mr. Under Secretary Knowles replied thus—

“Mr. Ormond is fully aware of the influence which the holders of timber rights and claims might exercise in opposition to the sale of the lands by the Natives, and the policy of respecting those claims, whether legal or equitable; but it must at the same time be borne in mind that many of the blocks on the Coromandel Peninsula have, apart from their mining value, no other value than that which their timber gives them, the right to which, you state, has in many cases been alienated, and required to be conserved. In estimating the purchase money of all such blocks as have not acquired a value for mining purposes, this should be taken into consideration, as the Government will have no option but to avoid interference with these old arrangements, wherever it is practicable to do so.”

Sir George Grey alludes thus to my letter: “He, in his letter to the Minister for Public Works of the 24th January, 1872, suggested, in reference to the large blocks of land which he was to purchase from the Natives, that in some cases Europeans had claims to the timber on such blocks, and in other cases had made agreements with Natives regarding lands contained in the blocks, some of which leases or agreements might be valid, having been made subsequent to the issue of certificates of title by the Native Land Court, whilst others were invalid and unlawful, the agreements regarding them having been made previous to the issue of certificates of title for the lands comprised in such agreements.”

The paragraph as written by me, and answered by Mr. Knowles, referred to kauri timber only, and to leases and agreements made between Natives and Europeans respecting it.

Sir George Grey's interpolation makes it to apply “to cases in which agreements had been made regarding the lands contained in the blocks,” a question which was nowhere raised by the Hon. Mr. Ormond or myself in the correspondence alluded to. I therefore propose to deal, firstly, with the kauri timber question; and secondly, to consider the points raised by Sir George Grey's manipulation of my report.

In March, 1872, there were within the Hauraki District some fourteen saw-mills, either working or in course of construction. These found employment for about 600 men, irrespective of the persons manning the vessels engaged in the timber trade. The capital which had been expended, or was then in the course of expenditure in the erection of saw-mills, with the dwelling-houses and plant connected therewith, amounted to about £120,000; in addition to which the proprietors had paid about £30,000 to Natives for kauri timber within the twenty years preceding that date. Some of these purchases of kauri timber were held by legal instruments in the shape of deeds of grant, leases, or agreements, made subsequently to the issue of

certificates of title by the Native Land Court to the Native owners of the land on which such timber was growing. In other cases there were agreements made between the millowners and the Natives, which, although not strictly legal, were equitable arrangements, and were carried out in good faith by the persons interested.

Knowing the importance of the timber question, and the magnitude of the interests involved, I deemed it advisable, before agreeing to purchase land for the Government, to lay the whole circumstances of the case before Mr. Ormond. I spared no pains in obtaining information, in order to show in my report (*vide* report, 24th January, 1872) the actual state of each block as regarded the alienation or otherwise of the kauri timber within it. Had the Government objected to conserve the rights of the millowners and purchasers of timber, I would, for several reasons, have declined to act for them.

It is true that, under the Land Purchase Ordinance, sales of timber by Natives to Europeans were forbidden; but many saw-mills were erected, and forests purchased, before the repeal of that law. The Government of the colony were never in a position to strictly enforce its provisions, because the voices of the settlers and Natives were against it. I also reiterate the statement that several of the agreements for the sale of timber were made with the concurrence of the Government for the time being. It has been frequently said that when the Kapanga block at Coromandel was ceded to the Crown for gold mining purposes, Sir George Grey, then the Governor of the Colony, sanctioned the reservation by the Natives of the kauri timber on that block, because it had been previously sold by them to Messrs. Charles and Frederick Ring; and those gentlemen were permitted to retain certain water rights and other easements necessary for the proper working of their saw-mill; and when the miners injured the water rights held by Messrs. Ring on the Kapanga stream, they claimed damages from the Government, and Mr. Graham, the Superintendent of the Province, offered to give them £350 in satisfaction of their claim, which they refused to accept. I enclose copies of correspondence between the Messrs. Ring and myself on the question, and of Mr. Graham's proposal.

During the period Dr. Shortland was Native Secretary, Maoris frequently came to the Native Office about sales of kauri timber, and I recollect in the case of the purchase of the forests at Tairua, an officer of the department (who is now a Judge of the Native Land Court) drew out an agreement between the seller and purchaser.

On one occasion, I, when Civil Commissioner for the Thames District, was instructed to arrange a dispute which arose between two parties of Natives and two parties of Europeans respecting the sale of kauri timber at Whangapoua, but I had nothing to do with the signing of any agreement respecting it. This culminated in the well-known Craig, Macfarlane, Harris, and Mohi Mangakahia law-suits. I believe there are similar cases elsewhere, and to these I referred in my report. In order to preserve the peace of the country, the Native Department were frequently compelled, although with considerable reluctance, to take part in these transactions.

I am at a loss to understand the meaning of a portion of the following extract from Sir George Grey's letter:—"What I would propose is this: That whenever the Provincial Government takes over from the General Government a block of land purchased from the Natives, it should take it over subject to all agreements and leases with which it may be encumbered. In this case it would, of course, only be bound to respect those agreements and leases which were really legal and valid, and which had not been *similarly* made to appear to be so, whilst those agreements or leases which were not legal or valid could in no way bind the Provincial Government; but I would suggest that every such case should be referred to the Legislature, or to the Committee which represents that body, or to some Court, that it should be fairly and openly heard, and the amount of compensation to which the holder of it might be entitled, if any, should be ascertained and be liquidated by a money compensation voted by the General Legislature."

It is very desirable that Sir George Grey should state whether he accuses the Land Purchase Agents of the Government, or the purchasers of timber, of making counterfeit leases or agreements to legalize such purchases, in order that the persons referred to may be in a position to request him to verify his assertions.

In my opinion the Government, whether General or Provincial, are bound by the terms of the deeds of conveyance from the Native to the Crown; and if, on the face of such instruments, it is shown that prior rights have been either lawfully or equitably acquired by others, and there is sufficient evidence thereof, then such agreements or leases should be respected. I would respectfully beg to point out that the timber trade is one of vital importance to the Province of Auckland and the whole colony. The suggestion made to deprive some of the millowners or proprietors of timber of their rights, because of legal technicalities, and taking from them the means of working their saw-mills, which have been established by the expenditure of large capital, is one which appears to me of a suicidal nature.

Sir George Grey could not have considered the question in all its bearings, when he proposed to award compensation to the parties thus deprived of their rights. The question raised is one which affects the owners of timber throughout the whole Province of Auckland. These men have, in a majority of cases, been in quiet possession of their timber for a number of years; they are engaged in a productive industry, with profit to themselves and the country; and why should they be disturbed, and their numerous bodies of workmen be thrown out of employment? The compensation required within the Province of Auckland would probably amount to £1,000,000

sterling, and no equivalent advantage would be gained by either the General or the Provincial Government. A steady home and export trade would be annihilated. The forests would be either destroyed by miners and kauri gum diggers, who light fires in a most reckless manner when not checked by the proprietors of the timber, or be frittered away by the Provincial Government granting timber licenses to bushmen, who would cut whatever they pleased on the payment of a small license fee to the Commissioner of Crown Lands. I know of large blocks of land, formerly covered with kauri, having been denuded of all the valuable timber by this process, and the total receipts by the Crown bore no proportion to the area of the land. The revenue of the colony actually derived more benefit from the direct sales from the Natives to the millowners than it did from the transactions between the Provincial Government and the cutters of timber. It may be said the law limits the area over which a timber license shall be exercised ; it does so in the document, but not in practice.

Sir George Grey appears to strongly object to the purchasers of timber obtaining a legal title to it. I, however, differ in opinion from him on that point, and think it would have been a highly culpable proceeding on my part if I had taken absolute conveyances in fee simple of the land from the Natives to the Crown, and ignored the rights of those who had long previously acquired the timber.

The Government would not have purchased the land on such easy terms but for the timber, in many instances, having been previously sold to private persons or associations.

The leases and arrangements respecting kauri do not prevent the occupation of the land for settlement or mining purposes.

It has been urged that some of the leases or deeds of grant held by purchasers of timber are of such a nature as to prevent miners and others from cutting ordinary timber for domestic and mining purposes on the blocks to which they refer, but I cannot recollect any instance in which the European owner of timber has in any way objected to the exercise of the privileges claimed by the mining population. All that the millowners and proprietors of timber desire is to be able to utilize the kauri they have purchased, and have confirmed to them the rights and easements enabling them to do so. They have not offered the slightest opposition to the Government in any of the purchases, and have no desire to be obstructive, provided their vested rights and interests are not infringed or interfered with.

The land in the Hauraki District on which kauri timber grows is of broken character, and not generally suitable for agricultural purposes ; it is, however, known to contain great mineral wealth, and as such is a valuable public estate which, in the opinion of many persons, should be retained by the Crown, and not lightly disposed of for the sake of raising a land revenue for the province or colony.

Sir George Grey appears to be highly impressed with its importance, for he recently stated to a deputation at Grahamstown, "that, from what he saw, he believed that for centuries mining would be carried on there." I must say that I coincide with this view, and think the Government are right in acquiring the freehold of the land in order to facilitate the development of the great mineral resources of the district ; but in doing this, another interest, almost as important as that of the miner, should not be lost sight of. I see no reason why the two great natural sources of wealth of the Hauraki District should not be utilized simultaneously and without antagonism. It should be the policy of the Government to foster mining operations, and also to encourage the timber trade. There is no difficulty in accomplishing both objects, but it surely is to be lamented if, owing to political differences, one important branch of industry is injured or superseded by another, when the two are distinct and not necessarily conflicting. No difficulty has as yet arisen between the owners of timber and the mining population. It is, doubtless, desirable that steps should be taken to define the relative position and rights of each of these important industries, but there is no occasion to raise up strife and antagonism between them where none has heretofore obtained.

The majority of the purchases of timber in the Hauraki District took place previous to the year 1865. It has been said recently that the amount paid for kauri timber is small when compared with the price given by the Government for the freehold of the land on which it is growing. It must, however, be borne in mind that neither the land nor timber had become valuable when these transactions took place, as the mineral wealth of the district was not appreciated until after the 1st August, 1867 (the date of opening of the Thames Gold Field). It may also be as well to state that the *bonâ fides* of the agreements made between the Natives and the millowners for the alienation of kauri timber is not questioned by the Maoris, nor are they the subject of dispute between the persons most immediately concerned, which is the best proof, if any were required, of the fair nature of the dealings referred to.

The rights conferred by these old agreements are very great indeed, but they are clearly set forth in the documents held by the millowners, on the strength of which large capital has been invested, and a valuable productive industry has been established in the Province of Auckland. In all the cases heretofore brought under my notice there is no stipulation or limitation made on either side as to the term for which the purchaser of forests shall have the right to enter on the land to cut and remove the timber. Since the passing of the Native Lands Act, no efforts have been spared by the owners of timber to procure legal titles in place of the old agreements before alluded to. In some instances leases for ninety-nine years have been given, but the holders, when the land has been sold to the Crown, have agreed to waive their rights over such a lengthened period, and to reduce the term to twenty-one years, or other reasonable limit.

The peroration indulged in by Sir George Grey about arrangements made in private rooms, the solicitation of friends, and the wrongs done to human nature, is clearly uncalled for, as nothing has been done respecting timber rights which is not supported by long-standing agreements, and the practical effect of the Government land-purchase operations has been to define and limit the period for the enjoyment of these rights which were previously held for unlimited terms.

It is perhaps unnecessary for me to enter further into the question of the acquisition, by private persons or associations, of kauri timber from the Natives. I have endeavoured, as far as possible, to show that they have certain equitable rights, which were admitted by the Hon. Mr. Ormond in a liberal and fair-dealing spirit, that the industry which they have so perseveringly striven to promote is one of importance to the colony, and which, in this province alone, employs in various ways at least 2,000 men, and gives an export from places north of Auckland where there is no other marketable production but kauri gum. Having considered the subject from these points of view, it may, perhaps, be deemed desirable to look at its legal aspect. I submit with all deference, and subject to correction from law authorities, that, although in the early days of the colony, legislation was of a restrictive nature, and laws were carefully framed to prevent dealings between Natives and Europeans for lands or natural productions growing on them, there was, from 1865 to 1871, a revulsion of feeling on the subject, and the Legislature of the colony gave facilities for the acquisition of lands by private persons, notwithstanding that the Treaty of Waitangi vested the preemptive right of purchase in the Crown. When the colony committed itself to the great scheme of public works and immigration, it was deemed necessary to revert partially to the original system, and an additional reason was given that it was not desirable that lands of auriferous, or supposed auriferous, character should pass into the hands of private persons to the exclusion of the public.

In "The Immigration and Public Works Act Amendment Act, 1871," a clause was inserted giving the Governor the power, "whenever he shall have determined to enter into negotiations for the purchase of land, to insert a notice in the *New Zealand Gazette* that it is his intention to enter into such negotiations; and after such notice it shall not be lawful for any one to purchase or acquire from the Native owners any right, title, or interest, or contract for the purchase or acquisition from the Native owners of any right, title, or interest, in the lands specified in such notice, unless the notice be cancelled by the Governor: Provided that no such notice shall have longer operation than for the period of two years."

His Excellency Sir George Bowen, on the 9th October, 1872, by Proclamation published in the *New Zealand Government Gazette* of the 10th October, 1872, which was renewed and extended by His Excellency Sir James Fergusson on the 15th October, 1874, and published in the *New Zealand Government Gazette* of 22nd October, 1874, declared the intention to purchase certain lands in the district of Hauraki, which included all those subject to agreements previously made by millowners for the purchase of kauri timber.

As my letter to the Hon. Mr. Ormond, describing the status of the various blocks of land within the territory thus proclaimed, was written on the 24th January, 1872, and printed in the Appendix to the Journals of the House of Representatives in 1873 (*vide* G. 8), I believe I am right in assuming that the Governor, for the time being, and His Executive Council, were acquainted with the fact that there were in existence certain previously acquired rights to kauri timber, as set forth in that report, and which I had been instructed to conserve. The Government either desired to purchase the lands in question, or must have acted wrongfully in leading the public and the Natives to believe they did. I however maintain that great pressure was put on the General Government by the provincial authorities, and persons interested in gold mining in the Province of Auckland, to induce them to assent to purchase from the Native owners the whole of the lands within the Coromandel Peninsula and Hauraki District, as there was a strong popular feeling against the arrangements which had been made for giving the Native owners the fees derived from miners' rights as a rental for the occupation of their lands for gold-mining purposes.

In despite of this action on the part of the Government, which may, at the first place, appear to be hostile to the acquisition of lands or interests in lands by private persons, it is advisable at the same time to review the legislation of the period.

By referring to "The Native Lands Act, 1873," and "The Timber Floating Act, 1873," it will be found that although such extensive powers were given to restrain private land purchasers, yet two highly important productive industries were protected by Parliament.

Section 108 of the Native Lands Act provided machinery for legalizing agreements heretofore entered into by Europeans and Natives for the purchase or sale of timber, flax, and other natural productions growing upon Native lands, and gives the Court power to reserve or confirm such rights for any period not exceeding twenty-five years from the date of the order of the Court, notwithstanding such agreement for the purchase or sale of such natural productions may have been illegally made during the time when the "carefully framed" restrictive laws alluded to by Sir George Grey were in force. "The Timber Floating Act, 1873," was passed with the express intention of affording facilities to millowners to convey timber to their mills, and was brought before Parliament at the instigation of persons holding timber rights at Whangapoua, which were originally illegally acquired from the Natives.

These rights, whether legal or otherwise, were not ignored by the Supreme Court of the

Colony, or the members of the legal profession, as witness the well-known lawsuits between Mohi Mangakahia and Harris *versus* Craig and Macfarlane.

Although the parties interested in saw-mills and kauri timber may not have been able, in some cases, to take advantage of the provisions of "The Native Lands Act, 1873," as regards agreements made before that date, it is clearly not the duty of the Government or its agents, and is not to the interest of the provincial authorities, to endeavour to upset, by strict adherence to legal technicalities, the title of the persons engaged in the timber trade.

It is apparent that the Governor of the colony, its Legislature and Supreme Court, and the Superintendent of the Province, have from time to time recognized illegal dealings for the purchase and sale of kauri timber; and I therefore beg respectfully to submit to you that, in upholding legal and equitable agreements for the sale of timber, which had been made in good faith between Natives and Europeans, the Hon. Mr. Ormond did not commit an error, but acted with justice towards the persons interested in such arrangements.

Having endeavoured to lay before you the questions arising out of the purchase of kauri timber by private persons from Natives, it appears necessary to make some remarks on the points raised by Sir George Grey respecting the illegal purchase by individuals of lands over which the Native title had not been extinguished. As before mentioned, neither of these questions was alluded to by me in my report of the 24th January, 1872, or in the Hon. Mr. Ormond's reply thereto of the 4th March following. Before entering on this subject, it may be as well to consider what was the process generally adopted by private persons in acquiring land from the Natives. The Native owner generally made the first offer to sell; but in some cases the European first expressed his desire to purchase. A Native Land Purchase Agent was consulted, and he, probably, advised the would-be purchaser to advance a sum of money to the Native, part of it being a deposit to bind the bargain, and the remainder to defray the expenses of survey. This, as a general rule, was represented to be a payment to defray the expenses of survey, and the investigation of the title by the Native Land Court, and, as such, a lien over the land was taken, in accordance with the provisions of the Native Land Act. After survey the title was investigated by the Court, and the European completed the purchase by handing the balance of the consideration money to the persons found to be the owners.

Two cases of this class have arisen in the district within which I have been instructed to purchase land. The first is that of Captain Daldy, who, in 1871, was interested with me in the purchase of the Waikawau block, over a large portion of which he had long previously acquired the right to cut and remove kauri timber. In January, 1872, we had commenced the survey of the block, which we estimated to contain 60,000 acres. We did not wish to oppose the Government in the matter, and withdrew from our purchase on condition that the Government recognized and allowed Captain Daldy's right to timber previously purchased by him on the Waikawau and Mata streams and their tributaries. He was also to receive a title from the Crown for 400 acres at Waikawau and fifty acres at Te Mata, on payment being made to the Government at the same rate per acre as was given for the whole block.

The second case is that of Mr. Thomas Russell, respecting the purchase of the Hungahunga and Waiharakeke blocks at the Upper Thames. These were not included within the area which I was authorized to purchase in accordance with the instructions conveyed in the Hon. Mr. Ormond's letter of the 4th March, 1872. Neither were these blocks included in the Proclamation of the 9th October, 1872, made under the provisions of "The Immigration and Public Works Act Amendment Act, 1871." I found, about the end of 1872, that Mr. Thomas Russell was in treaty for the Hungahunga and Waiharakeke blocks, the latter being situated on the east and west banks of the River Waihou or Thames. Although not strictly within my instructions, I deemed it advisable in the interest of the public to endeavour to secure the eastern portion of the Waiharakeke block for the Crown, it being an extension southwards of the Aroha block, which is reported to be auriferous. I, therefore, proposed to Mr. Russell, who was conducting his purchase through Messrs. Preece and Graham, that he should relinquish the part of Waiharakeke on the eastern side of the River Waihou, and complete his negotiations for the western portion of the block, and for the Hungahunga block adjacent to it. I had no right at the time to ask him to do this, but considered it to be my duty to look after the interest of the public. On submitting the question for the consideration of the Government, they approved of my proceedings.

With reference to exchanges of lands between Natives and Europeans, or between the Government and Natives or Europeans, I am at a loss to comprehend Sir George Grey's meaning. I have not sanctioned any such arrangements, nor has any application been made to me to do so. The only case I can possibly imagine to be referred to is that of Mr. Whitaker at Piako. That gentleman is the transferee of some original land claims in that district, and, under the award of the Land Claims Court, is entitled to select within the Piako block, containing 19,500 acres, twelve thousand eight hundred and fifty-five (12,855) acres. Under sections 23 and 44 of "The Land Claims Act, 1856," he is allowed an additional area of one thousand nine hundred and twenty-eight acres (1,928) one (1) rood if he pays the cost of surveying the block, the total area to be granted being fourteen thousand seven hundred and eighty-three (14,783) acres. The Ngatipaoa tribe are in possession of the land originally purchased, excepting a piece erroneously granted to Arthur Willis through fraudulent representations. When I commenced the purchase for the Government of the lands situated between the rivers Thames

and Piako, the Chief Tarapipipi te Kopara and his people suggested that Mr. Whitaker's award should be taken out of that block, and not from the Piako block of 19,500 acres, as they wished to retain for their own use the portion to which Mr. Whitaker was entitled as the transferee of the original claimant (Webster). As Tarapipipi te Kopara had for some years been the head of Hauhauism at Piako, and a consistent opponent of the Government, I deemed it advisable to carefully consider his proposition, and submit it to them. I did so, and after long consideration and several discussions of the question, the Government came to the conclusion that it was expedient to grant Tarapipipi te Kopara's request, and Mr. Whitaker was asked to assent to it.

The Government were, in my opinion, met in a very fair spirit by that gentleman, and he assented to the exchange. The Maori difficulty was overcome, and the followers of Tarapipipi te Kopara have since renounced their allegiance to Tawhiao, and become good subjects of the Queen. I do not for a moment assume that Sir George Grey wishes them to revert to the semi-rebellious position they occupied from 1865 to 1874; if he does, the process is very simple; it can easily be accomplished by refusing to sanction the exchange of land agreed on between Mr. Whitaker and the General Government, and suggesting to that gentleman the desirability of selecting the land he is entitled to within the block known as the Piako block, containing 19,500 acres.

Exchanges of land were contemplated under "The Land Claims Settlement Act, 1856," and "The Land Claims Settlement Extension Act, 1858," as power was given to the Commissioner "in cases where difficulties existed in the way of the claimant obtaining quiet possession of the land, and it appeared expedient to exchange the particular land claimed for other land, to direct a grant to be made to the claimant of rural land within the same province."

I am not aware whether this power can be legally exercised by the Government in the case now under consideration, but it is precisely one of those which was intended to be provided for under the provisions of "The Land Claims Settlement Extension Act, 1858."

Sir George Grey should remember that land purchases are made by agreement between the Government and the Natives, and if the latter refuse to sell a large and valuable territory unless a long-outstanding question is finally arranged in the first instance, it may then be expedient to make an exchange in order to facilitate negotiations for the cession of an entire district.

If I have in this memorandum in any way digressed from the consideration of the questions raised by Sir George Grey in his letter of the 19th May last, or have attempted to reply to issues not apparently raised in it, I hope you will excuse my having done so. I was, however, unable to clearly understand the purpose of Sir George Grey's letter, until I saw in the newspaper columns the statements made by him in reply to deputations which waited on him at Grahamstown. Although feeling my disability to cope with a statesman of Sir George Grey's reputation in the discussion of this important question, I hope the Government will give me the credit of having, to the best of my ability, endeavoured to explain the actual state of the case, and of desiring to uphold the rights of the millowners, miners, and the public in general, which are affected by the purchase by the Government of the lands comprised within the Coromandel Peninsula and district of Hauraki.

JAMES MACKAY.

7th July, 1875.

Enclosure 1 in No. 2.

MR. MACKAY TO MESSRS. RING BROS., AUCKLAND.

GENTLEMEN,—

Auckland, 6th July, 1875.

I will be very much obliged if you will give me information on the following points respecting your sawmill and interests in timber at Coromandel, viz.,—

1. When the Tokatea and Kapanga blocks were ceded to the Crown for gold-mining purposes in June and July, 1862, did Sir George Grey, then the Governor of the colony, sanction the reservation of the kauri timber on those blocks because it had been previously sold by the Natives to you?

2. Did he at the same time promise to reserve to you the right to the use of the Kapanga Stream (commonly called the Driving Creek), for purposes connected with your mill?

3. When the miners damaged the water rights and easements reserved for you in the Kapanga Stream, did you make any claim against the Government?

I have, &c.,

Messrs. Ring Bros., Auckland.

JAMES MACKAY.

Enclosure 2 in No. 2.

MR. RING TO MR. MACKAY.

SIR,—

Auckland, 6th July, 1875.

I have received your letter of this date, asking for information respecting the saw-mill and timber at Coromandel owned by my brother and myself.

My reply to the first question is, that Sir George Grey did sanction the reservation of the kauri timber on the Tokatea and Kapanga blocks, that were handed over to the Government for mining purposes, because it had previously been sold to us by the Natives.

My answer to the second question is, that our rights to use the water of the Driving Creek were reserved for us.

My reply to the third question is, that the miners did considerable damage by silting up the creek with *débris* from their claims. We applied to the Superintendent, R. Graham, Esq., for compensation for the damage sustained by us; he tendered us £350, which we refused to accept, and we consider that we have still a claim against the Government for damage done.

Since 1859, and to the present time, we have continued to cut timber on these blocks, and still have the right to use the water of the driving and main creeks for purposes connected with our mill.

To Mr. Mackay, Auckland.

I have, &c.,
J. W. RING.

Enclosure 3 in No. 2.

I AGREE, on the part of the Government, to grant permission to Mr. Ring to dam up the main creek, and enjoy the privilege of driving logs up till the 1st November, after which time only with the consent of the Commissioner. The Government to protect Mr. Ring in his right to kauri timber, and further to give a sum of £350 sterling for injury sustained.

4th March, 1863.

ROBERT GRAHAM,
Superintendent.

By Authority: GEORGE DIDSBUXY, Government Printer, Wellington.—1875.

Price 9d.]

