1881.

NEW ZEALAND.

NATIVE AFFAIRS COMMITTEE

(REPORT OF, ON PETITION OF PAORA KAIWHATA AND OTHERS, TOGETHER WITH MINUTES OF EVIDENCE AND APPENDICES).

Brought up 21st September, 1881, and ordered to be printed.

REPORT

No. 61 of 1881.—Petition of PAORA KAIWHATA and 6 Others.

PETITIONERS say that they had been living on the land at Ngatahira for several years; that Mr. Bryce and Mr. Rolleston had visited them with a view to settle disputes about ownership; that certain arrangements for exchange of land had been made, but not carried out; that they have not heard from Government; and therefore pray that the land may be returned to them.

I am directed to report as follows:—

That inquiry should be made to ascertain whether or not it was by the default or neglect of the Native Land Court the evident intention of the Native owners to preserve their tribal settlement was not given effect to, the consequence being that a large number of Natives have been evicted from a piece of land which they imagined had been secured to them by authority of law That, in the opinion of this Committee, the Native vendors and the European purchaser considered they were dealing only for the land leased to Mr. Braithwaite, which contract would have excluded the land referred to in the petition under inquiry That the efforts of several successive Governments to settle this matter have been successful so far only as to deprive the Native owners of their only vantage-ground, *i.e.*, possession; and the papers and evidence disclose good grounds for believing that the Natives gave up possession in the full faith and belief that they would again be reinstated in their tribal holding. That justice requires that the petitioners and their friends should be restored to their original position, and be confirmed in their possession of the land. That inquiry should be made by the proper department to ascertain whether or not the application and declaration on which the Land Transfer title was based were made in accordance with fact. That, in the event of proof of the fact that the European vendor was an innocent purchaser, compensation should be paid to him in manner provided by the Public Works Act now in force. That the Government should, without delay, take the necessary steps to replace the Native owners in possession, without payment or consideration in land or money on their part.

21st September, 1881.

[TRANSLATION.]

No. 61 of 1881.—Pukapuka-inoi a PAORA KAIWHATA me etahi 6.

E KI ana nga kai-pitihana he maha nga tau e noho ana ratou i runga i te whenua i Ngatahira; i tae atu a Te Paraihe me Te Roretana kia kite i a ratou ki te whakaoti i nga tautohe mo te take ki taua whenua; i whakahaerea ano etahi tikanga kia utua taua whenua ki tetahi whenua ke atu, engari kaore i whakaotia aua whakaritenga; kaore ano he kupu a te Kawanatanga i tae atu ki a ratou no reira ka inoi ratou kia whakahokia a Ngatahira ki a ratou.

Kua whakahaua ahau kia ki penei:—

Me rapu mehemehea ranei na te Kooti te he i kore ai e mana te hiahia o nga Maori no ratou te whenua kia mau tonu taua wahi ki a ratou hei whenua mo te iwi, no te mea hoki he nui ratou nga Maori kua panaia i runga i te whenua i maharatia nei kua oti i te ture te whakatau ki a ratou. Na ki te whakaaro a tenei Komiti i mahara tonu nga Maori me te pakeha hoko, ko te whenua ke e hokona ana ko te whenua i riihitia ki a Te Paratiweeti, i runga i tena tikanga e kapea ana a Ngatahira ki waho o te hoko. Na he maha nga Kawanatanga kua whakamatau ki te whakaoti i tenei raruraru, heoi ano te mea i oti ko te tango i te ora kotahi nei o te Maori, ara; i tona whenua; na i runga i nga korero me nga pukapuka kua takoto ki te aroaro o te Komiti i puta pai nga Maori ki waho o taua whenua i runga i te whakapono tera ano ratou e whakahokia ki runga. Na i runga i te huarahi o te tika me whakahoki pumau ano nga kai-pitihana me o ratou hoa ki runga ki to ratou whenua o mua iho. Na ma tona Tari tika ano e kimi mehemea ranei i pono te oatitanga i tuturu ai te take o taua whenua i raro i te Ture Tuku. Na ki te kitea i pohehe te hoko a te pakeha, me utu ano ia i raro i nga tikanga o te Ture mo nga mahi Nunui e mana nei. Na me tere tonu te whakahoki a te Kawanatanga i nga Maori ki runga ano ki to ratou whenua, me kaua hoki nga Maori e utu whenua e utu moni ranei.

21 Hepetema, 1881.

MINUTES OF EVIDENCE.

TUESDAY, 5TH JULY, 1881.

Petition No. 61, from Paora Kaiwhata and others, read.

Mr. TOMOANA M.H.R., examined.

1. *The Chairman.*] Mr. Tomoana, I see your name on this petition; and no doubt you know the case from your own point of view I want you to state the case to the Committee?—Yes; I know all about the case. I have not much to add to what is stated in the petition. What is stated there are the principal points on which I can speak. I can only speak about the claim of the Natives to that block, and their settlement on the land. It was through the Government offering the Natives to have that difficulty settled that the Natives agreed to do so. The Natives also thought at the time that Government would consider on their behalf the interest they had in the land, and make such arrangements as would suit them. The Natives on their part did all they could to settle the matter when Mr. Rolleston went there; and the Natives thought that would be a final settlement of the question, if they gave up one thousand acres, as asked for by the Government. The Natives did not think that it rested with Mr. Sutton as to whether the bargain was completed or not. They thought, by giving up one thousand acres into the hands of the Government, the Government had power to settle the whole question. It was only when the arrest of the Natives took place that they felt troubled about the matter, because when that arrest took place the Natives were living on the land. The officers who arrested the Maoris did not tell them to go off the land, or give them any warning; but they were seized all on a sudden, and men, women, and children were bundled into a coach. If the Government had not entered into these arrangements with the Natives, and also promised they would settle the question, the Natives would never have gone off the land. That is why the petition prays for the return of that land to the Natives. When these Natives were arrested they were able to take some of their provisions away, but most of their food on the land was trampled under foot by horses and cattle; and the desire of the Maoris at the present time is that contained in the petition, their application to have the land back again. They want their land back. That is all I have got to say

2. *Mr. Bryce.*] Were you one of the original owners yourself?—Yes.

3. Are the names upon the petition the names of those who were other owners?—Yes.

4. Did they dispose of the land by way of sale to Mr. Sutton?—No.

5. Are their names to be found on a deed of conveyance, conveying that land to Mr. Sutton?—No.

6. Did the petitioners convey this land to any European by way of sale?—The petitioners did not sell this land.

7 Is there any conveyance within your knowledge, signed by Natives, purporting to convey this land to Europeans?—Yes.

8. Do you allege that these Natives who signed the conveyance were not really the owners of the land?—No; what I say is this: the petitioners did not sell that land; those who sold the land are persons in the grant of Omaranui. Paora Torotoro was one of those who sold. His name is mentioned in the petition, but only as one of those present at the meeting between Mr. Rolleston and the Natives.

9. What I am anxious to get at is the legal position of this land. Was the land conveyed to Europeans by Natives who had the legal right to convey—by Natives who had received the grant?—The grantees did not know what piece was included in the sale.

10. But nevertheless their names are to be found in a conveyance comprising this land?—I have heard the names of Rewi and Paora were attached to the sale; but in that sale those persons who are in the grant knew well that piece was not included in the sale; so did also the people who were living on the land.

11. What I understand from you is, they intended to sell one piece of land, a larger piece; but a smaller piece was included without their being aware of it at the time?—Yes.

12. Was this question ever before the Supreme Court—this question as to the title to this land?—Yes.

13. Was that allegation you have just made—namely, that the Natives were not aware of the smaller piece being included—was that allegation repeated before the Supreme Court?—Yes.

14. Was evidence adduced as to the alleged act?—Yes.

15. What was the decision of the Court?—The Supreme Court gave judgment in favour of Mr. Sutton. It decided the land belonged to Mr. Sutton.

16. When Mr. Rolleston and I visited Napier, with a view to a settlement of this matter, if possible, was that fact at all concealed, that the legal right to the land vested in Mr. Sutton?—No.

17 Then, was not this the position which Mr. Rolleston and myself took up in the matter: We understood it to be the direction or wish of the Assembly, as expressed by the Native Affairs Committee, that a compromise should be effected, if possible, in order to get this matter settled?—Yes.

18. I will put it plainer, so as to revive your recollection. Did I not say we understood it would be desirable that the Natives should concede something, that Mr. Sutton should concede something, and that the Government, on their part, should concede something, with a view to obtaining a settlement?—Yes.

19. And then I proceeded, did I not, to ask the Natives what they would offer on their part?—Yes.

20. And then, having received their offer—I need not go into the various offers made—having received it, did I not close the meeting by saying I would endeavour to arrange the matter with Mr. Sutton?—I do not know about that word of yours.

21. There was a shorthand report made of the interview?—You might have said so; I could not say

Mr. Bryce: I think I may stop the examination now I have brought it up to that point. Other members may perhaps like to ask some questions, and I shall have a further opportunity later.

Witness: I should like to make a further answer to one of your questions.

After some discussion,—

Mr. Bryce: I know The question was, was the fact that Mr. Sutton was the legal owner at all concealed during my visit with Mr. Rolleston to Napier.

Witness: I did not think what you said then had any reference to the legal estate of Mr. Sutton in the land; but what you said was, the thing was to be settled by each party making concessions. You did not say the land belonged to Mr. Sutton.

Mr. Bryce: Of course you are speaking from recollection. Will you [to the interpreter] read the resolution in view of which we were there?

The Chairman: The reports Mr. Bryce refers to will be produced. They are in the room.

Sir G. Grey: I think they had better be read, and we shall then be able to ask any questions upon them.

The Chairman: Mr. Rolleston, will you produce these documents?

Hon. Mr. Rolleston: These two documents are the reports for two separate days. They give a shorthand report of interviews between Mr. Bryce and Natives in Hawke's Bay, at the first of which I was present. This document correctly represents what took place at the first interview, at which I was present.

The Chairman: You can speak as to the first?

Hon. Mr. Rolleston: Yes; Mr. Bryce can speak as to the second.

[The clerk read the reports of two interviews between Ministers and Natives of Hawke's Bay.]

22. *Mr. Bryce* (to witness).] You have heard that report read, and have an idea as to its contents?—Yes.

23. Then I would repeat my last question, whether I did not close the meeting by saying I would endeavour to arrange with Mr. Sutton?

After some discussion,

24. *Mr. Bryce.*] As you have just heard the document read, and your recollection refreshed in the matter, would you answer that question. Have you any addition to make to the answer you gave to my last question, as to my settlement of the case being contingent on arranging with Mr. Sutton?—I am not clear, as you put this, that it would be contingent on Mr. Sutton's consent being given. What I remember you to say was this: "Now you have made your concession, have done as far as you can, I will go to see Mr. Sutton."

WEDNESDAY, 6TH JULY, 1881.

Mr. BRYCE, M.H.R., examined.

Witness: The difficulty in connection with this block of land is one of long standing, and of considerable notoriety I mention that because, if it were not so, I probably would have had nothing to do with the matter as Native Minister; it would have appertained properly to the department of the Minister of Lands; but, as it was connected with the Native difficulty, I took part in endeavouring to settle it. What I gather from papers, and from statements made by Maoris, is this: their contention is not impugning the grant in any way but their contention is they did not know, in fact, they were signing away this piece of land when they signed the deed for the larger piece. What has generally been known by the name of Omaranui consists of two parts, a larger and a smaller piece. I forget the acreage of the larger piece, but the smaller piece contains 163 acres, and that is the land now in question. I may say I understand this contention of the Maoris, that they did not know what they were signing, has not been uncommon on the part of Natives signing other deeds; but in this case there are circumstances connected with it that render it, at least in some degree, probable they themselves believe this contention to be a correct one. This is one of the circumstances: The larger piece of land, Omaranui proper, was under lease previous to the sale, but the smaller piece was not included in that lease.

25. *Sir G. Grey.*] Who was it leased to?—I forget the name. The lease was afterward sold to Mr. Sutton, I think.

Mr. Tomoana: It was leased to Mr. Braithwaite.

Witness: So that, other things apart, it seemed not improbable, at any rate, that they might seek to sell the larger piece without selling the smaller piece. That is one of the circumstances. I have been informed also, though I have not examined the deed for myself, that there is across the deed a line separating the two pieces—that is to say there is a line marking the boundary between the two pieces. These circumstances led me to the conclusion that it was not unlikely they might have signed this deed of conveyance to Mr. Sutton, which embraces the smaller piece, in error.

Sir G. Grey asked that this statement should be repeated.

Witness: It appeared to me not improbable they might have signed the deed, not knowing that it embraced the smaller piece, although as a matter of fact it did so. I apprehend some such reasons must have weighed with other Governments besides the one I was connected with; for I find pretty clear indications that Dr. Pollen, while Native Minister, expressed his willingness to assist in compromising the matter by a payment of money No doubt, also, the position of the matter must have been highly unsatisfactory to Mr. Sutton. The case had been before the Supreme Court, and this very allegation, that the Natives did not know what they were signing, was made before the Supreme Court. The decision of that Court was entirely in favour of Mr. Sutton, that the right to the land was Mr. Sutton's. Mr. Sutton then applied to the Sheriff to give him possession of the land to which he was legally entitled, but the Sheriff appeared to come to the conclusion that he had not force enough at his command to enable him to carry out the order of the Supreme Court; and the Government refused, and have throughout continued to refuse, to give the Sheriff special assistance in giving Mr. Sutton

possession of the land. In these circumstances Mr. Sutton petitioned the House, and the resolution which has been read, and which I desire to embody in my evidence, was the resolution arrived at by the Native Affairs Committee: "The petitioner states that he is the owner of a piece of land in the district of Hawke's Bay, known as Omaranui; that he gained a suit brought against his title by certain Natives in the Supreme Court and Court of Appeal, but that, nevertheless, the said Natives and others took possession of the land, and resisted the efforts of the Sheriff of the district to eject them by due process of law, declaring that they would never give up possession of the land while they retained life; that the Sheriff, in his return of the writ, has stated that he could not have enforced it without causing a breach of the peace, and that he had not sufficient means at his disposal to overcome the resistance which would have been offered; that the Supreme Court having accepted these reasons as a sufficient excuse for the non-execution of the writ, petitioner has received no benefit from the judgment of the Court, but has incurred costs to the amount of several hundreds of pounds. He therefore prays that means may be devised for enforcing the judgments, decrees, and writs of the Supreme Court of New Zealand. I am directed to report as follows: That the petitioner, as holder of the Crown grant, appears to have a legal title to the estate, but that it seems probable that the issue of the Crown grant did a wrong to the Natives, who for a long time inhabited 163 acres included in the grant. The Committee therefore recommend the Government to inquire into the case, and effect such a settlement as may appear fair, considering all the circumstances.—11th December, 1879." Government acted upon that resolution, and endeavoured to arrive at a settlement which, in terms of the resolution, should be fair. But no doubt they were moved by another consideration, and that is a desire to settle a difficulty which had existed for a long time, and which at one time looked as if it might produce bloodshed and serious disagreement between the races. Accordingly, Mr Rolleston and myself took advantage of a visit we paid to Napier to have a meeting with the Natives interested in this piece of land and others. At that meeting Mr. Sutton was present. What took place is fairly reproduced in the report already read to the Committee. The principle, if I may call it so, which we laid down for our guidance in the attempt at a settlement of this case was this: that some concession should be made by all parties; that the Natives should yield something; that Mr. Sutton should yield something; and that the Government—although, in my opinion, the Government had not been to blame—in the interest of peace and settlement, should be prepared to pay something for it. But I was careful on that occasion—as I have been on every other occasion in speaking with the Maoris on the subject, whether in public or private—to point out to them the legal right to the land vested in Mr. Sutton, and that it was not in the power of the Government to disturb that right. I then asked them what they would yield, what they proposed to do by way of concession? Several proposals were made, but it came to this at last: they offered 1,000 acres of land, which I valued at about £500, by way of concession on their part. I may state here, by way of parenthesis, though not strictly in my own knowledge, that I understand that offer has since been increased to 2,000 acres of the same kind of land. I said to them when I had received their offer, "Very well, I will receive your offer; Government are exceedingly anxious to have this matter settled, and I will try what arrangement can be made with Mr. Sutton." Accordingly I met Mr. Sutton, immediately after the meeting, and I asked him what he would do? Mr. Sutton expressed great dissatisfaction at the whole tone of the meeting as far as I was concerned. The position he took up was this: that the land was absolutely his—which I could not deny—and that therefore he had a right to its full value, and that it was the duty of the Government to place him in possession of his legal rights. I explained to Mr. Sutton I only felt at liberty to attempt a settlement providing a compromise could be effected, and that I did not feel at liberty to buy out his legal rights at the full value of the land. Of course, I ought to state to the Committee by way of explanation, in these offers I proposed to make, I could only go as far as I had power to go. It had to be confirmed by the Assembly for two reasons—first, that money would have had to be voted; second, that something had to be done to prevent Mr. Sutton being disqualified by the receipt of the money, under the Disqualification Act. Keeping that explanation in mind, I offered Mr. Sutton, as a contribution on the part of the Government towards the settlement of the case, £1,500, provided he would hand over his rights to the Government. I said, "If you want more, Mr. Sutton, say so; if it is only a little more I will consult my colleagues, but if you want much more I will drop the thing, as far as we are concerned—I shall not think it necessary to consult them. Mr. Sutton said, "The land is worth £28 an acre, and I do not see why I should take anything less than its value. I consider your offer of £1,500 is absurd." 163 acres is the quantity of the land. The negotiations stopped at that stage. I considered I had failed. I considered the Government had failed to effect a compromise. I left Napier then. Other negotiations took place afterwards between Mr. Sutton and the Government, and there was a proposal made that the Maoris should convey their title to another piece of land—a valuable piece—receiving whatever balance might be found to be due to them. But Mr. Sutton never departed from the position at first—namely, that the land was his, and that he was entitled to the full value of it; and that it was the duty of the Government to see he got his legal right. The attempts—the endeavours—to effect a compromise passed then from my hands altogether. I found I had failed, and they passed into the hands of other members of the Government. I do not know that I can say anything more. I have brought it up to the point at which I ceased to have an active connection with the matter.

THURSDAY, 7TH JULY, 1881.

Mr. BRYCE, M.H.R., further examined.

26. *Major Te Wheoro.*] When the Ministers of the Government met the Natives at Pakowai, was Mr. Sutton present at that meeting?—Yes.

27 What did the representatives of the Government then say to Mr. Sutton, in the presence of the Maoris, when the Maoris had made their concession?—The members of the Government said nothing to Mr. Sutton at that meeting at all; they were addressing the meeting, including Mr. Sutton. They were more particularly addressing the Maoris, but said nothing special to Mr. Sutton at that meeting.

28. Did the Minister ask the Natives to concede something, also Mr. Sutton to concede something, and that they themselves (the Government) would concede something?—That was the proposal. Yes.

29. Did not the Ministers consider it necessary that they should ask Mr. Sutton to make his concession during that meeting, in the same way as they asked the Maoris?—No; Mr. Sutton was not asked during that meeting at all. The position the Ministers took up at that meeting was this: to ascertain what concession the Maoris were willing to make. They were then going to act, as it were, for the Maoris and themselves, with a view to get a concession from Mr. Sutton. I may add, in explanation, the Government were desirous of settling the matter; and it was because of that desire that they did not think it right to enter into a full discussion with Mr. Sutton there, because that most likely would have produced a dispute, which would have prevented a settlement being arrived at.

30. Who authorized the officers of the law to seize the land while the question was pending, before Mr. Sutton had made his concession?—I had nothing particularly to do with that at the time, but I can tell Major Te Wheoro exactly how it happened, from documents I had before me. I am glad to have the opportunity to do so, because I omitted it in my evidence yesterday Mr. Sutton had obtained a decision of the Supreme Court that the land was his. He applied to the Supreme Court to put him in possession of that land. The Sheriff is an officer of the Supreme Court, not an officer of the Government—[Make that particularly plain, Mr. Carroll, if you please] It was the duty of the Sheriff to carry out the orders of the Supreme Court, which were that Mr. Sutton should obtain possession of this land. The reason he (the Sheriff) did not do that long ago was, that he did not consider he was strong enough to do it—that he had not a force sufficient to do do it—and the Government refused to supply him with a special force for the purpose, and even absolutely refused to give him any advice upon the question. They told him he was an officer of the Supreme Court, as Sheriff and must act as such, without looking to the Government either for special assistance or special advice. When he finally placed Mr. Sutton in possession of the land it was as an officer of the Supreme Court, and not as an officer of the Government. I know that that is the case, and therefore state it for the information of Major Te Wheoro and the Committee. By that time the matter had passed out of my hands.

31. After the Government had received a reply from Mr. Sutton on this question, what did they tell the Maoris?—They told the Maoris they had failed to effect the compromise they desired to effect. I instructed Captain Preece to tell them—the Maoris had gone before I left Napier. I told Captain Preece to tell the Maoris the negotiations had failed. I may say also that Renata Kawepo wrote me a letter, congratulating me upon having settled the case, because they from reports had heard that we had settled it. I replied—my reply will be found in the papers—I replied that in fact we had failed. But other negotiations were continued—there were other negotiations afterwards; and the only reason I did not speak on that point was because my evidence would necessarily be secondary; and the Committee have the power to get direct evidence. I could tell more from my knowledge, but mine would not be the best evidence. There is more direct evidence.

32. *Mr. Sutton.*] I wish to ask Mr. Bryce a few questions, as to what took place between himself and me after the meeting. I should like to ask him whether, previous to that meeting, or at any time, I had intimated my desire it should be settled in the way which he proposed—that I should take Government money for it?—No, Mr. Sutton's position from the commencement has been uniformly this: The land is mine; I am entitled to be put in possession. It is the duty of the Government to put me in legal possession of it.

33. Mr. Bryce, I understood, in his yesterday's evidence, to say he offered me £1,500. My impression is that it was £10 an acre, which would be £1,630; but what I want particularly to know is this: Did I not express my surprise, not only at the size of the offer, but also at the offer itself—the form of the offer?—Surprise at the form of the offer? I suppose Mr. Sutton did, for I remember his saying he did not see why the Government should pay money at all.

34. Therefore, at any time, I was a party to no offer on the part of the Government, to my obtaining money from the Government?—Not at any time previous to the meeting; but what I understood Mr. Sutton to say at that meeting was, that if he received the value of the land, he would not object to the title passing away from him into the hands of the Government. I understood Mr. Sutton, as far as my recollection goes, and I believe it is pretty accurate on the point, to say that he valued the land at £28 an acre, but subsequently he said, I think—I am not perfectly positive, but I am nearly sure—he said he would take £4,000. But it was always so far under protest that he did not conceal his opinion that it would be wrong—that is to say, there was no claim upon the Government to pay money In saying he would take the value of the land and part with it, he may have meant he should receive that money not from the Government, but from the Natives; that I cannot answer for

35. Did not the negotiations extend this far: that I said I was led to believe from what took place at the first meeting with Natives, that I had seen before, that the Natives were to place a piece of land of equal value, and that the Government were either to buy it and hand it to me, or hand the money to the Natives and let the Natives hand the land to me?—No. It is impossible it could have been so; because at that meeting of the Natives they had offered, not a piece of land of equal value, but a piece of land equal in value to about £500. That will be fresh in the memory of Mr. Sutton.

36. That is quite true, so far as the meeting is concerned, but——It is the meeting you refer to.

37 Did I not write to Mr. Bryce next morning, notifying him of my final reply to his offer, in which I said that the question of price was an important one, but nothing as compared with the question of principle?—I said at the interview I had with Mr Sutton that I had his final answer to this extent: that I had an answer which satisfied me. I had failed to effect the compromise I desired to do. I did next day, at any rate a very short time afterwards, receive a private letter from Mr. Sutton; but my recollection of that letter is that it was merely expressing his strong dissatisfaction at the course I had taken on behalf of the Government. It was a private letter.

38. *Sir G. Grey.*] Did you understand from Mr. Sutton that he was prepared to take £28 an acre for the land?—Yes; I have a very strong impression that he afterwards said he would take £4,000, but I do not feel sure, in fact, I scarcely think he expressed his willingness to take this from the Government

39. Then he must have meant he would take it from the Natives?—He must have meant from the Natives, not from the Government; but I think he left that question to a certain extent open. The Committee understand that any question of paying money through this case involved the disqualification of Mr. Sutton, of course.

40. *The Chairman.*] I understand all you did would be subject to the revision of the House?—No doubt; but Government would, if the offer had been accepted, have proposed it to the House with all the strength of the Government.

41. *Captain Russell.*] I think there is a question that has not come out yet. On what ground did you think Mr. Sutton would take so much less than the value of the land?—From certain circumstances which I pointed out yesterday, it seemed not improbable that the Maoris were right in their contention that they had signed the deed of conveyance without knowing it included the 163 acres, and, at any rate, there was the fact that the Maoris had for years, and were then, in what was really hostile possession of the land, although possibly not hostile possession in the eyes of the law These facts rendered the land of less value to Mr. Sutton than it would have been under ordinary circumstances.

42. You said that some of the grantees were supposed to have signed away the land without knowing they were doing so?—I said I supposed that was their contention.

43. Their contention? Are you aware how many grantees there were?—I should not like to say without reference to documents, but they are easily procurable.

44. I ask that question because I believe there were only two. I understand neither of the petitioners are concerned in any way in the grant. Do you know if that is the case?—I think that is the case. I should not like to say positively without having the deed before me.

45. Are you not aware the case was tried before the Supreme Court, and subsequently went before the Court of Appeal, and that the decision was that one of the Natives undoubtedly knew what he was doing, and that there was no evidence to show the other did not?—That might have been the impression left by the evidence. That might have been the evidence.

46. Was that the verdict?—The verdict was not that, that I am aware of

47 Supposing such to have been the verdict, would it not be natural Mr. Sutton should think he had a fair right to hold the land's full value?—It might be natural, whether that was the case or not.

48. *Sir G. Grey.*] Are you aware whether there was any promise of a reserve being made for the Natives when this land was bought?—I think not. No; I think not.

The Hon. Mr. ROLLESTON, M.H.R., examined.

49. *The Chairman.*] We will hear what you can state in narrative form, if you please, and any questions that suggest themselves can be put after.—Subsequently to the practical breaking down of the negotiations which were initiated by Mr. Bryce, and in which I was concerned, a proposal was made that another piece of land should be given by the Natives in return for being allowed to remain upon the Ngatahira Block. I had not personally anything to do with that negotiation in respect to Whareraugi; but I am aware, from papers in the office, that those negotiations also came to an end, because there was a difficulty as to the title to Whareraugi. So far as I know, that is the present position of the whole case—that further negotiations have failed, and the Natives have petitioned Parliament, as the Committee are aware, to obtain what they consider to be their rights in the matter. One point I should like to add, that I have omitted, that is, that during these negotiations the Natives increased their offer from 1,000 to 2,000 acres, which they were prepared to give up in order to carry out the arrangement suggested by Mr. Bryce and myself for the settlement of the matter.

50. *Mr. Bowen.*] What about the concession on the other side—by Mr. Sutton?—Shortly after that Mr. Sutton took possesion of the land.

51. *The Chairman.*] Is that all you can say?—That is all that occurs to me at the present moment. I shall be glad to answer any questions. As I have said, these matters are known to me from reading the papers, not from personal acquaintance with the subject.

52. *Mr. Tomoana.*] Was Whareraugi the first piece of land that was given by the Natives to you and Mr. Bryce?—No.

53. Then, according to your statement, Whareraugi was a subsequent piece?—Yes, subsequently; that is what I stated, when negotiations as to the first block had apparently fallen through, negotiations appear to have arisen with regard to another block of land quite distinct.

54. What was the first piece of land offered by the Natives?—I do not know the name, but it is that alluded to and spoken of in the statement read yesterday It is Te Kohurau.

55. Are you aware the Maoris gave up that 1,000 acres?—I am aware they offered to do so, and they were prepared to do so, as far as I know

56. And what you heard subsequently of the block, Whareraugi, do you consider it was the Maoris who were willing or who had offered that land?—I understood that one section of them certainly were; but one of the difficulties that arose in respect to the negotiations was that all the Natives were not willing, and that the land was incumbered with liabilities, which made the thing difficult to carry out.

57 Did you hear that the negotiations—the talk about Whareraugi—came from the Maoris, or did it emanate from Mr. Sutton?—I cannot say positively My impression is it emanated from Mr. Sutton.

58. You could not state clearly whether Mr Sutton told you that the land he wished for was Whareraugi?—No. I never had any communications personally about the matter, and I could not therefore state that positively I wish to withdraw part of the answer. [Question repeated.] I had personal communication with Mr. Sutton, with Mr. Bryce, on one occasion with regard to that question. I could not say that Mr. Sutton definitely asked for Whareraugi.

59. Do you know, or did you hear, of Paora Kaiwhata and Paora Torotoro being requested to come here to speak about this block?—The papers say they did.

60. Do you know whether it was through Mr. Sutton these persons were asked to come here to settle that question, on account of Mr. Sutton wanting the block Whareraugi?—I could not say, for I have no personal knowledge with reference to that.

61. *Major Te Wheoro.*] When the Natives offered 1,000 acres, and when the Government agreed to take that 1,000 acres, what did they do with it?—The Government agreed, when the Natives stated they would give the 1,000 acres, to do their best to bring about a settlement of the question by dealing with Mr. Sutton, but they never accepted the 1,000 acres. The 1,000 acres are not now in the hands of the Government.

62. Did not the Government attempt to offer Mr. Sutton that 1,000 acres when they got the consent of the Maoris?—I should prefer that question being asked Mr. Bryce, but my belief is the negotiations broke off.

Mr. Bryce: I never offered Mr. Sutton the 1,000 acres.

63. *Major Te Wheoro.*] In what position does the land stand now, that 1,000 acres, in connection with the Government? Is it still in the hands of the Government?—It is in the hands of the Natives.

64. Did the Government inform the Natives the land was in their hands, in a letter, upon their concession having led to no definite result?—I think the correspondence shows the Natives were told the negotiations had broken down.

65. Did the Government inform the Natives at all in any way that the 1,000 acres had fallen back into their hands, through failure in carrying out the negotiations?—I do not know whether any formal announcement was made to them of that, but it was evident from what transpired that the negotiations had failed, and that their offer, therefore, was of no avail.

66. *The Chairman.*] It strikes me the answer of Mr. Rolleston is a little likely to be misapprehended. I should like to put this question for the satisfaction of Major Te Wheoro. It is this: As a mere matter of course, that 1,000 acres belong to the Natives if the negotiations failed?—Certainly It was not Government land. It was simply saying this: "We will convey this land to the Crown on being called upon to do so, in the event of certain contingencies happening;" but they never were called upon to do so.

Major Te Wheoro: I was under the impression, I thought the land had been given over by the Natives to the Government. I would never have asked the question if I had not thought so.

The Chairman: Only conditionally

67 *Major Te Wheoro.*] However, I should like once more to be thoroughly clear as to whether the Natives did give up that land, or whether they only offered to give it up?—I understood distinctly they offered to give the land up with a view to a settlement, if a settlement could be made. They offered to give it conditionally upon the Government being able to make an arrangement with it.

68. *Mr. Tomoana.*] I want to ask the same question again. Did the Maoris offer to give up the 1,000 acres conditionally?—Yes, it was, as I understand it, an offer to give it up conditionally upon other parties coming into a common agreement.

69. The Natives said 1,000 acres will be given?—I understood the Natives agreed to give the 1,000 acres, if the Government could with that 1,000 acres make an arrangement.

The Chairman: There seems some idea in the minds of these gentlemen, although the negotiations with Mr. Sutton had fallen through, the Natives might be called upon to sell away—to part with that land. I think if we could get a sufficiently explicit word, we might clear that up. I think I see that is the difficulty We want it clearly understood by them that the Government have no claim whatever upon the land, only while they can arrange for the other piece.

70. *Captain Russell.*] Have the Government any claim whatsoever upon this 1,000 acres?—None whatever.

Mr. Tomoana: Why I asked the question was, because it was put this way—it was answered this way: That the land was offered by the Natives if certain conditions could be carried out. I wish to say that the land was given up by the Maoris as their part towards the settlement of the difficulty I do not know of any word, no definite word, from the Government returning that land to the Natives.

71. *Captain Russell.*] I would like to ask whether, the negotiations with Mr. Sutton having broken down, the Government has any claim whatever or any right over this 1,000 acres?—The Government has no hold whatever upon the land.

72. And the land is the property of the original owners?—It is the property of the original owners.

73. *Mr. Sutton.*] Can Mr. Rolleston inform the Committee whether the owners of Te Kohurau, or any one of the grantees of Te Kohurau, ever consented to this arrangement?—I understood the Natives who offered this to the Government were entitled to do so—were the Natives entitled to make the offer.

74. I should like to ask whether or not among the papers there is a letter from Captain Preece, informing the Government that either three or four of the grantees were no parties to it, and had nothing to do with it?—I do not recollect that.

Mr. Bryce: The point was raised very distinctly in the report read to the Committee.

Sir G. Grey: I think Mr. Bryce gave evidence on that point yesterday—that the Natives who offered this land were authorized to; that there was no objection on the part of the owners to give it up.

Mr. Bryce: Yes; it was the Natives who said arrangements could be made.

The Chairman: The Government were satisfied they could get the land.

Mr. Bryce: Yes; that is so.

75. *Mr. Sutton.*] In reference to the Wharerangi Block, I should like to ask Mr. Rolleston whether my contention throughout the whole of the negotiations was this: that Wharerangi belonged to the same people, but that Te Kohurau did not; and that I was willing to accept Wharerangi in exchange, and to pay the balance in value upon a fair valuation, but that I would not take the other block?—I did not conduct the negotiations with Mr. Sutton about Wharerangi, and I do not know what passed thereon, except what appears on the papers.

FRIDAY, 12TH AUGUST, 1881.

Mr. ORMOND, M.H.R., examined.

76. *The Chairman.*] Mr. Ormond, will you state what you know of this case in the form of a narrative, and any questions which suggest themselves can be asked afterwards?—In the first place, I would say that I was a member of this Committee at the time this case, I believe, was last under its consideration; and a resolution was then come to by the Committee in reference to this case, as far as my recollection goes, to this effect: that Mr. Sutton was legally possessed of the land, but that the Natives had a substantial grievance; and the Committee recommended that the Government should inquire further into the whole case, and endeavour to settle it upon a basis of concession on both sides. As far as I remember, that resolution was unanimously carried by the Committee. The next step that I know of in connection with this matter was when two members of the Government, Mr. Rolleston and Mr. Bryce, the late Native Minister, came to Napier. That was prior to last session of Parliament. I saw these two gentlemen, and conversed with them about various matters; and I understood that their chief object in coming to Hawke's Bay at that time was to endeavour to effect a settlement of this Omaranui case and the dispute at Waipawa; and that the settlement was proposed to be carried out on the basis of the recommendation contained in the report to which I have referred. As I had been more or less connected with the Natives concerned in this matter in my former official capacities, the members of the Government to whom I have referred asked me to assist in bringing about a settlement of this matter of Omaranui. I very gladly agreed to do anything I could with regard to that which was the Native part of the matter; with the part regarding Mr. Sutton, I told them I thought they were the proper persons to take any action. I then, acting upon the wish of the members of the Government, put myself in communication with Tareha, Tomoana here, and other Natives concerned. I had several interviews with them, and represented to them the decision the Committee had come to: that there must be concession on both sides, and that they must be prepared to make concessions; and I told them what I understood to be the decision of the Government as to in what direction that concession should be made. What I told them, and what I understood the particular members of the Government to whom I have referred authorized me to say to them was, that they must make a substantial concession in the shape of land, not necessarily there, but rather elsewhere; that then the Government—if they made a concession satisfactory to the views of the Government—that the Government would then deal with Mr. Sutton; that the law would have to be vindicated in any case by their going off the land, but that the endeavour would be to effect a settlement which would secure them this place in the end. At first there was some little difficulty, but in the end—perhaps after one or two days, but I forget now—they agreed. I strongly advised them, and they agreed to make a concession of land. I may say that Tareha was the principal man who directed the people on this occasion. Several blocks were talked about, but in the end one was pitched upon as the one which they could most easily give, and which had the advantage of the Natives concerned in Ngatihira having some interest in. Then the question arose about the extent. I do not remember very clearly what part I had to do with that. My recollection is that I understood from the Natives they were going to make the best bargain they could about the extent, but that practically they were going to do whatever was required of them. Practically, I had very little to do with that part of the matter—the settlement as to the acreage and so on. As I have said, I knew that was only a matter of bargain, and that the thing was practically arranged. The Government, in the end, accepted the concession of so many acres—I forget the acreage. I understood that acreage represented the same amount in value which the Government had decided was the concession they would require from the Natives. A meeting then took place—there might have been meetings before, I do not remember—a meeting took place with the Government, at which this was agreed to. I was not present at that interview. I was not present at any of the public interviews that took place between the Natives and the Government; but after it was over the Natives came to me and told me it was a settled matter, and satisfactorily, and that they understood the Government would then endeavour to settle with Mr. Sutton. I think they told me also that he was present at the interview that had taken place between the Natives and the Minister. I should say here, I never told the Natives in my communications with them that the settlement with the Government was conditional upon a successful settlement with Mr. Sutton. I have a most distinct certainty that I was never so told during the interviews I had, and the conversations I had with the members of the Government on the subject. If I had been, there was such an important point involved in it that I have no doubt at all I should have made it perfectly plain to the Natives. My understanding, on the contrary, was that Government were going to carry out the decision of the Committee. I had nothing, then, to do with what took place between the Government and Mr. Sutton, but I was informed—I forget now who by, but I think by Mr. Bryce—that the negotiations had failed with Mr. Sutton; that they had made what they thought liberal and sufficient proposals to Mr. Sutton, but that he had declined to accept them. I heard nothing more about this matter until, I think, shortly before last session. I think it was in the month of April, 1880, that I received from Mr. Bryce a telegraphic communication, saying that Mr. Sutton was in Wellington in reference to this matter, and represented to the Government that the Natives were willing to make an exchange of another block, or rather to give another block of land; that this block was called Whareangi; and that he believed he could make a settlement with the Natives in this matter if the Government assisted. Mr. Bryce asked me to ascertain whether the Natives were likely to agree to such an arrangement. I replied that I would put myself in communication with them and ascertain. I sent for them and was them, and asked them whether they had proposed or entered into such an arrangement, and they said that was the first they had heard of it. I had, after hearing from Mr. Bryce, made some inquiry as to the position of Wharerangi, and ascertained that the Natives were not getting much benefit from it—that it was leased for a considerable term, and mortgaged to such an extent that the interest upon the mortgage pretty well consumed the rent. I desired to get a settlement of this matter, if possible, and I advised the Natives—I personally advised them—to consider whether they would not see whether some arrangement could not be made with this other block, Wharerangi. But as Wharerangi was a

block of very much larger acreage than this block of Ngatihira—one being 1,800 acres and the other 150, and both being in valuable positions, one not so much so as the other, but still of considerable value—what I told the Natives I would do was this: I would advise them to see whether they could not agree to an arrangement to exchange, based upon the valuation either of the whole of the block, or, if not so, that of such a part as would be equivalent in value, by a valuation made by valuers appointed by Government or by the parties concerned to settle. They put the question to me at the time, whether or not this would be destroying the agreement that had been come to before. I said "No," I did not think it would. I meant their considering this would not prejudice the position—that was what I meant. They would not give me any answer the first day I saw them, but they fixed to come in either the next day or the day after that and give a definite answer. They came in as appointed, and they said they had considered it and absolutely declined, but that they would adhere to the arrangement made with the Government. The reason they gave was: in the first place they did not want to break through the agreement they understood they had made, and, in the next, that the people interested in Whareraugi were not the people concerned in Ngatihira. I wrote out, in their presence, a telegram to Mr. Bryce, telling him the result of the interview; and I may say I pressed them over and over again to think otherwise, but they declined, and at last I wrote out a telegram. I would not telegraph what they said, that it was a determined reply, but that they had declined it now I did not hear any more of this matter until last session, and then I heard from them from time to time. They came to me—Tomoana and other Natives who came down here on this matter—and told me they were in communication with the Government about it, and they told me what was going on, mainly about possible exchanges with this Whareraugi Block. Nothing, I understood from them, was done during last session about it; and the next I heard was: I met Tomoana one day on the railway platform at Hastings, and he produced a telegram from Mr. Hall, the Premier, to him. The telegram, in effect, was that Government had failed to make any arrangement with Mr. Sutton, and told the Natives it was now for them to deal with Mr. Sutton, with whom rested further action in the case. Tomoana asked me what that meant? I told him I did not understand the telegram. As far as I understood it, I did not see how the Government could have sent such a communication to him. I asked Tomoana then, when he had last heard from Mr. Bryce about this matter, and he said that for some time past Mr. Bryce had had nothing to do with it, that Mr. Hall had for some time had charge of the dispute. I had had no communication at all from the Government, as to their altered action in the matter, of any sort or kind. After that communication to Tomoana, the Natives came a good deal to me just about that time—Tareha and others—and asked me whether I thought Government should withdraw in that way from the arrangement. I said I did not understand at all how Government could do so. I saw the Natives again several times after that. They came to me, and they told me Government was still going on with the negotiations with them about the exchange of Whareraugi and Ngatihira, after this telegram, and that Captain Preece, the Native Officer, was conducting the matter. At last, one day, I heard of Mr. Sutton, with the Sheriff's officers, going to Omaranui and getting possession of the place. The Natives saw me about that afterwards, and asked me about it—asked me what they could do, and so on, and my advice to them was to petition Parliament on the subject. They told me at the time—I am not sure if it was not on the very day the place was taken possession of, but at least it was within a day or two—that they had met Captain Preece, and had then been in communication with him about the exchange. A little while after Mr. Sutton had got possession, Tareha came into Napier, and let me know he wanted to see me, and I went to see him. He went, first, over what took place between us when I was advising them to make the first concession to the Government. He asked me, as he proceeded with each point, as it occurred, whether it was right, and I agreed. He then said to me that they had agreed to that course upon my advice. He said I had, from my past association with them as representing the Government in former times, and that, being left to them, as he put it, in place of McLean, their old friend, that they had relied upon the advice I gave them—that they had acted upon it; and he wound up by saying to me that through taking my advice he had sacrificed his people, and that I had handed him over to his enemy, Sutton. Those were the words he used. He finished by saying he had nothing more to say to me. I can state to the Committee I never felt so humiliated in my life as when I had that communication made to me. I never saw him again. He died about a fortnight afterward. I think that completes all I know about this matter. Anything I have heard of it since has been from hearsay

77 *Mr. Sheehan.*] You have been for many years in public offices in Hawke's Bay?—Yes.

78. Besides being the head of the Provincial Government of Hawke's Bay for some years you also held the position of Agent for the General Government in that district?—Yes. It was in that capacity I meant I had been in communication with the Natives so much.

79. As such, of course, this matter came before you, and required your very gravest consideration? Yes; it came in various ways before me.

80. Did you ever, from your own knowledge of the facts, make out what you thought would be a fair settlement of the difficulty between Mr. Sutton and the Natives. Or, to put it more plainly, what would you—if the opportunity came for a settlement—what would you think would be a fair settlement of the difficulty?—The exact form of settlement recommended by the Committee in its resolution, with which I entirely agreed.

81. Did I understand from the evidence which you have given, at the time possession was taken by Mr. Sutton under the Order of the Court, that the negotiations were even then actually going on between the Government and the Natives?—The Natives told me at the very time negotiations were going on, either on the very day or the day before the seizure. That I only know from what they told me.

82. Was it on that occasion that Tareha expressed himself to you that you had deceived him?—Yes.

83. There was one matter not brought out. I put the question in the interests of both sides. Was Mr. Sutton aware of the nature and extent of the negotiations?—That I am not aware of; I had understood he was present with Mr. Bryce when the Natives were communicated with. I understand you refer to that occasion you are talking about now, just before the seizure.

84. Yes?—That is the time I mean.

85. It is quite possible Mr. Sutton was not aware of these negotiations?—All I heard was from the Natives. I had no direct communication except with the Natives. They came to me, as of course they would, from my communications with them, as I have related. I understood from them that Mr. Sutton was with Mr. Bryce. I should think the papers would show that.

86. Had you any idea, while so engaged in endeavouring to settle the question, that possession of the land would be taken in the way it was done? While I was engaged in bringing the Natives to a concession I understood that Government were going to carry out the resolution of the Committee as to concession on both sides. I also understood Government were to get a concession from the Natives —that the Natives were to obey the law by moving off the land, but in the end were to get it back again; that their concession was to be land elsewhere, and that Government were going to settle with Mr. Sutton by a money payment to him. That I have already given in my evidence.

87 *Hon. Mr. Rolleston.*] Did the Natives never tell you they were informed by Mr. Bryce that sooner or later the law would have to take its course, if a settlement were not made?—No. When they saw me, after the final interview with Mr. Bryce, they told me they looked upon the matter as settled; and that settlement was they were to go off the land to vindicate the law, and that the land was to come back to them, and that in this concession of land they had done all they were to do. They never told me there was to be any other concession. I should like to add to that, that I never knew and never heard otherwise—that there was any foundation for any different circumstances, until Mr. Bryce told me so since I came to Wellington. I had been told that I was under a misconception as to the arrangement between the Government and the Natives, but not actually on this particular point. In other words, I never heard until I came to Wellington what I understand appears upon the notes of Mr. Bryce's evidence—that Mr. Bryce told the Natives that his arrangement with them was conditional upon his arranging with Mr. Sutton. I never heard that till I came to Wellington this session.

88. Was it not natural—would it not be understood that in a case where a settlement would be the result of mutual concession, that all parties must be brought into harmony before anything like a positive settlement could be made?—No. That was not my understanding of the spirit in which the resolution of the Committee was passed. Of course I could not tell what was in the mind of the Government. I only say what my own view of the feeling of the Committee was.

89. You did understand Mr. Sutton dissented from the arrangement within a short time of what passed between the Natives and the Government?—What I understood from Mr. Sutton was, that he declined to accept the terms Government offered. I mean, I look upon it in a different way altogether from the way in which you put the question. My view, I should like to say, was this—in my mind it was this way: That Government had got the opinion of the Committee, after inquiry, and that it rested upon them to carry it out. My idea was that the proper course to take—as I understood they were taking—was to make both parties to concede that which was necessary to give effect to the recommendation of the Committee.

90. What power did you consider Government had to compel Mr. Sutton to consent to come to the agreement that was contemplated by the Committee?—The course that I think should have been taken was to have left the matter in the state it then was; and then, if power was wanted—as I supposed would be—to come to Parliament, and have asked Parliament to pass a Bill to give effect to the decision of the Committee, and I should have stayed the action of the law until that was done. There was one point I think I omitted in giving my evidence, and that was one the Natives had made constant inquiries of me about. It was this: They wanted me to explain to them how it was the matter appeared to be taken out of Mr. Bryce's hands, as Native Minister, and to go into the hands of Mr. Hall as Premier? I could not give them any explanation of that.

91. *The Chairman.*] Did you see Mr. Sutton during these negotiations—I mean upon this subject?—I do not think I had any communication with him upon this subject. I had some time after. I think just before Parliament met I had one or more communications in writing from Mr. Sutton, expressing dissatisfaction with the course Government were taking; but I had no occasion to meddle in it, and I did not take any notice of it.

92. *Mr. Sutton.*] Upon what evidence before the Committee on the last occasion this petition was here did the Committee find the Natives had a substantial grievance?—I cannot answer, of course, for the Committee; but my own opinion was founded upon my belief that the going of this land to Mr. Sutton was a pure matter of accident, and that the Natives never sold it.

93. Have you seen the documents in reference to this matter—public documents, in possession of the Government?—I take it I had seen all the documents in the hands of the Government up to the time of the decision of the Committee to which I referred.

94. Is there anything at all in those documents to lead one to believe that my claim is not only a legal one, but also an equitable one?—I cannot speak now on my knowledge of the documents, but I simply express my opinion, from my knowledge of the case, that this is really the position of it.

95. Then, I presume that is a private impression—not an impression gained by any evidence, or any documents?—I should say I think that is the general impression in Hawke's Bay If you had the people here, all would say that was the general impression, or almost so.

96. Then it was, as a matter of fact, altogether baseless so far as anything in the documents went, or anything official at all?—I will not say that at all. I have known the history of this thing from the very beginning.

97 Individually, or through other sources?—Through all the information upon the matter.

98. Could you explain to the Committee why you thought it a proper thing I should make any concession at all?—I have already said, in giving my opinion, that it was a matter of accident that that particular piece of the block came into your hands.

99 Is that supported by evidence?—It is supported by my opinion and all the facts that came before me.

100. Is it not a fact that that point was tried in the Supreme Court and decided by a jury?—Yes, I believe it was. My recollection of the Supreme Court, I should like to add, is—I am only speaking from memory now—that a number of involved issues were submitted. I read the evidence, and I came to a different conclusion from the jury upon it.

101. Do you think it reasonable that, after a matter has been specially tried in the Supreme Court and judgment given in form, that the party obtaining the advantage of that judgment should waive his claims in deference to private impressions?—It is a matter of opinion that, entirely It depends entirely upon what the view of the person concerned was, and what is his position.

Mr. Sutton (to Chairman): I was here during the whole of the evidence the last time the petition was here, and I am prepared to say there was no evidence before the Committee as to the justice of any mutual concession.

Witness: I may say that I did not give any expression to any such opinions as Mr. Sutton has obliged me to express now, before the Committee on the last occasion.

102. *Mr Sutton.*] How did you think the Government could have stayed the action of the Supreme Court?—My opinion is this: that when Government took up the case, and took into their hands the dealing with it, as I understood and believed, on the basis of the decision of the Committee of this House, they were fully justified in taking the course I say I should have taken if I had been them.

103. Is there any law in this country authorizing such interference by the Government with the Supreme Court?—I believe it has been the practice of more Governments than one to give instructions to judicial officers in cases where it was thought necessary in the public interests to interfere. In reference to this very case, there was that instruction given to take certain action, when Mr. Tylee went with a force. Again, at Waipawa, I think, similar action was taken—that is, the officers had instructions to take a particular course. I understood that was the case formerly at Omaranui. I should like to say, about Waipawa, that I do not know for certain about that recent action there. That is my belief, but I may be wrong about it. I may be allowed, in explanation of what I said as to instructing the officers as to the Waipawa case, to say this, that the local history given of it was something like this: that the police were there, as it was understood, with instructions to prevent a breach of the peace, if any such was likely to take place.

104. But you are certain, upon the first occasion of the attempt to serve a writ upon Omaranui, that the officers of the Court were directed by Government?—I believe Government gave instructions. I will not say they did, but I believe it was so. That is my recollection of it.

105. And that the Sheriff was instructed not to execute the warrant if there was the least show of resistance?—I did not say that. I should not like to say anything direct of that kind. My belief is the Sheriff had instructions, which in reality directed the course he took.

106. *Sir G. Grey.*] I think I understood you to say you agreed with the report of the Committee in this case?—Yes. It was agreed to unanimously

107 Were you the person who drew up the resolution which embodied the thing?—No. I think the resolution was drawn up by yourself.

108. Therefore your action was independent?—Yes. My opinion was based upon what I knew of the case. I cannot say what the general opinion of the Committee was based upon.

109. But I mean you voted for that resolution on thoroughly independent grounds?—Yes.

MONDAY, 15TH AUGUST, 1881.

Mr. SHEEHAN, M.H.R., examined.

110. *The Chairman.*] Will you state, Mr. Sheehan, what you are able to in reference to this case?—I only desire to show the Committee, from the facts of the trial in Hawke's Bay—to put that before the Committee, in so far as it may help to show there is some equitable right on the part of these people to this land.

111. Were you present?—Yes, I was present; the papers should show that. The land had been put through the Court, and dealt with, I think, before my arrival in Hawke's Bay to attend the Commission; and I believe that it forms part of the block at the end named Omaranui or Moteo, which was dealt with by the Commissioners—which came before the Commissioners. But I acted for the Natives afterwards in the Supreme Court proceedings, and at the trial of the case a number of issues were found to some extent in favour of one of the Native plaintiffs called Rewi Haukoro. As the whole of these proceedings have been reduced into writing, I think it would be better, perhaps, if the Committee had the best evidence on it. I can procure the record of the case, showing what took place, and what the findings on the issues were. The burden of it is this: On some of the issues the jury found this man Rewi Haukoro did not understand that, in the sale of the large block—of which the piece now in dispute forms a part—he was leasing, or selling, or mortgaging his interest.

112. *Captain Russell.*] The people who signed this petition, I believe, are not the people to whom the land was Crown granted. Is that the case?—Yes, they are not the persons to whom the grant was issued. [After referring to petition.]

113. Is it not then probable that the grantees may have behaved improperly Looking at these signatures, should you not imagine many of the men signing the petition are really not interested at all?—I cannot say Probably some would have a claim. I think Hohaia Te Hoate would have a claim.

114. Should you imagine it possible or probable that the grantees defrauded the claimants?—Well, I should imagine that would hold good in the case of Paora Torotoro. As I understood at the time, the land was being surveyed for putting through the Native Land Court. There was a separate survey made of this particular piece, which was shown on the Crown grant, if I remember right, and also on other documents of title. The jury found, in the case of Paora Torotoro, that he was leasing, selling, and mortgaging this particular piece; and, in that case, I should say Paoro Torotoro was defrauding in reference to this particular piece.

115. That is, he sold the land without consulting the residents upon it?—Yes.

116. And that, in fact, the residents did not sell that, by not being consulted?—Yes. Of course I can only refer to it indistinctly at this lapse of time, but there was evidence as to what took place in the Native Land Court, which came out in the trial. It appeared the Natives wished to have two grants instead of one—that is, a separate grant for Omaranui and for Ngatihira. It was held by the

Court that this was not necessary—that and could act for themselves over this land, and, that being so, Paora did get this by fraud. As the matter stands now there is the verdict of the Court in Mr. Sutton's favour, and, I understand, by this time, at least, his title is unimpeachable under the Land Transfer system. The only thing I should like to have brought out, is in the findings with reference to Rewi Haukoro's interest in the matter.

117 *Mr. Sutton.* At the time of the trial was there any suggestion on the part of either side that what took place at the time the land passed through the Court could have any affect upon me at all? —Nothing transpired at the trial of the case which would have given the Court to understand that Mr. Sutton was present at the Native Land Court, or was concerned at the time the land went through the Court.

Mr. SUTTON, M.H.R., examined.

118. *The Chairman.*] What were the names of the Natives upon the original Crown grant?—Paoro Torotoro and Rewi Haukoro.

119. These were the names of the persons you bought the land from?—These were the names of the persons I dealt with.

120. Have you read the names on this petition?—I have.

121. Is either of those two names upon it?—No; four of those names have never claimed any interest in the land, directly or indirectly

122. There are seven names on the petition? Six out of the seven have never claimed any interest, direct or indirect, in the matter. I had not previously noticed the two other signatures.

123. Out of the seven, which is it that has claimed an interest?—Hohaia te Hoate. He is one of the Natives who has resided on the land, but he has no right to it.

124. Did any of the other six live on it?—Of the other six, none of them have ever lived upon it.

125. When did this one man go to live on the land?—I cannot say; he has been living there some time.

126. You have heard all the evidence that has been given, including all the documents put in, or at least quoted from, by Ministers?—Yes.

127 After hearing that, have you any statement to make?—I do not know that I have seen all the documents. I have heard all that have been referred to.

128. After hearing the evidence that has been given, have you any statement to make to the Committee?—I can scarcely understand whether the petition is against me or against the Government. I do not consider in any way my piece of land at Omaranui is open to adjudication.

129. That will be for the Committee to consider. Have you any statement to make?—I was present during the whole of the inquiry in the session of 1879 on my petition. I heard the whole of the evidence, and have read the whole of the documents produced, and I know of no evidence that was given to the Committee, or documents, that would lay a foundation for this portion of the Committee's report: "but that it seems probable the issue of the Crown grant did a wrong to the Natives, who for a long time inhabited the 163 acres included in the grant." When this case was before the Committee first, I, as the petitioner, asked simply that the orders of the Supreme Court should be carried out. I had obtained judgment in the Court at considerable cost to myself, as well as a great deal of annoyance, and the Court had issued instructions to the Sheriff to take possession and hand the land over to me. I had reason to believe at the time, and that is completely established by the evidence which has been given the Committee on this occasion, that there was a power behind the Supreme Court which prevented this order being carried out. I did not anticipate, nor did I intend, on my petitioning in 1879, to accept any compromise. I had the right to think that, having fought my action in the Supreme Court, I was entitled to the judgment of that Court, and I have adhered to that point. Some time last year the two Ministers, Mr Bryce and Mr. Rolleston, came to Napier, as I understood, principally for the purpose of arranging this matter. Previous to their arrival I had informed them I expected the order of the Court to be carried out. A meeting took place, which Mr. Bryce has very correctly described in his evidence on this matter. I was present at that meeting. The Natives present, after negotiation with the Minister, offered a block of land over which they had an interest, but in which neither of the grantees of Omaranui were concerned, and only one of the persons living on the land was concerned in this land. The land was 1,000 acres, a portion of a block of 8,000 acres, which was let for £100 a year on a lease with seventeen years to run, and with a valuation for improvements on the land. The majority of the grantees of that block were not only not interested, but were at absolute enmity with the hapu interested in Omaranui, and had never been consulted by their co-grantees in that arrangement; so that I consider that offer was never before the Government in any tangible form. Shortly after the meeting was over Mr Bryce had a conversation with me, which was the first he had had with me on the subject. This was in March, 1880. Mr. Bryce offered or suggested that he would offer—I am not certain that he made any definite offer—that Government were prepared to pay £10 an acre—£1,630. I said I was not aware I had offered it to the Government; that I was not prepared to take £1,630 from any one for it, and that I would not take it from the Government. Mr. Bryce asked me to think the matter over and let him know in the morning. I wrote to him early next morning and said that I had further considered it, and that my first impressions were only intensified, and that with the objection—first, as regards the principle; and, secondly, as regards the amount of the settlement, I should have nothing to do with it. I said it was a question on which no Government money should be expended; that the Supreme Court had decided no harm had been done to the Natives, and the Natives were as much entitled to submit to the orders of the Court as any one else. There was a good deal of correspondence after that between the Government and myself. I was asked whether I could make any other suggestion, or something of that sort. I said, "I have always told the Natives I will take land anywhere. I had no objection to the biggest hilltops in the country, always provided it was of the same value as Omaranui In conversation with some of the Natives—I forget now who, but I fancy it was Tareha—they asked me "Could you suggest any other land that might be exchanged?" I said I would inquire, and would take a few days to look into the matter and let them know Upon examination of the records, I came upon a block called the

Whareraugi Block, which is situated about four miles from Omaranui. It is granted to four grantees, three of whom are directly interested in Omaranui, and the other is a very near relative. I thought that that, at all events, was an argument in favour of this exchange being more fair than the other. Paoro Torotoro was a grantee in both, and a near relative of his named Waka Kawateni, who is since dead, was a grantee in Whareraugi. A Native named Pera, and another named Hemehona, were the remaining grantees of the block. These men are both dead, but their sons lived on Omaranui; one of them is Hohaia, and had lived there some years; so that it seemed to me, as far as interest went, this was an eminently proper block to talk about. Whareraugi Block is inalienable from sale, lease, or mortgage, further than twenty-one years, except by consent of the Governor. It is 1,825 acres, or 1,835 acres, in extent—1,835, I think. It is leased for £100 a year upon a lease which has nine years to run. The rents of the lease are mortgaged for £970, I think, at 10 per cent. interest, so that there has been no rent paid or likely to be paid for Whareraugi during the currency of the lease. I offered to take Whareraugi and give them back Omaranui, and let the difference of price which I was to pay be settled by ordinary arbitration, they appointing one and I the other. At my suggestion, Government sent for some of the leading Natives in Whareraugi during last session to come to Wellington—three or four of them. A meeting was held in one of the rooms of this building between the Natives, myself, and Mr. Cooper. The Natives went back to Napier, having informed the Government they would call the people together and talk this matter over, and probably get the thing arranged in a few days. I went up to Napier during the session expecting to be able to get something settled. When there, I could see there was an unseen power somewhere working against it, and nothing came of it. I telegraphed to the Government the position of the matter and received in reply this telegram, dated the 28th July, 1880: "Government cannot agree to put pressure on Natives to sell Whareraugi. If Government can see its way to secure you £2,500, will you take that to settle business." My reply was: "Have informed Government months ago that I will accept no settlement that I am not prepared to defend in Parliament. I understood that Government would insist upon the surrender of Omaranui as the substitution of Whareraugi upon arbitration basis. I have only asked for what I have every reason to believe I am entitled to, that is, possession of Omaranui, and have agreed to accept its value in another way" After that, so far as I know, no negotiations took place between the Government and the Natives. I have reason to believe there were documents somewhere in the Government offices reflecting upon my conduct in the matter, and establishing a state of things which has been a good deal talked about—namely, that I had become possessed of Omaranui by a legal fluke —that I had no equitable right. That view of the question has been taken on several occasions by Ministers in Parliament. Ministers have stated in their place in Parliament that Government had in their possession documents very prejudicial to me. I applied to see these documents. I have not been able to see them. Documents were laid upon the table last session in answer to a question of mine, but there was nothing in those documents which would carry out that impression. I understand that one document of a rather important nature is missing from the record.

130. How do you understand that?—I was informed so by Ministers last session. It is impossible for me to say what the contents of that document were. I have seen nothing and heard nothing to justify the statements which have been made in reference to my action in this matter. I am not aware at the present moment upon what grounds such statements have been made in Parliament. I am certain that this difficulty could have been very easily settled at the commencement. I have ascertained that, on the first supposed attempt to execute the writ at Omaranui, no attempt was made to execute it, and all these garbled accounts which have been put in evidence here, as to threats of bloodshed, are pure invention. Neither the Sheriff, nor his Bailiff, nor the Inspector of Police, who accompanied them, ever left the trap during the time they were there. They were instructed to bring about a failure, and they did it.

131. By whom? How do you know they were instructed to do that?—I think Mr. Ormond admitted they were instructed. When giving evidence here I asked him: "And that the Sheriff was instructed not to execute the warrant if there was the least show of resistence?" Answer: "I did not say that. I should not like to say anything direct of that kind. My belief is the Sheriff had instructions, which in reality directed the course he took." I have seen the Sheriff's officers' written instructions.

132. Were you present on the 5th March, 1880, at the interview between Mr. Bryce, Mr. Rolleston, and the Natives at Napier?—I was.

133. Mr. Bryce in his evidence, and Mr Rolleston also in his evidence, stated that Mr. Bryce at that interview said that it would be incumbent upon all three parties to make some sacrifice towards a settlement—that is, Mr. Sutton as the holder of the land, the Natives who claimed the land, and the Government, as representing the country You heard that said?—I heard that. I should say previous to that, in February, I received a letter from Government in which this occurs: "The question is an exceedingly difficult one, and can only be settled by a disposition to assent to a compromise by all those interested." I replied immediately, I was aware of no obstacle or any difficulty in carrying out the orders of the Court, and was not prepared to make any compromise. So Government, at all events, were perfectly aware of my intentions. That letter is dated the 18th February, 1880. Mr. Bryce's visit was in March.

134. You were present again on the 8th March, at the adjourned meeting of the same parties?—Yes.

135. Now, at either of these meetings on the 5th and 8th March, having heard this proposal of Mr. Bryce's, did you express any dissent from the principle laid down?—I was not referred to at all. Mr. Bryce addressed himself to the Natives; and I did not think it was my place to take any part in it.

136. Where you not there as one of the interested parties, just as the Natives were?—No doubt I was there as an interested party, but I had no information of what nature Mr. Bryce's proposals to me were to be.

137 Between the 5th and the 8th March did you repudiate this mode of settlement?—I did not know what the settlement was to be until the 8th March. On the first occasion the offer was a general one.

138. If I understand it right, at the first meeting on the 5th March the principle I have just spoken of was laid down by Mr Bryce?—That was a suggestion that they should give a piece of land.

139. On the 5th March the suggestion was made by Mr. Bryce, as shown in his evidence, that Mr. Sutton, the Natives, and the Government were all to give something towards a settlement?—Yes; Mr. Bryce did say that. So far so I was concerned this was unauthorized.

140. That was on the first occasion?—Yes.

141. And, if I understand your answer right, upon the first occasion when that offer was made you said nothing?—I said nothing. Mr. Bryce did not address himself to me at all. He did not ask any opinion from me.

142. Then you were present again on the 8th March, at the adjourned meeting?—Yes.

143. At that meeting it was that the Natives offered 1,000 acres as their contribution to the settlement?—Yes.

144. You were present then?—Yes, I was present.

145. Then between the two dates—the 5th and the 8th March—did you repudiate the proposed mode of settlement?—The Government never asked my opinion at all, and never spoke to me about it. I only saw the Ministers when with the Natives.

146. I want a clear understanding as to what occurred between the 5th and the 8th March. On the 5th the principle was laid down in your presence, and on the 8th the principle was again laid down. The Natives on their part agreed to give 1,000 acres of land. I want to know if, from the time the principle was first laid down on the 5th in your presence, until the 8th, did you say or do anything to lead Mr. Bryce or Mr. Rolleston to believe you would reject their overtures?—I certainly did nothing to lead them to believe I would accept anything.

147 Did you take any action at all to give your state of mind to them?—I do not see that I could. They were not available. They were away from town on other business between the dates, all the while. The days between the meetings were Saturday and Sunday The first meeting was on Friday, and the second on Monday I wrote this letter, which conveys my impression pretty clearly, on the 9th March "The arrangements proposed yesterday do not meet my ideas in any way Had I been at all aware that a settlement of that kind was contemplated, I should have at once stated my objection I was not aware till yesterday afternoon what the proposal was. Up to that time I had been led to believe that the Natives would provide land of equal value, which they would sell to the Government, receiving funds wherewith to pay me. I could name at once half a dozen arrangements of that kind much more suitable than this Kahurau business. My first impression yesterday was quite against a settlement upon the terms proposed, and further consideration assures me that, while the question of amount is an important one, it is nothing as compared with the principle, which I consider is highly objectionable. I want it settled, but I want it settled in such a way as will be fair to myself both privately and publicly; and, in the interests of the Government as well as my own, I feel bound to say a better settlement will have to be made."

148. That was written on the 9th March?—Exactly; and delivered early in the morning.

149. But between the 5th and the 8th March nothing of this kind was said by you?—I did not see the Ministers at all between the meetings. I saw them on the days of the meetings. As far as my recollection goes, Mr. Harding was waiting for an appointment with Mr. Bryce after the first meeting on Friday, and he was engaged with Mr. Harding all the remainder of that day and all Saturday

150. You say you proposed to take Wharerangi at a valuation, and to give up Omaranui?—Yes. I proposed to buy Wharerangi and sell Omaranui, and give the difference in price on a valuation.

151. You heard what Mr. Ormond said about the Natives with regard to that,—that they stated distinctly to him they had never authorized you to tell the Government they were willing to sell Wharerangi?—I do not know that they did. They asked me to suggest any piece of land which would be suitable for exchange. I told them, situated as Wharerangi was, I could not say what the purchase-money would be—that it was a very intricate calculation, but that it was certain, if it came to a bargain, they would have several thousand pounds to receive.

152. Did you know that the owners of Wharerangi, from the beginning, refused to negotiate upon that basis?—No; I am not certain they did not: quite the contrary I had Tareha's positive authority that Wharerangi would be exchanged. There were the same owners interested as in Omaranui; in three cases they were exactly the same, and in the other there was a near relation.

153. Did you know Paora Torotoro was connected with Wharerangi?—Yes; he was connected with both.

154. Did he not object to the selling of Wharerangi?—Tareha said he did not. I have heard that he did at first, but that his objection was withdrawn.

155. Has not Paora Torotoro, as a matter of fact, objected from the very beginning to Wharerangi being alienated?—I really cannot say I have not had two conversations with Paora.

156. But he was deeply interested in it?—Yes; he was deeply interested. But I had all conversations in reference to it with Tareha. Paora was here (in Wellington), and I think he made an objection to it. I may say I never wanted Wharerangi at all. I only suggested, if they particularly wanted to keep Omaranui, this was a probable thing upon which a fair bargain could be made.

157 Of the four grantees of Wharerangi, did ever any more than this one—that is, Hohaia—offer to enter into this arrangement?—I cannot say at all. I never took much trouble about Wharerangi. Tareha, after the Sheriff took possession, asked me if I would accept Wharerangi on the same terms as were offered before. He said he was authorized by these people to say that it would be agreed to by the grantees of Wharerangi.

158. When did you come into possession of this land first? When did you buy it?—I cannot say I think it was in 1870 or 1871.

159. How much was there that you bought? What area?—3,573 acres, I think.

160. How much did you pay for that?—£2,500, I think. I am not quite certain it was not £3,000. I think it was £2,500.

161. You sold a portion of it?—I sold a portion of it that was under lease to Mr. Braithwaite. I sold it to him.

162. For how much did you sell the leased part?—£3,000.

163. What was the area of that?—3,410 acres, I think.

164. Do you remember that you said in your evidence in 1879 that this 3,400 acres was first-class land?—I do not think in 1879 I had ever been over the land. There is a great deal of it first-class land. At the present moment I do not know the exact boundaries of the Omaranui Block, and the Rahuarui Block that is adjoining. At the present time that property is in the market, and I hear that the owners expect to get £17 an acre. It will be sold in October.

165. What do you value the 163 acres at?—£4,000. I have refused two offers of £3,500 for it. Both offers were from very responsible men. One offered half cash, and the remainder on mortgage of the property at 8 per cent. interest; and the other offer was for a mortgage upon another property Both offers were perfectly good.

166. In 1879, when you were examined, you gave in a paper in connection with the land-tax. It was valued in that at £3,000?—Yes; I think it was, so far as I can remember.

167 Are you aware Government got a valuation made of it in August, 1880?—I heard Government had had a valuation made. I do not know that I heard it very officially I may say I am privately aware of it. I am also informed the valuation was £20 an acre. I am not certain whether that is correct or not.

168. Twenty-one pounds an acre?—It was somewhere about July or August last, I believe.

169. Do you think that too low a valuation, then?—I have been offered more for it by two gentlemen as well acquainted with it as any one in Hawke's Bay: one owns the adjoining land, and the other gentleman is the present leaseholder of land in the neighbourhood.

170. There is a wire fence upon the land?—There are two, I think.

171. Who put that up?—I did not. I suppose the Natives did—one fence, and probably the Bank of Australasia the other. Out of 163 acres there was about 130, I think or perhaps 120, enclosed in a fence along the road.

172. Have you any idea of the value of the fence?—I have not. It was not worth much. I have had to pull it nearly all down and re-erect it. It is almost all new fence there.

173. When you took possession of this land were you resisted? You went to take final possession, and did get possession: were you resisted?—No; there were only three or four people there—one old man, and, I think, all the rest were women.

174. Have you been interfered with since?—No; they have been pleading here *in formâ pauperis* that they have got no other land. They find now they have a block of 1,500 acres good land, which is three miles away, upon which most of them are living.

175. After you had got possession, you had a conversation with Tareha?—Tareha sent a messenger to me, the same night I think, asking me to see him next day at Waiohiki.

176. You met him?—I met him. Tareha said, "I am not going into what has led to this. Of course we have always held we were right, and you have always said you were. The Court said you were right. We are prepared to submit to the orders of the Court. But what I want to talk about is these two things: I want to talk to you about, in the first place, Whareraugi." I said, "Yes. What about Whareraugi?" He replied, "We understood, some months ago, you would have no objection to put Whareraugi in place of Ngatihira. You would appoint some one to say what Whareraugi is worth, and we would appoint some one; and that you would pay the difference. Are you prepared to stand to that offer now?" I said, "Yes; if the grantees of Whareraugi wish it. All I want Omaranui for is for what it is worth, and I have no objection to make an exchange even now"

177 But did he say anything about this land—about getting possession again of Omaranui?—Only upon that basis. He said, "I will see my people, and will get the grantees all together to-night. We will have a meeting and will let you know" He said, "Another thing I want to speak to you about, that is, the corn—the crops." Of course the crops were not ripe in December. There were maize, oats, barley, wheat, potatoes—and altogether there were, I should think, about seventy or eighty acres in crop. He said, "What about the crops?" "Well," I said, "in the meantime, your people will not go upon the land in the way of ownership. They have been on the land since and threatened to turn my men off." He said, "Yes, but I have told them to withdraw and go away" I said, "Well, you can take the whole of the crops. I will instruct my men to allow the Natives to obtain the crops without being restrained. I only stipulate you shall take the crops when they are ready to take off." He expressed his consent, and performed his part of the bargain rigidly, and I performed mine. The only thing I stipulated was that I should have full possession of the land in March, in order to get it ploughed. He said, "I will meet you again to-morrow or next day, in Napier" I met him next day, in town, and he said he had called the Whareraugi people together and had a meeting, after I left, the night before, and he was now authorized by the tribe to say he could deal with Whareraugi upon the terms that had been suggested before. He said, "Mr. Donnelly is not here. He is in Taupo. I will wait for a few days, possibly a week, and will then give the name of the man to act for us and decide the price of the land. We will appoint a man after I have consulted with Mr. Donnelly" I do not know that I heard anything more about it after.

178. If they were all so anxious to change, how is it it fell through?—I do not know at all. I believe it fell through. I am under the impression that Paora Torotoro did give his consent to a certain extent—I have no correspondence with him at all; that was from what I had heard—and that he subsequently withdrew it. I did not pursue the matter further.

179. Did Tareha at the interview say anything about Taupo, or men coming to the district having given his people any advice to re-enter?—I do not think he did. I heard something about it, but not from Tareha.

180. Did he give you to understand at that interview that the reason you were not opposed in taking possession was that, trusting to the offer of the Government, they had allowed you to take possession quietly?—No, he did not say anything of that sort at all. He said the Natives had received letters from the Government to the effect that all arrangements with me were off, and that they would have to be settled with me direct. I think it was Tareha told me that. It was somebody in connection with it told me so.

181. Did you give the Natives to understand when you went to take possession, or shortly before it, that you had the sanction of the Government for the Sheriff to take possession of it?—I did not say anything to the Natives at all about it. I considered I was there by the orders of the Supreme Court.

182. Did you tell the Sheriff Government had given you authority?—I think I did. I had an official letter from the Government.

183. Had you authority to push for possession?—I had a letter dated the 5th November from which I will read: "The various important questions put by you in that letter [2nd October] have now been carefully considered by the Government, and I have the honor to state, in reply, that the Government will not interfere with the Sheriff in the execution of his duty, nor with yourself in any lawful steps you may think it proper to take for the purpose of enforcing your legal rights."

184. Do you call that authority to push for possession?—I did not consider I required any authority from Government.

185. No; but did you consider that an authority? You say Government had given you authority, and now you quote from a letter. Is that the only thing that authorized you to push for possession?—I showed the Sheriff this letter.

186. Is that the only thing you have?—I called upon the Sheriff immediately, and gave him notice to execute the orders of the Court, which I conceive I had the right to do without any authority from Government.

187 I do not dispute your right. I am only asking whether Government had given that authority, and whether that letter be the only authority you based that assertion upon?—That is the only authority I got from Government. I fancy there was a correspondence between the Sheriff and the Government, but that I do not know The Sheriff positively told me he refused to act until he received from the Government something of that sort.

188. *Mr. Tomoana.*] Who are the persons you say have no interest in this land?—Henare Tomoana, Peni Temuera, Menaena Hohaia; and Paora Kaiwhata is supposed to have an indirect interest.

189. Can you trace our genealogies—our Maori ancestors?—No; I fancy the Native Land Court did that.

190. When the land was before the Native Land Court, were these two persons put in the Crown grant simply on their own individual claim?—I do not know at all. That is simply the business of the Court. I was not present in the Court, and knew nothing about it.

191. Did you not know that Paul Kaiwhata had a claim to that land?—I have said Paul was recognized by Mr. Braithwaite, the lessee of the land, that he had a claim, although his name is not in the grant. I have never been able to ascertain why he was recognized.

192. You say you did not know any claim I may have to the land?—No, I never heard of it—that you had established any claim to the land.

193. I might have a claim to that land according to Maori custom without your knowledge of it?—That may be; I am speaking of the English usage in reference to it.

194. Did you say that Temuera was never living on this land?—I never knew him to live there.

195. Do you not know that Temuera is related to Paul Kaiwhata, and in this way he is an elder branch of the same family of Paul Kaiwhata, and that he is a sort of uncle to me?—No, I did not know that. If I had I do not consider it would make any difference in my position with regard to the land. They are not grantees of the land.

196. Do you not know that I gave evidence in the Supreme Court as to the boundaries of the land?—Yes, as concerning the grantees. I understood not as to your own right.

197 Did not the Judge ask me if I had a claim to the land?—I cannot say

198. You say the owners of the land which the Maoris proposed to give are not interested in Omaranui?—Which land—Kahurau? I say that some portion of the grantees of Kahurau—there were three or four who had not been consulted, and would not consent, and were not at all related. I do not think a single one, excepting only Paora Kaiwhata, had any interest in the two blocks. I believe neither of the grantees of Omaranui is included in the Crown grant of Kahurau.

199. Do you not know that people living on this disputed piece of land were owners of Kahurau?—No. I say they are not. Some portion of them were in the Kahurau grant.

200. Did not Hohaia consent to give up Kahurau?—Possibly he may, but the whole ten did not consent. I understood five of these ten had never been consulted. Two or three came to me when they heard the thing was talked about, and told me they had not been consulted, and would have nothing to do with it.

201. If any single grantee of Kahurau was disposed to sell his interest in the block, could he not do so?—He could not give a title to the whole block. I never had anything to do with Kahurau at all. All I know is, I happened to be in the room when Kahurau was talked about.

202. Where was it that Tareha told you that Government had written to them, telling them they (the Government) had thrown down the thing?—Tareha did not tell me that, I think, but Government told me they had informed the Natives so, and Mr. Ormond in his evidence said you had shown him a telegram to that effect.

203. If you had gone on to Ngatihira on your own authority, do you think the Maoris would have allowed you to take possession of the land?—I went on the authority of the Supreme Court—the highest authority in the colony

204. Was it not because the matter was in the hands of the Government, and the Natives considered it so? Was that how you got possession of the land?—I do not know at all. I understood from the Natives themselves, and from the Government, that the Natives were perfectly aware that the Sheriff was going up there some days before he went.

205. Do you not know that there was a writ issued by the Supreme Court before for Ngatihira to be taken by the Sheriff?—Yes.

206. And the Natives resisted the execution of that writ?—The Natives, like every other person, I consider, must obey the orders of the Supreme Court. If any Europeans had resisted the Sheriff they would have found themselves in gaol.

207 Do you not think the Natives resisted on that occasion simply to bring out a more thorough and satisfactory settlement of the question?—They had no right to do that after the Supreme Court had given orders they were to go off. They were setting themselves up as a superior authority to the Supreme Court.

208. If the judgment of the Supreme Court in every respect had been fair, why has the question been brought up now? Why has it assumed this shape?—The Court said the land was mine, and I ought to have had it five years ago; and some one will probably have to pay me for having five years' use of that land.

209. Did you give the grantees £3,000 in money for that land?—I think it was £2,500 I gave them, and that I sold the leased part of it for £3,000 about six months afterwards.

210. How much did you give the grantees in cash for that land?—I gave them £2,500 in cash. Not all was in cash, but the bulk was in cash. There was some store account.

211. Was not the bulk of that amount in spirits?—Certainly not. They did not drink more spirits than you did when you were doing business with me. They always paid for whatever they got, and they never obtained much. I think there was £70 or £80 worth.

212. Did you give any cash to Rewi?—Yes.

213. How much?—I cannot say now I gave what was due to him. There was never any question about payment in cash.

214. Did Rewi allege, in the Supreme Court, he had never received anything in cash at all for that land?—I do not know

215. Did not Rewi state in Court he only owed you £100, and beyond that he owed you nothing?—He never owed me anything at all. He paid his debt, and never owed me a penny since.

216. Did you think I excelled the others in drinking spirits at that time?—No; I do not say that. They were all very moderate. I do not think at all you consumed the quantity of spirits some people do.

217 Did not you think Paora strongly addicted to drink?—No; I did not think so. I think Waka at one time was. He was about the only one who went to excess at that time. He did not obtain his supply from me. I do not think the Natives drink as much spirits as the pakehas do, as far as my experience goes.

TUESDAY, 16TH AUGUST, 1881.

Mr. SUTTON, M H.R., further examined.

218. *Captain Russell.*] You stated yesterday, when the writ of ejectment was first to be served by the Sheriff, that the Sheriff, his officer, and the Inspector of Police, went in a cab to the ground, and did not get out of the cab?—Yes.

219. That, of course, is only from hearsay?—It is from the officers themselves.

220. Then, did these officers lead you to understand they did not attempt to carry out their duty?—I did not understand until some time afterwards how things had been brought about.

221. When you became aware they did not get out of the cab, did they lead you to suppose they had intentionally abstained from duty?—I have seen a letter from the Government to the Sheriff directing him not to take any steps until the arrival of Mr. Ormond, who would instruct him. I have seen Mr. Ormond's memorandum since.

222. Who signed the memorandum?—Mr. Ormond, I believe.

223. I mean from the Minister to the Sheriff?—I am not certain whether it was a letter or a telegram. My impression is it was a telegram from Sir Donald McLean.

224. You have said, I think, the instructions were to the Sheriff to achieve a failure?—To take no active steps to carry out the order of the Court: if there was any resistance, or any show or talk of resistance, they were not to attempt it. They interpreted their instructions, as I am informed, in this way They were met by a few Natives; and an honorable member of this Committee was present, who addressed the officers, and said they must not take possession, or something of that kind; and no attempt was made.

225. Was any reason assigned for such a course in the instructions from Sir Donald McLean?—No. That memorandum or telegram, whatever it was, was simply directing the Sheriff that he was not to execute the orders of the Court until he had consulted Mr. Ormond.

226. What was Mr. Ormond's position at the time in the matter?—I think Mr. Ormond was Minister for Public Works at the time. I am not quite certain, but I think so.

227 Then, it would have been Mr. Ormond in his official capacity either as Minister or General Government Agent?—I do not think it was in any official capacity as Minister at all. It was, in my opinion, an extremely improper assumption and interference of a Minister. I do not hold at all that it came within the scope of any Minister's authority

228. But would it not have been as a question of public policy they thought it inexpedient to give effect to the writ?—It was no more a question of public policy than the case of an ordinary writ to a European.

229. What year was this in?—I can hardly say without reference. Probably it was the end of 1874 or in 1875.

230. There was a very strong impression, was there not, in the district at the time that resistance would have been offered?—No. I do not think there was. I had every reason to believe that such resistance as was offered was got up; it was not spontaneous.

231. There was a second occasion of serving the writ—a second attempt to take possession, was there not?—Only the one unsuccessful one and the successful one.

232. The impression your evidence leaves on my mind is that you imagine it was not a question of public policy, but something personal to yourself, which led to that action?—Quite so. That is my impression, that it was not so much a question of public policy as for other reasons. Public policy was the blind.

233. That is a very serious statement to make. Do you really wish that to be taken as you say it?—That has been my impression for some time. I should be very glad to be able to alter such an impression.

234. But still it is a fact, is it not, that people who have lived upon the land were not in the Crown grant, and therefore these may have felt seriously aggrieved?—Yes, it is a fact they are not in the Crown grant. But I brought a separate action in the Supreme Court against them to eject them, and I also obtained a verdict against them. They were trespassers.

235. What I meant by the question was, under the circumstances, is it not probable the real occupants of the land may have felt very seriously aggrieved by being turned off the land, and therefore it had assumed a political aspect?—I have every reason to believe, with a full knowledge of all the facts and all the circumstances connected with it, that unless the Natives had been led to believe resistance would succeed there would have been no ill-feeling at all about it. There were not, at that time, a dozen men living on the land.

236. Do you happen to know at all why the occupants of that land were not included in the grant?—No; I do not. Within the last few days I have read the evidence given by the surveyor at the time this action was tried by the Court in Napier. He produced his books and notes, in which his instructions were to survey the whole block. He was very positive then that the including the 163 acres in the survey was not a mistake. I was not personally acquainted with the block for some years after that, and I certainly could not suggest any reason why these people were not included in the grant.

237 Do you know whether Paora Torotoro and Rewi Houkere ever had lived on this land?—I do not think so. They never have since I have known them.

238. The evidence is conclusive to my mind the resident Natives did know of the selling. Do you not think it possible the occupants of the land would not have consented had they themselves been aware this piece was being put in?—I cannot say There was no law nor practice for them to be there. They were there not in accordance with the orders of the Court—they were not legally there. For all I know, they may have been trespassers all along. In purchasing a piece of land I should always deal with the persons I found holding the legal title, and with no one else.

239. What I want to arrive at is, whether the real occupants of the land had been injured by the grantees, and therefore, being a political question, whether it should not have been ascertained whether compensation was due to them for a miscarriage of justice?—I suppose, unless we go behind the Crown grant, we are bound to suppose these people, at all events after the issue of the Crown grant, were trespassers; and therefore I cannot see there is any claim by them. I cannot see that they have suffered any wrong or any deprivation at all.

240. *Sir G. Grey.*] I think you said you gave £2,500 for this land?—Yes. That is for the whole block of 3,573 acres, I think.

241. Was that paid in money or goods?—Part in money and part in goods. The larger portion was paid in money

242. How much was paid in money?—I cannot say from memory

243. Have you any documents to show?—Of course I have the books showing it.

244. Then we could get direct evidence on that point if we desire it?—The books are in Napier. No one but myself could get them. They have been locked away for the last seven years.

245. These books will show the goods supplied to the Natives?—Undoubtedly

246. Were accounts rendered to the Natives?—Yes.

247 I mean, were the accounts absolutely given to them—were there bills for the goods?—They were all offered, but were very seldom taken. The Natives generally came in and inspected the entries in the books periodically In this particular case, my impression is there were not many invoices—perhaps not more than eight or ten—during the transaction. I know there were some, but not many, as a rule.

248. At the time of this trial in the Court of Appeal was the property mortgaged to you?—I cannot say.

249. You cannot say that?—I cannot say that. It had been mortgaged, and had been free for a long time. I think at that particular time it was not mortgaged.

250. What is the name of the person it was mortgaged to?—I am not certain that it was under mortgage at that time.

251. Could we ascertain that?—I do not know what the Committee has to do with my private affairs of that sort. I should be most happy to answer if it had anything to do with the question.

252. I think it has something to do with the question. I should like to know the name of the person it was mortgaged to at the time of this action?—I cannot say My impression is, just at that time it was not mortgaged.

253. Whom was it mortgaged to?—I think it very likely it was mortgaged to the Colonial Bank, as far as I remember. I am not certain. I know it was once mortgaged, and it was mortgaged to no one but the bank.

254. Never to any one but the bank?—No. I believe now, at the very time of the trial in Napier, so far as my recollection goes, my solicitor went to the Colonial Bank for the certificate of title. That would show it was then under mortgage to the bank.

255. *Mr. Tawhai.*] How many times was the Omaranui Block surveyed?—I do not know I never heard of it being surveyed up to that time but once.

256. Do you not know there was a separate survey of Omaranui, and a separate one also of Ngatihira?—The surveyor's evidence is very distinct that there was not—that it was one survey I never even heard the name of Ngatihira until two years after it occurred. No man in Napier would know at that time where Ngatihira was.

257 Then did you hear from the surveyor that his survey was uninterrupted by the Natives—that he was allowed to make his survey without opposition?—I never spoke to the surveyor about it in my life, that I can remember. I heard him give evidence in Court. He was produced by the Natives. His evidence was that he had been instructed to survey the whole of the land, and he had surveyed it

with the assistance of the Natives. When he had done the outside boundaries, on the suggestion of Mr. Braithwaite and the Natives he did survey the boundaries of Braithwaite's lease.

258. As you listened to the evidence of the surveyor in Court, did you hear him state who the Natives were that consented to the survey being made, and actually pointed out the boundaries and assisted him in the survey?—I did hear him state the names of one or two Natives, but I cannot remember who they were. He said there were Natives present in the place at the time.

259. Did you ever hear of a dispute among the Natives themselves about ploughing a portion of this land?—No.

260. Do you remember, on one occasion, Tareha and his people going on to this land armed with guns to fight for a piece of it that was being under the plough at the time?—I never heard of such a thing. I do not think such a thing could have occurred without my knowing it. I never heard of Tareha going anywhere with guns. If that occurred I think it must have occurred long before the land went through the Court.

261. I mean before the land went through the Court, but since ploughs were in use?—I do not know It may have been

262. *Mr. Tomoana.*] Was that land mortgaged first before it was bought?—Yes; the whole of the land was mortgaged.

263. Was it not leased before that?—A portion was leased some years before that—four or five years, I think.

264. Whom was it leased to?—Mr. Braithwaite.

265. Was it after the land was leased that a survey of it was made?—Yes, it was; and then a new lease was executed after the survey It was an informal lease which existed three or four years, I think, before the survey The land was then surveyed, and a new lease was then made for twenty-one years from that date.

266. Whom was the second lease in favour of?—Both were in favour of Braithwaite, as far as I remember. I only know that from rumour.

267 When that land was under lease, what was Braithwaite's occupation at the time?—He was a bank manager in Napier.

268. When the second lease had been drawn up, whom was the land mortgaged to?—To me.

269. Was it to you Braithwaite mortgaged the land?—Braithwaite never had the ability to mortgage. He was the lessee. He only held a lease of the land.

270. Do not you know of a previous mortgage to any other person over the same land?—There could not possibly be one. Braithwaite might have mortgaged his lease, but he could not mortgage the land. He could not put any mortgage upon it that would affect the Natives.

271. Did you not know that a Mr. Maney was connected with a mortgage over that land?—No, I never heard of it. Maney had nothing to do with the land for some years after that.

272. Was it after you had got possession that Maney had anything to do with it?—Braithwaite sold to Maney two or three years afterwards.

273. *Major Te Wheoro.*] You had not bought the land at the time it fell into Maney's hands?—I had bought the land five years before that. Maney had never anything to do with it until three or four years after I had sold to Braithwaite. I am not quite certain as to the dates.

274. Did not Braithwaite tell you that Ngatihira—this portion, the 163 acres—was to be excluded from the sale? When you got the land, did not Braithwaite inform you the 163 acres was cut out of the block?—Certainly not. When I sold to Braithwaite, he instructed his solicitor to prepare a conveyance for the whole block, including the 163 acres, and threatened me with legal proceedings providing I did not sign a conveyance for the whole block. He found, on reference to the writings between us, that I had sold what was leased to him only He then offered me £500 extra to include the whole of the block. I said "No; I wished to stick to the bargain simply

275. *Captain Russell.*] With reference to the question asked you now, that there were two surveys, was there not one when the land was originally leased, and one when the land went under the Land Transfer Act?—The survey for the Land Transfer Department was a very recent one, indeed—only in the last year or two. I do not know how it happened, but I got my land through the Land Transfer Department without any fresh survey There has lately been a survey made by the Bank of Australasia. There was no survey before my certificates were issued. I think probably the Land Department has got a little more particular since.

276. *Sir G. Grey.*] Who was the interpreter who interpreted and explained the deed of mortgage to the Natives? Mr. Martin Hamlin, I believe.

277 Who was the interpreter who explained the deed of sale?—The same gentleman, Mr. Martin Hamlin, I believe. As far as my memory serves, Mr. Hamlin was the only interpreter who had anything to do with the contract.

278. *Mr Sheehan.*] You were aware at the time of the purchase of the block that you bought the whole of the land, including the reserve?—Yes, the whole block. There was no question about it.

279. Was there not a survey of the land made for the purpose of the Land Transfer Department before your certificate was issued?—I have a very strong impression, almost amounting to a certainty, that there was no survey made at the time of issuing my certificate. The only surveys I know of at the present moment are the original survey, and Mr. Rochfort's survey of the remaining portion of the block for Land Transfer purposes. I do not think these 163 acres have ever been surveyed more than once.

280. Did you buy the block entirely on your own account, or with Braithwaite?—Quite on my own account, and in opposition to Braithwaite.

281. *Sir G. Grey.*] Has the order of the Court of Appeal in reference to the payment of costs been carried out?—It has not. I have been put to the expenses of two actions in the Supreme Court and one in the Court of Appeal in this matter, and very large expenses in connection with the Sheriff, and have not recovered a single penny except the taxed costs of the appeal, which were paid, I understand, by a gentleman who had executed a bond. I believe I have been put to expenses amounting to £500 or £600, which I am entitled to recover from the other side. There is one little matter I have

forgotten before. In looking over Mr Bryce's evidence, I see Mr. Bryce said that at the meeting in Napier he stated he had authority to carry out the wish of Parliament. I wish to put in evidence that, as far as I know as a member of Parliament, Parliament had expressed no wish in the matter. This Committee had sent in a report, but the report was not supported by any resolution of the House. Of course, if the Ministers had said they were acting upon the request of the Native Affairs Committee, that would be perfectly correct. I remember Mr. Bryce making the assertion, and I see he mentioned it in his evidence.

282. *The Chairman.*] You wish simply to record your view upon it?—Yes.

TUESDAY, 13TH SEPTEMBER, 1881.

Mr. SUTTON, M.H.R., further examined.

Witness: I have read the declaration made, I think, in January, 1874. When that declaration was made, it was true in every respect. I was advised by my solicitor that "tenant-at-will" simply meant a person in occupation without any authority. I had no reason to believe that the persons on the land claimed any interest in the land. That belief was justified by proceedings which I afterwards took in the Supreme Court against those Natives, to which there was no defence; and, if my memory does not altogether deceive me, the solicitor for the defence withdrew his defence in Court, and judgment was given in my behalf: and I should like to say that the declaration, as the Committee will see, was made some months before any suit was commenced—some four or five months, I think. That declaration was made in January, 1874. The first suit was commenced against me in August, 1874, apparently, by this.

283. *Sir G. Grey.*] At the time you made the declaration, did you know that any person had any claim on the estate or interest in the said land, in law or equity, in possession or in expectancy?—Certainly not.

284. Did you believe that there was no person in possession or occupation of the said land adversely to your estate or interest therein?—Not in legal or equitable occupation. I knew these persons were squatting there—I stated so in the declaration. I then believed, and still believe, they had no right there.

285. Did you believe that the Natives who were there were, in fact, tenants-at-will?—As I understand the term tenants-at-will to mean. They were on the ground without any title.

286. You believed they were there in that way? Yes; without any title. I am not quite certain as to the exact legal meaning of the term tenant-at-will. That (the declaration) was advised by a solicitor, and the Registrar himself was a solicitor, and was perfectly cognizant of the circumstances of the case. I should like to add that, so far as my recollection goes, the writ was issued a shorter time after that declaration than those proceedings seem to show I have a very strong impression that the writ was issued within a couple of months at most: that is my impression. That paper says that the writ was issued in August, 1874.

287 *The Chairman.*] Were you examined on this point at the time of the trial—about this declaration under the Land Transfer Act?—I am not quite certain. I know that the whole of the documents were produced before the Court, and I was examined on them; but as to that particular point I am not quite certain. The Registrar was subpœnaed to produce all the documents in his possession, and he produced them in Court.

APPENDIX I.

Papers relative to the Petition of Paora Kaiwhata and Others No. 61, 1881.

QUESTION asked by COLONIAL SECRETARY at request of NATIVE AFFAIRS COMMITTEE, and OPINION of LAW OFFICERS on same.

COPY of resolution passed by Native Affairs Committee, 22nd August, 1881: "That the opinion of the Law Officers of the Crown be obtained as to whether the question of the issue of the Crown grant for the Omaranui Block can be raised by *scire facias* or otherwise, and whether the conveyance of the land in question to Mr. Sutton can be revised by any legal tribunal"

REFERRED to the Solicitor-General.—THOMAS DICK. 31st August, 1881.

HON. COLONIAL SECRETARY.—The above questions are rather too vague to enable me to answer them satisfactorily at present. Of course Mr. Sutton's title, if disputed by some one who alleged that he held a better title in law, could easily be tested in a Court of law. But if the question means whether the Natives who say that they were beneficially interested under the grant to the persons from whom Mr. Sutton derived title can dispute Mr. Sutton's title in a Court of law, I can reply at once that I do not think they could do so successfully, unless the legality of the grant had first been settled. So long as the grant remains in force, and Mr. Sutton has a complete title from all persons legally interested under the grant, his title is, in my opinion, unassailable in a Court of law *Primâ facie* I should say that the legality of this grant could be tested by proceedings by *scire facias;* but I could not answer this question definitely without seeing a copy of the grant, and being informed of any circumstances connected with its issue which would throw light on the subject of its validity.—W MILLER LEWIS, Assistant Law Officer. Crown Law Office, 3rd September, 1881.

The DISTRICT LAND REGISTRAR, Napier, to the SECRETARY for STAMPS, Wellington.

Copy of Declaration.

SECRETARY for STAMPS, Wellington.—I, Frederick Sutton, of Napier, storekeeper, do declare that I am seised of an estate of freehold of fee-simple in all that piece of land situated in the Puketapu District, portion of the Omaranui Block, numbered 3N, marked B, containing 163 acres, be the same a little more or less [here follows description in full], which piece of land is of the value of £1,200 and no more, and is portion of the Omaranui Block, marked B, originally granted to Paora Torotoro and Rewi Haokore by grant dated the 14th day of July, 1866, numbered 2515 in the plan of the Puketapu District, as delineated on the public maps of the province deposited in the office of the Chief Provincial Surveyor. And I do further declare that I am not aware of any mortgage, incumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest in the said land at law or in equity in possession or in expectancy, other than is set forth and stated as follows, that is to say, *nil.* And I do further declare that there is no person in possession or occupation of the said lands adversely to my estate or interest therein, and that the said land is now occupied by Hohia and others, aboriginal natives, whose names I do not know, being tenants at will; and that the land is bounded by the property of

J. B. Braithwaite on one side, John Bennett on another, and the Tutaekuri River on the other side; and that there are no deeds or instruments of title affecting such land in my possession or under my control, other than those enumerated in the schedule hereto or at the foot hereof. And I make, &c. Declared the 15th January, 1874, before Hanson Turton, D.L.R.—J M. BATHAM, District Land Registrar. 6th September, 1881.

The CHIEF JUDGE, Native Land Court, to the CHAIRMAN, Native Affairs Committee.

SIR,—I have the honor to inform you that I have telegraphed to the Registrar to send at once telegraph copy of proceedings of Court in the matter of Omaranui Block.—I have, &c., F D. FENTON, Chief Judge.—Wellington, 19th September. The Chairman, Native Affairs Committee, H. R.

The REGISTRAR, Auckland, to the CHIEF JUDGE, Native Land Court.

F D. FENTON, Esq., Chief Judge Native Land Court, Native Office, Wellington.—*Re* Omaranui, am attending to matter. Omaranui, containing 3,573 acres, was adjudicated on by Judge Smith in 1866. Plan shows two pieces. One order made for whole by Ministers. No application appears to have been made for a division. Division line was cut at time of original survey, and is not minuted by the Judge on map. Monro heard Omaranui No. 2, 225 acres, in August, 1868. No restrictions on either block I have referred to. Monro will let you know. His reply will also refer to F H. Smith.—A. J DICKEY, Registrar. Auckland, 19th September, 1881.

The REGISTRAR, Auckland, to the CHIEF JUDGE, Native Land Court.

F D. FENTON, Esq., Chief Judge Native Land Court, Native Office, Wellington.—*Re* Omaranui, minute books sent to Monro to report on case. Do you mean me to telegraph a copy of all the minutes? They are rather voluminous. Please reply.—A. J DICKEY, Registrar. Auckland, 19th September, 1881.

Mr. H. D. BELL to Mr. SHEEHAN.

DEAR SHEEHAN,—I have only this printed case on which to lay my hands at present. I have somewhere a printed report of the evidence at the trial, which I could send another day. The case in C.A. was reported on. I have not the report.—Yours, &c., H. D. B.

Enclosure.

In the Court of Appeal.—Between PAORA TOROTORO and REWI HAOKORE, Appellants, and FREDERICK SUTTON, Respondent.

THIS is an appeal from the judgment of His Honor the Chief Justice, delivered on the 28th day of September, 1875, wherein, on the application of counsel for the plaintiff Rewi Haokore, the Chief Justice gave leave to appeal. The plaintiff Rewi Haokore only appeals. The writ in the action was dated on the 8th day of August, 1874.

The pleadings were as follows:—

IN THE SUPREME COURT OF NEW ZEALAND, WELLINGTON DISTRICT.

DECLARATION.

The plaintiffs, by Charles Beard Izard, their solicitor, sue the defendant, and say,—

1. That by deed of grant from the Crown, dated the 14th day of July, 1866, under the hand of Sir George Grey, the Governor of the Colony of New Zealand, and under the seal of the said colony, but which deed of grant is not in the possession or under the custody or control of the plaintiffs, and they cannot set it out in the words and figures thereof, all that parcel of land in the Province of Hawke's Bay, containing 3,573 acres, more or less, and situated at Omaranui, in the District of Napier, and known by the name of Omaranui, bounded towards the North and North-east by the Tutaekuri River; towards the South-east by lines 1900 links, 50 links, 1000 links, 370 links, 200 links, 850 links, 2100 links, 110 links, 2480 links, 6500 links, 710 links, 2045 links, and 1158 links; towards the South by the Repoki te Rotoroa Stream, and by a line 1308 links; and towards the West by a line 20350 links to the Tutaekura River at Te Pani, and numbered three N (3N), was granted to the plaintiffs, aboriginal natives of the Colony of New Zealand, their heirs and assigns, for ever.

2. That by deed dated the 28th day of July, 1856, and made between the plaintiffs of the one part and James Butcher Braithwaite of the other part, but which deed is not in the possession or under the custody or control of the plaintiffs, and they cannot set it out in the words and figures thereof, all that parcel of land, being part of the land comprised in the said deed of grant, and being the land within the following boundaries, namely, commencing at Hikauera, running on from thence to Hopuaroa, Waiuhakaata, Te Mungi, Pakahoreroa, Taungatara, Pukioku, Te Puni, and on to Paira Kauihata's fence, where it turns, and, following that fence, runs in the direction of that fence and in a direct line into the channel of the swamp, where it turns and runs to Haumakawe, and follows on to Te Tumu, Tamangakoau, Te Totara, Te Koka; here it again turns, and takes over the hills in a direct line to Motukumara, and on to the starting boundary to Hikawera, was leased by the plaintiffs to the said James Butcher Braithwaite, for the term of twenty-one years from the 1st day of November, 1865, at a yearly rental of £300, under and subject to the covenants and agreements in the said deed expressed and implied.

3. That the land comprised in the said deed of lease consisted of 3,410 acres, or thereabouts.

4. That the land comprised in the said deed of grant contained, in addition to the land included in the said deed of lease, 163 acres or thereabouts, on which the dwelling-houses of the plaintiffs were standing, and whereon they were living, their wives, families, and kinsmen, and which land they were, at the date of the said lease, and of the mortgage and conveyance hereinafter mentioned, cultivating and using for their crops and cultivations.

5. That by deed dated the 5th day of October, 1868, and made between the plaintiffs of the one part and the defendant on the other part, but which deed is not in the possession of or under the custody or control of the plaintiffs, and they cannot set out the same in the words and figures thereof, all and singular the lands comprised in the said deed of grant were purported to be conveyed and assured by way of mortgage to the defendant, to secure the payment by the plaintiffs to the defendant, on the 1st day of November, 1873, of the sum of £500, then lent by the defendant to the plaintiffs, and of all moneys then due or thereafter to become due by the plaintiffs to the defendant upon account current, or for future advances, or in any other way whatsoever, together with interest on all sums thereby secured, at the rate of ten pounds (£10) per centum per annum, payable on the 1st day of November in each and every year during the continuance of the said security. The first of such payments to be made on the 1st day of November, 1869.

6. That by deed dated the 16th day of March, 1869, and made between the plaintiffs of the one part and the defendant on the other part, but which deed is not in the possession or under the custody or control of the plaintiffs, and they cannot set it out in the words and figures thereof, all and singular the lands comprised in the said deed of grant, and in the said deed of lease, in consideration of the sum of £1,200 then due by the plaintiffs to the defendant, and of the further sum of £1,300 then paid by the defendant to the plaintiffs, were purported to be granted, conveyed, and assured unto the defendant, his heirs and assigns.

7 That at the time of the treaty for the mortgage by the plaintiffs to the defendant of their land at Omaranui, it was, by word of mouth, mutually agreed and understood between the plaintiffs and the defendant that the mortgage deed should comprise only that portion of the land comprised in the said grant which had been previously leased to the said James Butcher Braithwaite by the said deed of the 28th day of July, 1866.

8. That the said deed of mortgage was prepared under the instructions of the defendant alone, and the plaintiffs had no independent professional advice or assistance in reference to the said mortgage before or at the time of the execution thereof, and the plaintiffs did not know, nor did either of them know, that the said deed of mortgage comprised the whole of the land contained in the said grant from the Crown, and the plaintiffs executed the said deed of mortgage under the mistake that only the land comprised in the said deed of lease to the said James Butcher Braithwaite was affected thereby.

9. That the execution of the said deed of mortgage by the plaintiffs was fraudulently obtained by the defendant, in this: that he well knew at the time of the execution thereof that the plaintiffs did not then intend to include in the said deed of

mortgage the said 163 acres, or any part thereof, and that the same were included therein contrary to the terms of the agreement between the plaintiffs and the defendant in that behalf.

10. That the said deed of conveyance of the 16th day of March, 1869, was also prepared under the instructions of the defendant, and the plaintiffs had no independent professional advice or assistance in reference to the said conveyance before or at the time of the execution thereof, and the plaintiffs did not know, nor did either of them know, that the said deed of conveyance comprised the whole of the land contained in the said grant from the Crown, and the plaintiffs executed the same fully believing and on the understanding that the land thereby conveyed was the same land as was comprised in the said deed of mortgage, and that such land did not include the 163 acres of land whereon they were living with their families, and which they were then cultivating.

11. That the plaintiffs never agreed to mortgage or sell to the defendant any part of the said 163 acres, and they say that they executed both the said deed of mortgage and the said deed of conveyance under a mistake as to the land comprised in the said deeds, and without any intention to mortgage or sell to the defendant any more of their said land than was leased to the said James Butcher Braithwaite.

12. That the execution of the said deed of conveyance was fraudulently obtained by the defendant in this: that he well knew that the said deed of conveyance contained 163 acres not agreed by the plaintiffs or intended by the plaintiffs to be mortgaged or sold to the defendant, and that the same were included therein contrary to the terms of the agreement between the plaintiffs and the defendant in that behalf.

13. That the plaintiffs have been in continuous possession and occupation of the said 163 acres of land since the 5th day of October, 1868, and no claim for possession of the said land was ever made upon them by or on behalf of the defendant before or about the month of May, 1874.

14. That until the said month of May, 1874, the plaintiffs were not, nor was either of them, aware that the aforesaid mortgage and conveyance affected or purported to affect their title to the said 163 acres of the said land.

The plaintiffs therefore pray—(1.) That it may be declared that the said deed of mortgage of the 5th day of October, 1868, was and is a mortgage only of so much of the land comprised in the said deed of grant as was contained in the said lease to the said James Butcher Braithwaite by the said deed of the 28th day of July, 1866, and that the said deed of mortgage may be altered and reformed in accordance with such declaration. (2.) That it may be declared that the said deed of conveyance of the 16th day of March, 1869, was and is a conveyance only of so much of the said land comprised in the said deed of grant as was leased to the said James Butcher Braithwaite by the said deed of the 28th day of July, 1866, and that the said deed of conveyance may be altered and reformed in accordance with such declaration. (3.) That the plaintiffs may have such further or other relief in the premises as may be just.

PLEA.

On Monday, the 21st day of September, 1874.

The defendant, by his solicitor, John Nathaniel Wilson, says,—(1.) That he admits the allegations contained in the first, second, third, fifth, and sixth paragraphs of the declaration. (2.) That he denies the allegations contained in the fourth paragraph of the said declaration, except so far as the same alleges that the land comprised in the said deed of grant contained, in addition to the land included in the said deed of lease, 163 acres of land. (3.) That he denies the allegations contained in the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth paragraphs of the declaration.

REPLICATION

On Saturday, the 28th day of November, 1874.

The plaintiffs, by their solicitor, Charles Beard Izard, say,—That they take and join issue on so much of the defendant's pleas as denies the allegations, or any part of the allegations, contained in the fourth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth paragraphs of the plaintiffs' declaration.

ISSUES.

1. Were the plaintiffs, at and for some time prior to the date of the lease in the declaration mentioned, dwelling on the said 163 acres of land in the declaration mentioned, and cultivating and using the same?—Yes.

1A. Were they so dwelling on, cultivating, and using the said land at and for some time prior to the date of the mortgage in the declaration mentioned?—Yes.

1B. Were they so dwelling on, cultivating, and using the said land at and for some time prior to the date of the conveyance in the declaration mentioned?—Yes.

2. On the treaty for the mortgage in the declaration mentioned, was it mutually agreed by word of mouth between the plaintiffs and the defendants that the whole of the land included in the Crown grant mentioned in the declaration should be included in the mortgage?—Yes, as far as Paora Torotoro was concerned, but not as regards Rewi, because the treaty was with Paora Torotoro.

2A. If not, was it on such treaty as aforesaid so agreed that only the land so leased to the said James Butcher Braithwaite as in the declaration mentioned should be included in the said mortgage?—No; it was not only Braithwaite's lease.

3. Was the said deed of mortgage prepared under the instructions of the defendant alone?—Yes.

3A. Was the said deed of mortgage prepared under the instructions of the plaintiffs as well as of the defendant?—No.

4. Had the plaintiffs, before or at the time of the execution of the said mortgage, any independent legal advice in reference to the said mortgage?—No.

5. Did the plaintiffs or either of them know, at time of execution of mortgage, that the said mortgage comprised all the land included in the said grant?—Yes; Paora Torotoro only.

5A. Was the said mortgage deed read over, interpreted, and explained to the plaintiffs before the execution by them, and did they understand the nature and effect thereof?—Yes; read over, interpreted, and explained, but no evidence that it was understood by Rewi Haokore.

6. Was the execution of the said deed of mortgage fraudulently obtained by the defendant by reason of his knowing that the plaintiffs did not intend to include therein the said 163 acres?—[Struck out at trial.]

7 Was the said conveyance on the 16th day of March, 1869, prepared under the instructions of the defendant alone?—Yes.

7A. Was the said conveyance prepared under the instructions of the plaintiffs as well as of the defendant?—No.

8. Had the plaintiffs, before or at the time of the execution of the said conveyance, any independent legal advice in relation to the said conveyance?—No.

9. Did the plaintiffs, or either of them, and, if so, which, know at the time of the execution of the said conveyance that the said conveyance comprised all the land included in the said grant?—Yes; by Paora Torotoro, but not by Rewi.

9A. Was the said conveyance read over, interpreted, and explained to the plaintiffs before the execution thereof by them, and did they understand the nature and effect thereof?—Yes; read over, interpreted, and explained to both, but no evidence that understood by Rewi Haokore, but understood by P Torotoro.

10. Did the plaintiffs, previously to the execution of the mortgage to the defendant, agree to mortgage to the defendant the said 163 acres?—Yes, by Paora Torotoro, inasmuch as it was included in Crown grant.

10A. Did the plaintiffs, previously to the execution of the conveyance to the defendant, agree to sell to the defendant the said 163 acres?—Yes, by Paora Torotoro inasmuch as land included in Crown grant.

11. Was the execution of the said deed of conveyance fraudulently obtained by the defendant, by reason of his knowing that the plaintiffs did not intend to include therein the said 163 acres?—No.

12. Were the plaintiffs in occupation of the said 163 acres at or for some time prior to the 5th day of October, 1868, and have they been in occupation thereof ever since?—Yes.

13. Was any claim for possession of the said 163 acres made upon the plaintiffs by or on behalf of the defendant before the month of May, 1874, and, if so, when first?—Yes, on or about 11th December, 1873.

14. Were the plaintiffs, or either of them, aware, before the month of May, 1874, that the said deeds of mortgage and conveyance, or either of them, purported to affect their title to the said 163 acres, and, if so, when first?—Yes; by Paora Torotoro from execution of deed, and Rewi on or about 11th December, 1873.

15. Did the defendant, at the time of his making application for the certificate, know that he was not rightfully entitled to the said land?—No.

16. Were the plaintiffs, Hohaia and other Native persons, in possession adversely to the defendant before and at the date of the issue of the certificate, and were they, or any of them, rightfully entitled to such land?—Yes, in possession adversely, and not entitled, as the grantees had signed the deed of conveyance.

AFTER-PLEA.

The defendant, by way of after-plea, says,—

1. That on the 21st day of January, 1874, he made an application to the District Land Registrar for the District of Hawke's Bay, in the manner provided by "The Land Transfer Act, 1870," requiring the land in the declaration mentioned to be brought under the provisions of the said Act; and the said application was received by the District Land Registrar, and all notices and advertisements required by the said Act were duly given and published. The defendant is unable to set forth the application in the words and figures thereof, the same not being in his custody or power.

2. The plaintiffs, or some one on their behalf, on or about the 10th day of July, 1874, pursuant to the provisions of the said Act, caused caveats to be entered in the said register, forbidding the bringing of the said lands under the provisions of the said Act. The defendant is unable to set out the said caveats in the words and figures thereof, the same not being in his custody or power.

3. The plaintiffs allowed three months to expire from the receipt of the said caveats, and did not give written notice to the District Land Registrar of their having taken proceedings in a Court of law to establish their title to the said land, or obtain from the Supreme Court an order or injunction restraining the said District Land Registrar from bringing the said land under the provisions of the said Act.

4. The District Land Registrar, on the 15th day of November last, duly signed, sealed, and entered in the register book, and issued, a certificate of title comprising the said land under the provisions of the said Act in favour of the defendant, and which certificate is in the words and figures following:—New Zealand Certificate of Title Register Book, Vol. III., Folio 113. "Frederick Sutton, of Napier, in the Province of Hawke's Bay, storekeeper, is now seised of an estate in fee-simple, subject nevertheless to such incumbrances, liens, and interests as are notified by memorial underwritten or indorsed hereon, in that piece of land situated in the Province of Hawke's Bay aforesaid, containing by admeasurement one hundred and sixty-three (163) acres or thereabouts, being Section B of Oamaru Block 3N, in the District of Napier aforesaid, bounded as appears in the plan hereon and therein, in outline coloured green, commencing at a point on the Tutaekuri River at the junctions of Sections A and B of same block; thence south-westerly, bearing 210° 15′, two hundred and fifty (250) links; thence south-easterly, bearing 155° 30′ four thousand and sixty (4060) links, and bearing 159° 30′, one thousand three hundred and fifty (1350) links to Te Mingi; thence to a curvilinear line along south-east side of Te Mingi; thence southerly, bearing 164° 15′, two thousand six hundred and fifty (2650) links, and bearing 161° 45′ two thousand seven hundred and fifty-five (2755) links; thence easterly, bearing 69° 30′, one thousand (1000) links; thence northerly, bearing 360° 0′ fifty (50) links; thence again easterly, bearing 60° 30′, one thousand nine hundred (1900) links; thence north-westerly along the bed of the Tutaekuri River in a curvilinear line to the commencing point: which said Omarunui Block 3N is delineated on the public map of the said District of Napier, in the office of the Inspector of Surveys, at Auckland, originally granted the 14th day of July, 1866, under the hand of Sir George Grey, K.C.B., Governor of New Zealand, to Paora Torotoro and Rewi Haokore, aboriginal natives. In witness whereof I have hereunto signed my name and affixed my seal, this 15th day of December, 1874, at eleven o'clock, a.m.—Signed in the presence of Hans. Turton and W A. Connell, District Land Registrar of the District of Hawke's Bay"

5. The said District Land Registrar, on the 15th day of December, 1874, issued the said certificate to the defendant, and the same certificate is still in the defendant's possession uncancelled.

DEMURRER AND REPLICATION.

On Wednesday, the 22nd day of June, 1875.

The plaintiffs, by their solicitor, Charles Beard Izard, say that the after-plea by the defendant pleaded herein is bad in substance.

The matters of law intended to be argued are,—(1.) That a change in the nature of the title of the defendant to the land in the declaration mentioned, made during the pendency of the suit, and which does not vest or purport to vest any interest in the land in any other person than the defendant, cannot defeat the right of action which had accrued to the plaintiffs at the time of the commencement of the suit. (2.) That the said after-plea does not allege that this suit is not within any of the exceptions contained in section 129 of "The Land Transfer Act, 1870." (3.) That the said after-plea does not allege that the plaintiffs were not deprived of the land in the after-plea mentioned, by fraud, as against the person registered as proprietor of such land, through fraud.

And by way of replication to the said after-plea, the plaintiffs say—(1.) That they deny all the material allegations in the said after-plea contained.

And for a second replication to the said after-plea,—(2.) That the certificate of title in the said after-plea mentioned was the certificate of title issued upon the first bringing of the land in the said certificate mentioned under the provisions of "The Land Transfer Act, 1870," and that for a long time prior to and at the date of the issue of the said certificate to the defendant, the applicant for the same, and continuously thereafter to the present time, the plaintiffs and Hohara, and other aboriginal native persons, were adversely in occupation of the land in the said certificate mentioned, as against the defendant, and were and are rightfully entitled to such land.

And for a third replication to the said after-plea, the plaintiffs say—(3.) That they repeat the statements made in the declaration contained, and say that they were deprived of the land in the said certificate mentioned by fraud on the part of the defendant, and that the defendant, knowing that he was not rightfully entitled to the said land, or to any interest therein, by fraud, caused himself to be registered as proprietor thereof.

And the plaintiffs claim—(1.) That a perpetual injunction may be issued, restraining the defendant from selling, mortgaging, or in any wise dealing with the said certificate of title, and with the land comprised therein. (2.) That the District Land Registrar of the district within which the said land is situate may be directed to cancel the said certificate of title, and to substitute in lieu thereof a certificate in the name of the plaintiffs. (3.) That they may have such further or other relief as to this honorable Court shall seem just.

JOINDER IN DEMURRER.

On the 15th day of June, 1875.

The defendant, by John Nathaniel Wilson, his solicitor, saith, as to the demurrer to the after-plea herein pleaded,—(1.) That the said after-plea is good in substance.

REJOINDER TO FURTHER REPLICATION.

And as to the first replication of the said after-plea,—(2.) That he gives and takes issue thereon.

And as to the second and third replication to the said after-plea,—(1.) That he denies all material allegation therein contained.

On the 3rd day of August, 1875, motion was made by Mr. Travers, as counsel for the plaintiff Rewi Haokore, for a decree in his behalf. At the same time the demurrer came on to be heard. Cause was shown in the first instance on behalf of the defendant.

The learned Judge took time to consider his judgment, and on the 28th day of September, 1875, delivered the following judgment:—

This was a motion on behalf of one of the plaintiffs, Rewi Haokore, for a decree in a suit brought by himself and Paora Torotoro against Frederick Sutton. Mr. Travers and Mr. Izard appeared for the plaintiff Rewi, and Mr. Wilson and Mr. Crawford for the defendant. The action was commenced on the 8th August, 1874.

The declaration stated that, by Crown grant dated the 14th July, 1866, a parcel of land of 3,573 acres, known as Omarunui, was granted to the plaintiffs in fee-simple. That in July, 1866, the plaintiffs leased a part of the said land (3,410 acres) to James Butcher Braithwaite for the term of twenty-one years, at an annual rental of £300. That on the 5th October, 1868, the plaintiffs mortgaged to the defendant the whole of the grant, to secure repayment of a loan of £500 and future advances and interest. That on the 16th March, 1869, the plaintiffs conveyed to the defendant the whole of the granted lands, in consideration of a debt of £1,200 due by plaintiffs to defendant, and of £1,300 paid to the plaintiffs by defendant. That at the time of the treaty for the mortgage it was verbally agreed that only the land leased to Braithwaite should be included in the mortgage. That the mortgage deed was prepared under the instructions of the defendant alone, and that the plaintiffs had no independent legal advice in the matter. That neither of the plaintiffs knew that the mortgage deed comprised the whole of the land in the grant. That the plaintiffs executed the mortgage deed under the mistake that only the leased land was affected thereby. That the execution of the mortgage deed was obtained fraudulently by the defendant, in that he knew that the plaintiffs did not intend to include the part of the land not leased. That the conveyance to the defendant was also prepared under the defendant's instructions, and the plaintiffs had no independent legal advice in the matter, and that neither of them knew that the conveyance comprised the whole of the land in the grant, and that they executed it believing and on the understanding that the land conveyed did not include the portion not leased. That the plaintiffs never agreed to mortgage or sell the land not leased, and that they executed the deeds under a mistake as to the land comprised therein. That the execution of the conveyance was obtained by the fraud of the defendant, in that he knew that it contained land not agreed on or intended to be conveyed. That the plaintiffs have been in continuous occupation of the land not leased, and no claim for possession was made till May, 1874, and that until that the plaintiffs were not aware that the deeds of mortgage and conveyance included the leased land.

The declaration then prays a declaration that the deeds of mortgage and conveyance are a mortgage and conveyance of only the lands leased, and that the deeds may be altered and reformed.

The defendant, by his plea, denied the allegations of mistake and fraud, and the allegations as to the manner in which the deeds were prepared and executed, and the occupation of the lands not leased. The plaintiffs replied by joining issue. Subsequently, in fact immediately before the trial, the defendant pleaded an after-plea, alleging that on the 21st January, 1874, he applied under the Land Transfer Act for a certificate of title for the unleased portion of the land conveyed to him by the plaintiffs; and that the plaintiffs, on the 10th July, 1874, entered a caveat, but allowed three months to expire without giving notice to the Registrar of having commenced proceedings to establish their title, and did not obtain an injunction; and that on the 15th December, 1874, the Registrar gave defendant a certificate of title for the land not leased, and that that certificate is in full force.

To this after-plea the plaintiffs demurred and replied. The grounds of demurrer were,—(1.) That the grant of the certificate, having been made *pendente lite*, does not affect the plaintiff. (2.) That the plea does not allege that this suit is not within the exception of section 129 of the Land Transfer Act. (3.) That the plea does not allege that the plaintiffs were not deprived of land by fraud as against the person registered as proprietor through fraud.

In the replication to the after-plea, the plaintiffs first deny the allegations in the plea, and also reply that the certificate of title was one issued on the first bringing of the land under the Act, and that at the time the plaintiffs were, and still are, in adverse possession, and are rightfully entitled. By a third replication they repeat the allegations in the declaration, and say that they were deprived of the land by fraud, and that the defendant procured himself to be registered as proprietor by fraud, knowing that he was not rightly entitled thereto. The defendant joined in demurrer, and denied the allegation in the replication to the after-plea.

Upon these pleadings issues were formed.

The jury found, in effect, that the plaintiffs had been and were in occupation of the land not leased; that the plaintiff Paora Torotoro had agreed to mortgage and also to convey the whole of the land granted, but that the plaintiff Rewi had not so agreed; that at the time of the execution of the mortgage and of the conveyance Paora Torotoro knew that the deeds affected the whole of the land, but Rewi did not; that the deeds were prepared under the instructions of the defendant alone, and the plaintiffs had no independent legal advice in the matter; that the deeds were read over, interpreted, and explained to both of the plaintiffs before execution, but the jury said that there was no evidence that they were understood by Rewi.

The jury negatived the issue of fraud—that is, that defendant knew that the plaintiffs did not intend to include the land not leased.

The jury found that the defendant's first claim for possession was made 11th December, 1873, and that Rewi did not know till that date that the deeds included the land not leased, but that the other plaintiff knew they did at the time of the execution by him.

The jury, as to the issues on the after-plea, found that the defendant did not know, at the time of making his application to bring the land under the Land Transfer Act, that he was not rightfully entitled thereto; that the plaintiffs were in adverse possession, but that they were not entitled to the land, as they had signed the deeds.

It is contended, on behalf of the plaintiff Rewi, that he is entitled to a decree for the rectification of the deeds of mortgage and conveyance by altering them so that the interest of Rewi in that portion of the land in the grant not leased to Braithwaite should not be affected thereby. No motion for a decree is made on behalf of the other plaintiff, Paora Torotoro. The jury have found that the plaintiff Rewi and the defendant did not mutually agree that the whole of the land in the grant should be included in the deeds, and that Rewi did not know that the deeds affected the whole of the land in the grant; but the jury have also found that the defendant did not know that Rewi did not intend to include the whole. The case, therefore, as to Rewi is not one of mutual mistake, for it must, I think, be assumed that the deeds are in accordance with the intention and understanding of the defendant, though not in accordance with the intention and understanding of the plaintiff Rewi.

But on behalf of Rewi it is contended that the Court may rectify the conveyance, though the mistake is not mutual, but is the mistake of the vendor only; and it was argued that the case of Harris *v.* Pepperell, L.R. 5, Eq. 1, establishes this. I am not aware of any authority other than Harris *v.* Pepperell which can be cited in support of the plaintiff's contention, and that case (Harris *v.* Pepperell), properly understood, does not, I think, decide that a rectification can be decreed where the mistake is not mutual. The decree which the Master of the Rolls declared that he was prepared to make was, that the deed should be set aside or rectified at the option of the defendant. The judgment of the Master of the Rolls, if properly reported, may, and I think must, be understood as deciding that the deed should be set aside, but that, if the defendant was willing to have the deed rectified, he would not order it to be set aside. So understood, the judgment is in accordance with the authorities. The suit was at the instance of the vendor of land against the vendee, seeking for a rectification of the deed on the ground that a portion of the land conveyed was not intended to be conveyed. The facts, as reported, would certainly lead one to the conclusion that, as a fact, the mistake was mutual, and that the defendant either knew or ought to have known that the parcel of land in question was not intended to be conveyed. Some of the observations of the Master of the Rolls would seem to show that, though the defendant gave evidence that he understood that he was to have the land in dispute, and that there was therefore no mistake on his part, there was, in the opinion of the Judge, a mutual mistake, and that the defendant and plaintiff had not agreed for the whole, but had agreed for the conveyance of that portion only which the plaintiff alleged was the subject of the agreement. However, other observations and the reasoning of the Judge seem to show that he did deal with the case as one of mistake on the part of the vendor only. If the Master of the Rolls found, as a fact, that the plaintiff justifiably thought that he was selling a portion of the land, while the defendant justifiably thought that he was buying the whole, in fact that the vendor and vendee never assented to the same thing, then it would follow that there was no contract at all; and, if there was no contract, clearly it would be no case for rectification. But, though not a case for rectification, it would be a case for the cancellation or setting aside of the conveyance, if the vendor had been guilty of no *laches*, and the position of the parties had not, with reference to the land, become so altered that they could be restored to the same position as before the conveyance. For

though, perhaps, where the vendee thinks he is buying what the vendor does not think he is selling, the Court may not, before conveyance, actively interfere by setting aside a void contract; yet, when there has been a conveyance, then there arises a sufficient reason for the active interference of the Court, for otherwise the vendee would be able to set up the conveyance against the vendor, which would be inequitable, and would be damaging to the vendor. I say perhaps, for there are strong authorities in favour of the active interference of the Court even before conveyance. In Calverley *v.* Williams, 1 Ves. (Jun.) 211, Lord Chancellor Thurlow refused specific performance, because neither party thought the land in dispute was to be conveyed; but, in the course of his judgment, said, "Where one thinks he is buying what the vendor does not think he is selling, it is ground to set aside the contract;" but in Alvanley *v.* Kinnaird, 2 MacN. and Gordon 1, Lord Cottenham says, "Where the vendor includes more than intended by mistake, the Court will not decree specific performance of the whole. If the vendee refuses to take a part, the Court will not interfere—it will not rescind the contract." And in Lord St. Leonards' Vendors and Purchasers (p. 314), he says, "If a purchaser of an estate thinks he has purchased *bonâ fide* a part which the vendor thinks he has not sold, that is a ground to set aside the contract, or at least not to execute it, that neither party may be damaged." But the authorities cited are all suits for specific performance of contracts, and not for rectification or setting aside contracts. And at page 215 he says, "Where there is mistake between two parties as to what was sold, the Court will not interfere in favour of either party." See also Kerr on Fraud, p. 362; and per Lord Justice James in Torrance *v.* Bolton, L.R., 8 Ch. Ap. 118. See also Powell *v.* Smith, L.R., 14 Eq., p. 90. However, it is not material to inquire whether the Court will set aside the contract where one party does not think he is selling what the other thinks he is buying; but there seems good ground for the active interference of the Court where, in such a case, the vendor has by mistake executed the conveyance; and Harris *v.* Pepperell is an authority that, in such a case, the Court will set aside such a conveyance if the parties can be replaced in their former position. That is a necessary condition, and was so treated in Harris *v.* Pepperell. See also Powell *v.* Smith, *supra*, p. 91. In the case now before this Court there is no finding which would enable it to make a decree on the basis of placing the parties in their former position. Indeed, the plaintiff does not ask that the deeds should be set aside; he asks that they may be rectified so as to conform to what he intended, though not in conformity with what the jury has found to be the intention of the defendant; and Harris *v.* Pepperell is cited as a case in which that was done. In my opinion the Master of the Rolls did not so decide. At any rate the decision may be supported as a decree for setting aside, but not for rectification, unless it be on the supposition that there was a common error. The case cited has been the subject of observations in several text-books of repute, and the general opinion seems to be that the case decides only that, where there is mistake on one side only, the Court will set aside the conveyance, but that it cannot be taken as an authority for the proposition that the Court will, in such a case, rectify the deed against the will of the other party; but that, if the case does so decide, it cannot be upheld. In Kerr on Fraud and Mistake, p. 35 he says, "In Harris *v.* Pepperell, Lord Romilly, M.R., said that the rule that the Court will not rectify an instrument on the ground of mistake except the mistake be mutual, is liable to an exception in a case between vendor and purchaser. But the distinction is not supported by the authorities, and does not seem sound. Garrard *v.* Frankel, and Harris *v.* Pepperell, were, there is no reason to doubt, correctly determined; but the principle upon which they are to be upheld is that the Court, in these cases, merely abstained from setting the agreement aside on the consent of the defendant to submit to the variation alleged by the plaintiff. In cases of rectification properly so called, the Court does not put it to the defendant to submit to the variation alleged by the plaintiff, but makes the instrument conformable to the intent of the parties without any such offer or submission." In Dart's Vendors and Purchasers, p. 683, he observes on this case as follows: "In a recent case where the plan on the conveyance comprised more land than the vendor intended to convey, the Court, in a suit by the vendor to rectify the deed, gave the purchaser the option of having the contract annulled, or of taking the conveyance in the form which the vendor intended; and this decision was rested on the ground that, where the parties can be placed in the same position as if no contract had been executed, the Court will interfere provided the party aggrieved comes speedily for redress; but after conveyance the parties can seldom be restored to their original position, and it would seem the sounder doctrine that, in such a case, no relief should be granted unless both parties have participated in the error. In the case just cited the purchaser appears to have been not altogether free from blame, and it cannot be regarded as an authority for the proposition that the Court will, to the prejudice of an innocent purchaser, rectify a conveyance merely on the ground of the vendor's mistake." This author therefore questions the soundness of the decision, and seems to be of opinion that, after conveyance, there can be no relief unless the error is common. See also p. 681 in note (w). In Chute on Equity in relation to the Common Law, at page 135, he observes of the decision in Harris *v.* Pepperell that "the Master of the Rolls decreed, in effect, that the obligation should not be interfered with by the erroneous deed, and that the indenture which stood in the way of the real agreement or obligation should be rescinded."

It hardly seems to require authority to show that the Court will not rectify an instrument so as to make it conform to the understanding and intention of one of the parties only for to do so would be to make the contract for the parties. However, as the observations in the judgment of the Master of the Rolls seem to show that he conceived that the Court would, in such a case, rectify the instrument as between vendor and purchaser, and that judgment was relied upon in the argument, I have thought it better to review some of the many authorities on the subject, with a view to show that they do not support the observations of the Master of the Rolls. And, first, it may be premised that it is not necessary here to consider those cases which have turned upon the question of evidence. Courts of Equity in England require clear and satisfactory evidence of mistake, and attach considerable weight to the evidence of the defendant denying the mistake; and many of the judgments in cases of mistake are addressed to the question of evidence of the mistake rather than to the effect of mistake. The defendant may depose that there is no mistake on his part, and yet the Court may on the whole evidence come to a different conclusion. In New Zealand the jury are the judges of the fact, and in the case now before the Court the jury find that the mistake is on the side of the plaintiff Rewi only. In the case of Garrard *v.* Frankel, 30 Beavan, 445, the Master of the Rolls thought that the defendant had verbally agreed for a higher rent than was by mistake named in the written agreement or the lease; and but for an inconsistency in the written agreement he would have decreed the rectification, as in case of a common mistake. But, as the draft lease contained the error, and the agreement, though in its body stating correctly the higher rent, yet incorporated the draft, and was therefore in itself inconsistent, he made the same decree as in Harris *v.* Pepperell, namely, gave an option to the defendant of having the deed set aside, or, if he retained the lease, that it should be rectified. As there was a written agreement and patent ambiguity existed, parol evidence could not be admitted on behalf of the plaintiff to explain and rectify it, and force the lease on the defendant, though such evidence was admissible to set aside the lease. The Master of the Rolls, in the judgment in that case, says, "The next question is also one of fact: it is whether the defendant knew that the reservation of £130 was a mistake. It was certainly not a mistake committed by him, and therefore it is argued that there must be an end of the case, for that, to enable the Court to rectify a mistake, the mistake must be mutual; but, though as a general rule that is correct, it does not apply to every case. The Court will interfere in cases of mistake where one party to the transaction, being at the time cognizant of the fact of the error, seeks to take advantage of it." And, after considering the evidence, he concludes that the defendant, at the time she executed the lease, was cognizant of the mistake which had been committed by the plaintiff. Moreover, he proceeded on the assumption that the parties could be placed in their former position; for, though the defendant had mortgaged the lease, the terms on which the lease was to be set aside were that the mortgage security should not be affected, and the plaintiff be entitled to repayment from the defendant. The authority of this case is questioned by Mr. Dart, and is supported by Mr. Kerr only on the ground that in effect the decree was to set aside the lease unless the defendant consented to retain it, and, if he retained it, he must retain it with rectification.

In Sugden's Vendors and Purchasers, p. 326, he says the Court will relieve the vendor where more has passed than was contracted for. But the present question is, whether it will relieve where more has passed than was intended by one side only. The cases he relies upon are not authorities in favour of the plaintiff in the present case. They are the three following cases: In Clifford *v.* Laughton, Tot. p. 23, more land passed than was intended, but relief was refused as against a purchaser for value without notice. It does not appear from the short note of the case whether the mistake was mutual or not. In Tyler *v.* Beversham, Finch, 86, 2 Ch., Ca. 199, land was included in general words which had not been intended to be conveyed; it was not specified in the particulars, and the mistake was admitted by the defendant. That was clearly a case of mutual mistake, and relief was granted as against the vendee but not as against the mortgagee, he

being a purchaser without notice. In Gibson *v.* Smith, Barnardiston C.C. 491, the case was really one of mutual error; for the question was whether the conveyance did not convey more than was described in the written agreement.

Carpmael *v.* Powis, 10 Beavan, 36, was a suit to set aside or rectify an annuity deed granted by the plaintiff, and was therefore a case of vendor and purchaser. It was contended by the defendant that, because it was not a case of mutual mistake, the Court would not interfere. The mistake was a miscalculation by the plaintiff on information supplied by the defendant, and the defence was that the defendant would not have accepted an annuity of less amount than that in the deed. There was no suggestion of fraud. The Master of the Rolls, Lord Langdale, in his judgment, said that "a decree to rectify the annuity deed could not be made, and the only question was whether the grant of the annuity was to be declared void." He decided that there was such a mistake, that the plaintiff ought not to be held to the agreement, and that the deed must be cancelled. The case is one, therefore, of mistake on one side, and therefore not one for rectification, but cancellation.

Murray *v.* Parker (19 Beav 305) was a case where a lease was ordered to be reformed, and there it was held by Lord Langdale that, to justify the Court in reforming an executed deed, it must appear that there has been a mistake common to both contracting parties, and that the agreement had been carried into effect by the deed in a manner contrary to the intention of both. That was not a case of settlement, but in effect of vendor and purchaser.

In his judgment in Wright *v.* Goff (22 Beav. 207), the Master of the Rolls (Romilly) says, "The Court looks with extreme jealousy upon an application to reform a deed, and the onus lies upon the plaintiff to show that the deed was executed under a mistake;" and he held that, "as the deed was executed under a mistake, not only of the person executing it, but of all the parties concerned, it must be reformed." It is true that this case was not one of vendor and purchaser, and therefore does not come within the exception from the general rule, which, according to Lord Romilly, in Harris *v.* Pepperell, exists. But the grounds of the judgment are a common mistake, and not the alteration in the position of the parties.

In Leuty *v.* Hillas, 2 De G. and J 101, where the plaintiff and defendant had purchased separate lots of land, &c., at an auction, and a portion which the plaintiff had purchased was by mistake conveyed to the defendant, the Master of the Rolls refused relief either by rectification, rescission, or otherwise; but on appeal relief was granted to the plaintiff on the ground that, though the Court was satisfied that the defendant believed he had purchased the portion in dispute, yet he had not good reason for so believing, and that he ought to have known that it did not form part of his purchase; and he was ordered to convey it to the plaintiff. There was in that case, therefore, a mutual error.

In Fowler *v.* Fowler, 4 De G. and J 250–265, it was held that, for the purpose of reforming an instrument, clear and unambiguous evidence must be produced, not merely showing a mistake, but showing the deed in its proposed state to be in conformity with the intention of all the parties at the very time of its execution. The latter part of this ruling is a distinct authority that in such a case as that now before the Court there can be no rectification in the manner proposed by the plaintiff, for such rectification would not make the deed in conformity with the intention of the defendant. In the Metropolitan Counties, &c., Society *v.* Brown, 26 Bevan, p. 454, one question was whether the schedule to a mortgage deed of machinery could be rectified by reason of some portion of the machinery, which the plaintiff intended to have had in the deed, having been omitted by mistake; but the Master of the Rolls (Romilly), in his judgment, says, "Then the question arises as to that part [of the machinery] which was put down between the date of the two mortgage deeds, whether this Court can reform the second by inserting the metal flooring, because, as I understand, the schedule of the second deed does not include the metal flooring. I cannot, however, alter the deed upon the valuation made when the plaintiffs took their mortgage. The parties who advanced the money no doubt intended to include in the deed everything which was included in the valuation. The metal flooring was without doubt there, but I cannot therefore include it in the deed, in the absence of proof that it was omitted by a common mistake of both parties." There is nothing to show that Mr. Brown (the defendant) made any mistake on the subject.

In that case the defendants had assigned their estate for the benefit of their creditors, and therefore it was not a case in which rescission would be asked. The case, however, is in effect one of vendor and purchaser, and yet rectification was refused.

In Elwes *v.* Elwes, 2 Gif. 545, it is said by Sir John Stuart V.C., that the principle on which the Court reforms a settlement is to make it conform to what was the real agreement. In Sella *v.* Sella, 29 L.J., ch. 500, Vice-Chancellor Kindersley held that the Court could not correct an instrument made upon the marriage of two parties, except upon the clear mistake of both parties. He refers to Vice-Chancellor Wood's judgment in Rooke *v.* Lord Kensington, 2 Kay and J. 753–764.

In Bentley *v.* Mackay, 31 L.J., ch. 700, the Master of the Rolls, in the course of his judgment, says, "When this Court rectifies a deed under the equity of mistake, it must be a common mistake, a mistake of all the parties to the deed; you must show that all made the mistake, and then when you come to reform it that mistake must be clearly proved."

In the Earl of Bradford *v.* the Earl of Romney, 31 L.J., ch. 499, the Master of the Rolls says, "It is a rule of equity in such cases that to reform a deed it is necessary to show that the mistake was an error common to both parties to the contract." And, "Above all things, in cases of reforming a deed, it is essential that the extent of the proposed alteration should be clearly defined and ascertained by evidence contemporaneous with or anterior to the deed."

In Mortimer *v.* Shortall, 2 Dr. and War. 372, the principles upon which Courts of Equity proceed in reforming deeds and instruments are discussed, and it is laid down that in such cases the mistake must be mutual, and that a mistake on one side may be a ground for rescinding, but not for correcting, an instrument. The case was one of a lease in which more land had been demised than was intended or agreed. In a late case on this subject, Bloomer *v.* Spittle, L.R. 13 Eq., p. 431, the Master of the Rolls thought there was a common mistake. In that case the purchaser asked for rectification because of an omission from the conveyance by mistake; but, though the Judge (Romilly) was satisfied there was a common mistake, yet as a period of years had elapsed, and the defendant denied the mistake, he refused to rectify the deed against the will of the defendant, and, as he said, followed the case of Garrard *v.* Frankel, and gave the defendant the option of having the deed rectified in the manner asked by the plaintiff, otherwise the transaction to be set aside. In that case the position of the parties had not been so altered that complete relief could not be given.

Powell *v.* Smith, cited at the argument, was for specific performance, and the mistake insisted upon by the defendant was one of law, not of fact.

Accepting, however, the authority of Harris *v.* Pepperell, that, though the mistake be not common, the instrument might be set aside if the parties can be placed in their former position, yet, as already pointed out, the plaintiff has not laid that foundation for the decree. There is no finding of the jury on which I can proceed to make a decree on the supposition that the parties can be placed in their former position, and I cannot look beyond the issues. I may remark, however, that it was indisputably proved at the trial, though there was no issue to meet the fact, that the defendant had some time since sold to the lessee the fee-simple of the whole of the land included in the lease, and no doubt the purchaser had no notice of the alleged mistake. If that fact had been found by the jury, then it would have been made apparent that the parties could not be restored to their former position. If the plaintiff Rewi asks for a reference and inquiry as to the matter, I should be disposed to grant it, though it is clear to me on the evidence that no benefit would accrue to him from it.

The transaction cannot be set aside in part. If set aside, it would have to be set aside altogether. As the plaintiff Rewi states he will not ask for such inquiry, I must therefore refuse the relief to the plaintiff Rewi, and dismiss the bill, both as to himself and his co-plaintiff. As the declaration made a case of fraud, and that was not established, I must give the defendant his costs of so much of the proceedings as have been caused by that charge, and order that these costs shall be paid by Paora Torotoro and Rewi; and I also order that the plaintiff Paora Torotoro do pay the defendant his costs of the cause generally.

The question for the Court of Appeal is, Whether the decision of the learned Judge should be sustained, or varied wholly or in part.

No. 340.—Application from F SUTTON, Napier, Storekeeper, for a Certificate of Title for Portion of Omaranui 3N Block.

I, FREDERICK SUTTON, of Napier, storekeeper, do declare that I am seised of an estate of freehold of fee-simple in all that piece of land situated in the Puketapu District, portion of the Omaranui Block, numbered 3N, marked B, containing

one hundred and sixty-three acres, be the same a little more or less, with frontage to other portion of Omaranui Block, Section A, 250 links, 4060 links, 1350 links, rounding Te Mingi and running along boundary of Omaranui Section A, 2650 links and 2755 links, to where that block joins Omaranui No. 2, following the boundary of that block 1000 links, 50 links, 1900 links, running to Tutaekuri River, and continuing along that river till it arrives at the starting point, as the same is shown and delineated in the plan thereof drawn hereon, and edged red: which piece of land is of the value of one thousand two hundred pounds and no more, and is the portion of the Omaranui Block marked B, originally granted to Paora Torotoro and Rewi Haokore by grant dated the 14th day of July, one thousand eight hundred and sixty-six, numbered 2515 in the plan of the Puketapu District as delineated on the public maps of the province deposited in the office of the Chief Provincial Surveyor. And I do further declare that I am not aware of any mortgage, incumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest in the said land, at law or in equity, in possession or in expectancy, other than is set forth and stated as follows, that is to say,—*Nil.* And I further declare that there is no person in possession or occupation of the said lands adversely to my estate or interest therein, and that the said land is now occupied by Hohaia and other aboriginal natives whose names I do not know, being tenants at will, and that the land is bounded by the property of J B. Braithwaite on one side, John Bennett on another, and the Tutaekuri River on the other side; and that there are no deeds or instruments of title affecting such land in my possession or under my control, other than those enumerated in the Schedule hereto or at the foot hereof. And I make this solemn declaration conscientiously believing the same to be true. Dated at Napier this 18th day of January, 1874.—F SUTTON. Made and subscribed by the above-named Frederick Sutton this 15th day of January, 1874, in the presence of me—Hanson Turton, D.L.R.

I, Frederick Sutton, the above declarant, do hereby apply to have the piece of land described in the above declaration brought under the provisions of the Act. Dated at Napier this 15th day of January, 1874.—(Signature of applicant) F SUTTON. Witness to signature—Hanson Turton.

SCHEDULE REFERRED TO.—*Nil.* This property is included in a deed of conveyance from the Native grantees to F. Sutton, No. 3796, 16th March, 1869, and is excluded from the conveyance, Sutton to Braithwaite. (Here follows plan.)

I hereby certify that the foregoing is a correct copy of an application registered here under No. 340. Dated at Napier this 9th day of September, 1881.—J M. BATHAM, District Land Registrar.

This application is correct for the purposes of the Land Transfer Act.—F SUTTON.

APPENDIX II.

Report on Petitions No. 294 *of* 1878, *and No.* 29 *of Session I.*, 1879, *from Frederick Sutton, together with Minutes of Evidence, &c.*

THE petitioner states that he is the owner of a piece of land in the District of Hawke's Bay, known as Omaranui; that he gained a suit brought against his title by certain Natives in the Supreme Court and Court of Appeal, but that nevertheless the said Natives and others took possession of the land, and resisted the efforts of the Sheriff of the district to eject them by due process of law, declaring that they would never give up possession of the land while they retained life; that the Sheriff, in his return of the writ, has stated that he could not have enforced it without causing a breach of the peace, and that he had not sufficient means at his disposal to overcome the resistence which would have been offered; that, the Supreme Court having accepted these reasons as a sufficient excuse for the non-execution of the writ, petitioner has received no benefit from the judgment of the Court, but has incurred costs to the amount of several hundreds of pounds. He therefore prays that means may be devised for enforcing the judgments, decrees, and writs of the Supreme Court of New Zealand.

I am directed to report as follows:—

That the petitioner, as holder of the Crown grant, appears to have a legal title to the estate, but that it seems probable that the issue of the Crown grant did a wrong to the Natives, who for a long time inhabited 163 acres included in the grant. The Committee therefore recommend the Government to inquire into the case, and effect such a settlement as may appear fair, considering all the circumstances.

11th December, 1879.

SESSION I., 1879,

THURSDAY, 24TH JULY, 1879.

Mr. SUTTON, M.H.R., examined.

1. *The Chairman.*] I understand you are desirous of giving evidence on this petition?—Yes.

2. I suppose your evidence will be to the effect of sustaining the allegations contained in the petition?—I think so.

3. Perhaps you will proceed to make your statement?—Will you allow me to have the petition, so as to give my evidence according to the different headings as laid down in the petition. I purchased from the Native owners the block of land in question about the year 1869. It was a large block of about 3,500 acres, this portion—163 acres—being part of it. I am not quite certain whether it was in 1869 or 1870 that I purchased. However, it was somewhere about that period. In 1874 the question was raised as to whether this portion—the 163 acres—was included in the conveyance. At the time I purchased it the other portion was under lease to Mr. Braithwaite. This small portion was excluded from his lease, and then unoccupied, I believe. The Natives brought an action against me in August, 1874, to set aside the deed of conveyance so far as regarded this portion—the 163 acres—on the ground that it had been improperly included in the conveyance. The question was never raised before to my knowledge. It was tried in the Supreme Court, and the principal charge in the action was that this piece had been included by fraud on my part, and that it had not been intended by the Natives to sell this part. The Court decided in my favour, with costs. That decision was appealed against on behalf of one of the plaintiffs, Rewi. The appeal was dismissed with cost. Just before the first trial came on the Land Transfer Department had issued a Land Transfer certificate for this land—the 163 acres—which I now hold. The appeal against the action in Napier was argued in Wellington, and was also dismissed with costs. Finding I could not get possession, I was compelled to institute a new suit against those persons whom I found in occupation, who are not the original grantees, nor, so far as I know, intimately related to them. There was really no defence to the action. I have been put to the very greatest possible expense that the solicitors on the other side could put me to. The defence was virtually withdrawn, and again judgment was entered for me, with costs. Shortly afterwards the Supreme Court issued a writ directing the Sheriff to enter and take possession of the land for me, and recover from the chattels of the

defendants the sum of £150 or thereabouts. That referred to the costs of the second action. The Sheriff was accompanied by the Government interpreter, the Inspector of Police, and, I think, a solicitor's clerk. He was interviewed by the Natives present, who were altogether another party from the original grantees or persons who had been lately in occupation, and who went there for the purpose of resisting the order of the Court. Some altercation ensued, when the Sheriff was told by the assembled Natives that any attempt to enforce the order of the Court would lead to bloodshed He then withdrew from the ground, and the matter remained in abeyance from that point for some six or eight months. I then again appealed to the Supreme Court to compel the Sheriff to return the writ. The Court ordered the writ to be returned by the Sheriff, and after some delay it was returned with the indorsement that the Sheriff was unable to execute. Upon the argument in Wellington before the Judge—I think it was before Mr Justice Richmond—he stated that there was no power in New Zealand to enable the Sheriff to employ sufficient force to execute the orders of the Court, and he did not think that any action against the Sheriff would lie. The matter has remained in that state from that time to the present. So far as I know, some Natives are living on the ground. I think it unlikely that all the Natives named in the petition are there but some of them are there. In the month of January last I wrote a letter to the Hon. the Attorney-General on the subject. I was at a loss as to which of the Ministers of the Crown I should write to on the subject. My own opinion was that the Minister of Justice was the proper person. But believing as I did that the action that was taken by the Natives was taken by the direction and at the instigation and advice of that gentleman when he held the private position of solicitor, I could not, therefore, bring myself to address him on the subject in his public capacity I therefore wrote to the Attorney-General the following letter:—

SIR,—I have the honor to bring under the notice of the Government a matter which has been for some time one of public notoriety. I refer to the Omaranui case. Some few years since an action was brought in the Supreme Court, Paora Torotoro *v.* Sutton, for the purpose of setting aside a conveyance to me in the Omaranui Block. This action was tried in Napier, and a verdict was given in my favour. Subsequently the matter went to the Court of Appeal, and was there again decided in my favour. Finding I could not get possession of the land, I instituted proceedings in the Supreme Court, Sutton *v.* Haera and Another, for the purpose of getting possession. This case was also decided in my favour; and subsequently on the 28th September, 1876, a writ was issued from the Supreme Court directing the Sheriff to levy upon the goods of the defendants to recover over £150 costs, and to hand the land in question over to me. You will find, on reference to the documents in possession of the Government, that the Sheriff, attended by a bailiff and several others, attempted to execute the writ of possession, but was informed by a body of assembled Natives that any attempt would lead to bloodshed. The writ, therefore, has not been acted on. A considerable delay occurred before the writ was returned, and I subsequently had to take proceedings in the Supreme Court to compel the Sheriff to return the writ; and, in consequence of the order of the Court therein, the writ was returned on the 22nd October, 1877, with an indorsement by the Sheriff that he had been unable to execute it. I am advised that there is no further redress open to me in law, as I have established my claim to the fullest extent, and am in possession of a Land Transfer certificate for the land in my favour. I presume that I am entitled to claim that the order of the Court be carried out, and that, if the circumstances of the case are such that in the public interests it is not advisable, I submit that it is not reasonable that I should have to submit to further loss in consequence. I have good reason for believing that there never has been any danger of a breach of the peace, and I know of no reason why the order of the Supreme Court should not be enforced. I have the honor to request that you would inform me whether the Government will take steps to get this matter settled at an early date.—F SUTTON. Royston, Napier, 6th January, 1879. The Hon. the Attorney-General.

This letter was written on the 6th January I saw immediately after that the Attorney-General was absent from Wellington in Dunedin; and I have no doubt that some other Minister was managing his department. Possibly this letter came before some other Minister than the one to whom it was addressed. At all events I waited patiently for an answer until the 4th March—nearly two months after the letter was sent. I then addressed this letter to the Hon. the Attorney-General:—

SIR,—I have the honor to call your attention to a letter of mine dated the 6th January addressed to you, and to inform you that I have not yet received any reply thereto.—I have, &c., F SUTTON. Royston, Napier, 4th March, 1879. The Hon. the Attorney-General, Wellington.

To that I received a telegram immediately,—

F Sutton, Esq., M.H.R., Napier.—Have just received letter of 3rd March. Letter 6th January never reached me Please telegraph subject of letter.—ROBERT STOUT.

I kept a copy of my letter of the 6th January to the Attorney-General, and advised him by telegram that I had posted it:—

To Hon. R. Stout, Wellington.—Posted letter myself. Subject—The position of the Omaranui Block, which the Supreme Court has decided belongs to me. Will send you copy.—F SUTTON. Napier, 6th March, 1879.

On the 20th March I received the following reply:—

SIR,—I have the honor to acknowledge the receipt of your letter of the 6th January, received on the 17th March by me at Dunedin. In reply, I may state that the Government never interferes with any Sheriff in the exercise of his duty. Any private person who may feel aggrieved at the manner in which he performs his office has his remedy by appealing to the Supreme Court. Of course, if a formal complaint of misconduct was preferred against the Sheriff, an inquiry would no doubt be instituted, and be dealt with; but I do not understand you to prefer such a complaint As the Government has not informed the Sheriff, so far as I know, to refrain from executing the writ or writs in the actions you mention, I do not see how the Government can interfere.—I have, &c., ROBERT STOUT. Dunedin, 20th March, 1879. F Sutton, Esq., M.H.R., Napier.

I replied to that letter from Mr. Stout in the terms following, which completed the correspondence on the matter:—

SIR,—I have the honor to acknowledge the receipt of your letter of 20th March in reply to mine of 6th January, in which is the following paragraph: "I may state that the Government never interferes with any Sheriff in the exercise of his duty." Although I am aware that it is supposed that this is the correct view of the matter, I must also very decidedly submit that in practice it is not so. In England, I understand, it would have been the duty of the Sheriff to have raised a sufficient force to have entered upon the land, but I am advised that there is no such power here. In the case referred to the Sheriff acted under instructions from the Government, and was directed to report the result. I am aware that both anterior and subsequent to the issue of the writ the Sheriff was instructed by the Government, and when he attempted to enforce the writ he was accompanied by the Inspector of Police, who had also been instructed in the matter. It may be said with equal force that the Government never interferes with the bailiffs of a Court to prevent the issue of proceedings other than Sheriffs' writs, and I believe that nominally it is so; but you will, I think, admit that in such cases the Government have lately interfered to prevent the due course of law. I refer you to proceedings lately instituted by the Thames County Council against a Native for obstructing a road. In that case, I presume, the maxim of non-interference holds good in theory, but not in practice. You must, I think, be aware that the Government has always interfered whenever it is

considered that the wonderful piece of machinery called "the Native question" is likely to be affected. I do not say they have always acted legally, but that such interference has been the practice is undoubted. I have, as you are no doubt aware, a Land Transfer certificate in my favour. I have established my claim to the land at very heavy costs in the highest Courts in the colony, and I shall, I have no doubt, before very long obtain possession of the land, and satisfaction for the time I have been kept out of the results of these actions. Aware as I am that the Sheriff has only acted on instructions, I make no official complaint against him; but I do hold that it is the duty of the Government to see that the orders of the Supreme Court in districts like these should be respected. It is possible that, as you wrote from Dunedin, you may not have seen the papers in reference to this matter. If you had I do not think you would have referred to the matter as one in which the Government do not interfere. The Supreme Court has stated that it has no further power in the matter, and cannot either compel the Sheriff to execute the writ, or attach him for non-compliance with the order of the Court in the matter. I have therefore no other redress than an application to the Government, and, in case justice is still refused, to bring the matter before the House.—I have, &c., F SUTTON. Royston, 25th March, 1879. The Hon. the Attorney-General.

That closed the correspondence. So far as I know, the position is exactly the same now as it was then. I may state that within the last few months, in common with the rest of the inhabitants of the colony, I have received notice from the Land-Tax Department, and I find—I have the notice in my pocket—there is the notice I received from the office collecting the land-tax, whereby I am taxed at the net value of £3,000.

4. Does that include the whole of the piece?—That is for the 163 acres. I sold the land for £3,000 very shortly after the issue of the certificate, which would be somewhere about five years ago. I sold the land conditionally upon giving possession in six months, when the bargain would be settled.

5. It should have been settled within that time?—Yes. Of course that fell through.

6. Was this land part of the whole block?—It was. I think the original acreage was 3,570 acres.

7 And what is the quantity of the piece in question?—163 acres. The other portion was sold to Mr. Braithwaite.

8. What is the character of the larger block?—The larger block is very valuable indeed. Some of it is hill. At present, I think, it is the property of the Bank of Australasia, and if I am rightly informed the land is worth from £18 to £20 an acre.

9. What is the character of the 163 acres?—All flat, and best of agricultural land, being all ploughable.

10. Apart from the special value of the land, had the Maoris any reason for attaching importance to it?—Not that I am aware of

11. Are there any old pas or anything of that kind?—No. The only buildings that have been put on the land have been since these proceedings. They had a pa in the vicinity where the celebrated Omaranui battle was fought. Years ago there was an old pa about half a mile from it.

12. What price did you pay for the land?—I forget now It was either £2,500 or £3,000. I sold shortly afterwards the major portion for £500 more than I had given for the block. I am under the impression that I gave £2,500, selling in a fortnight afterwards for £3,000.

13. What was the nature of the alleged impropriety in including this land?—The Natives said that they had bargained with me for the sale of the "whenua of Braithwaite," and not the land included in the grant. It was all included in the grant.

14. Do they support that allegation in evidence?—They produced a certain amount of evidence on that point, but the evidence on the other side was overwhelming, and decided the jury

15. You say that those persons who were occupying at the time you got that writ of ejectment are not the original owners?—None of the original owners were living there.

16. What claim did they put up?—Force, I think. They were instructed by a learned gentleman; they took the land, occupied it, and simply refused to go. I may mention that during the last month they forcibly resisted the making of the road in the district, and told the men who were sent that if they came back again they would thrash them.

17 You say in the last letter to the Attorney-General that the Sheriff had got further instructions. How did you become aware of that?—The instructions were from the Government. I derived my information from some papers in the Supreme Court.

18. I wish to know how you became aware of it that the Sheriff was acting on instructions from the Government?—From documents I saw in the Supreme Court.

19. Those were instructions from the Government?—They were instruction by implication. I do not think that there is any actual official correspondence on the subject.

20. Do you remember the terms of the instructions?—I do not remember. It was some eight or nine months ago.

21. *Mr. Ormond*] Are those documents come-at-able?—(No reply recorded.)

22. *Mr. Carrington.*] Did you purchase from the original grantees of the land?—Yes.

23 Was there a marginal plan?—Yes. The 163 acres were included, and the whole thing was explained to the Natives. The plan is for 3,570 acres, the area in the grant. There is a subdivision line running through the plan showing the 163 acres. I believe the reason of that is that when this land went through the Land Court it was in the occupation of Mr. Braithwaite, and the line showed the boundary fence.

24. Was it shown in the deed that the sections A and B were purchased?—No. I bought the land comprised in the grant. It is marked on the plan 3,570 acres, and in the small piece there are 163 acres, leaving 3,410 acres on one side and the balance on the other.

25. Do you not think it would have been desirable to have stated that in the deed, and saved all trouble?—I am quite certain that we had seen the Crown grant at the time of the present action. I knew that this piece was outside of Braithwaite's.

Mr Carrington: I think it was a pity it was not inserted in the deed

26. *Sir William Fox.*] I presume, Mr. Sutton, that when this case was before the Court any discrepancy between the Crown grant and the deed was explained?—Yes. All documents were before the Court, and subsequent to that the jury gave a verdict in my favour after having a full knowledge of all the circumstances. I should not like to say how much I am out of pocket—over £500, I believe, for which I have got judgment.

27. *The Chairman.*] Has it ever been alleged that this line was drawn through for the purpose of deceiving the Maoris, and making them believe that the conveyance was for only the larger portion of the block?—I do not think so. I understood that the line was put in there for the purpose of allowing Braithwaite to get a more complete lease than he otherwise would. The Crown grant was for the whole block, and Braithwaite's deed was for 3,410 acres.

28. Did you say the Sheriff was here?—No. The gentleman who was Sheriff then is not here. Another person has been appointed Sheriff.

FRIDAY, 25TH JULY, 1879.

Mr TOMOANA, M.H.R., examined.

29. *The Chairman.*] What is your name?—Henare Tomoana.

30. Are you acquainted with the matters referred to in the petition?—Yes.

31. Would you be good enough to state to the Committee, as I understand you desire to give evidence on the matter, what you know?—I have something to say with reference to the contents of the petition, but cannot remember it all at present. I cannot say all I would wish to say as the matter is pending in the law-courts. The Natives were grieved about the land owing to the manner in which it was Crown-granted. They know that really that piece of land was not included in the survey of the block. Although the case has been in the Supreme Court and judgment given against the Maoris, they are still of that belief. I could give evidence on that point.

32. Will the witness explain in what way this case is pending in the Supreme Court? It is alleged in the petition, if I understand it rightly that the case has been disposed of?—I refer to the judgment of the Court, which is still hanging over the block in question. All I have got to say is that it is only the small block of 163 acres that is in dispute. The dispute does not relate to the larger piece or to the whole block. The Maoris fully believe that the 163 acres were not included in the block, and that it was intended to be kept out when the land passed the Native Land Court. That was the only cause of the trouble, and that is how I got drawn into the matter. When the Crown grant was issued and the 163 acres were found to be included, we were surprised and knew nothing about it. The surveyor of the block published an account in the *Wananga* saying that he had not included in his survey the 163 acres. The dispute rests solely on that small piece.

33. Does the Crown grant, as a matter of fact, include the 163 acres?—I cannot say for certain. I have heard so.

34. Assuming, then, that the Crown grant includes this 163 acres, was the 163 acres intended to be included in the survey?—No; it was not surveyed, according to my belief.

35. Does the tracing which, I presume, appears on the Crown grant, show that this land is included?—I do not know

36. I was going to follow up that question by asking how it was included in the map without a survey having been made; but there is no use asking that question. Do you remember an attempt having been made by the Sheriff of that district to execute a certain writ of ejectment with respect to this land?—Yes.

37 Was the Sheriff resisted in his endeavour to perform that duty?—Yes; the Sheriff was resisted.

38. I will ask the witness whether he resisted the Sheriff in the execution of that duty; but at the same time tell him that he has no occasion to answer such a question lest it might criminate himself?—I was the principal person. I was at the head of those who resisted the Sheriff in the performance of his duty It was I myself who told him to go back.

39. What would have been the consequence if he had persisted in the performance of the duty assigned to him?—There would have been no violence committed. If he had persisted in remaining there he could have done so. My object was to have the matter brought to Court.

40. Now, with respect to another point: the conveyance was signed by certain Natives—were they the real owners of the land?—No; they had a claim over a portion of the block. Those who are occupying the land claim this portion (the 163 acres) The occupants of this piece are not in the Crown grant of the block. They cut this piece out, specially for themselves. When the block was surveyed they arranged for this block to be left out of the survey When the case came to be put through the Native Land Court they did not appear. They were under the impression that that piece had been excluded. That was why I took up their case for them. I felt grieved for them. They had no other land to live upon.

41. If then they had known that this piece was included in the Crown grant they would have asserted their claim to the ground?—Yes.

42. *Mr. Carrington.*] You said that the surveyor published in the newspaper that the 163 acres were not included in his survey?—Yes.

43. How is it that the plan is on the Crown grant, if the land had not been surveyed?—I do not know In his (the surveyor's) publication in the newspaper he said that he had excluded the 163 acres from his survey, and knew nothing about it being included.

44. *The Chairman.*] What is the name of the surveyor?—Mr Ellison.

45. *Mr. Carrington.*] Can you account for the plan appearing on the Crown grant?—I cannot account for the piece having been included in the block. All that I know is that at the time the Maoris knew nothing of it being included.

46. *Hon. Mr. Nahe.* Did the occupants of this small piece claim with the grantees of the whole block?—No. These people, the owners of the small piece, lived on it, and the grantees of the block lived at another settlement altogether. The grantees in the block also state that they were not aware that this piece was included.

47 Do the grantees state that they are not owners of this small piece?—Yes.

48. Have the grantees sworn in the Supreme Court that they have no right to this small piece?—I do not know They have acknowledged that they have no claim there.

49. Does the small piece adjoin the Crown-granted piece?—It is on the side.

50. Do the Maoris say that the piece was included through some mistake in the survey?—No.

51. Did the Natives living on this small piece conduct the survey line adjoining this block?—Yes. A divisional line was put between the two. One piece was cut out and was reserved from Mr. Braithwaite's lease. They reserved this piece to themselves.

52. Whose map was it that included this small piece?—I only know of one surveyor who surveyed this.

53. *Mr. Ormond.*] Who had the survey of this block done? The Maoris or the purchaser?—I am not clear; it might have been Mr. Braithwaite.

54. Was that at the time of the lease?—Yes.

55. Were you acting on legal advice when you resisted the Sheriff?—No; we were not acting on advice. I wanted to bring the thing to a head. I do not know but the same thing might continue to occur with other Natives. The Natives were so persistent that this piece had been excluded in the block, I sided with them, taking into consideration their statement and the statement also of the surveyor.

56. *Mr. McMinn.*] Are we to understand that this small piece has been surveyed off from the main piece?—Those who conducted the survey took the lines so as to exclude this small piece.

57 Was that the original survey?—Yes.

58. How did the small piece come to be included in the larger block?—I do not know how it came to be included.

59. *Mr. Rees.*] Did any Natives at all consent to this piece being surveyed and put through the Court?—No.

60. Did any Natives know of it going through the Court?—No—that is, the small piece. They only knew that the larger block was going through Court.

61. Did any Natives know that the Crown grant was issued for this small piece?—No.

62. Did any Natives lease, sell, or mortgage with their knowledge the small piece?—No. The only thing they know about is with reference to the larger block.

63. When did the Natives first hear that the small block was claimed by Mr. Sutton?—It was not until Mr. Sutton had ordered them off the land. When Maney had the land he did not order them off. I think that the land was first sold to Mr. Maney, and afterwards to Mr. Sutton. Perhaps I am wrong about that. I had only heard from Maney that he had got the land.

64. Is this particular piece of land more than ordinary land to the Maori, such as a burial-place, or cultivation?—The larger block is fine fertile land. It has been cultivated. I cultivated upon it for four years myself. It is all very good land right through. The smaller block we hold specially valuable because there are burial-grounds upon it. The land outside is better right through. On the smaller piece there are also cultivations as well as burial-grounds.

65. Has it been used long as a settlement as well as a burial-ground?—When Europeans first went there the Maoris were living upon it.

66. From the traditions of the people, have the Maoris been living there long?—Yes; for many generations. There is a hill on which stood a pa. The place was used by their ancestors, and continued so down to the present time when guns were first used. There were also kumara plantations alongside. Te Mingi was the name of the place. The 163 acres is called Ngatahira. The hill is outside the small piece, on the margin, but the kumara cultivation is on the land.

67 The pa is not on the land in question?—No.

68. Are there any burial-places on the ground in question—that is, on the small piece?—Yes; there are old burial-grounds. It has been used as a burial-ground in recent times. Ngatahira was the first person buried there, and the land was called after him on that account.

69. Would the Natives have allowed Paora Torotoro and Rewi Haokore to sell that land?—No; they never would have consented to that.

70. Do you know what Mr. Sutton gave the Natives for this land?—I do not know I have heard, but do not recollect.

71 Have you ever had any conversation with Mr. Sutton as to the claim about the land?—No; this is the first time.

72. Were there not a great number of people to whom that land belonged—the 163 acres?—There are a great many owners to that land. There are two hapus, and each member of the hapu has a family, and they claim with him.

73. Did any of the Natives give instructions to have this land included in the survey?—No.

74. Before the land passed through the Court was it not in occupation of some Europeans—that is, the larger block?—Yes.

75. Was the smaller part in the occupation of Europeans?—No.

76. When the orders to survey were given, were they told to survey nothing but the larger portion which was in the occupation of Europeans?—There were no instructions given to include the small piece.

77 Did any of the Natives know that that smaller piece had been surveyed, or passed through the Court, or Crown-granted?—No. We first knew when Mr Sutton turned us off the ground.

78. Do you remember Dr. Pollen coming to Hawke's Bay, and having a meeting about this land?—I remember.

79. Did Dr. Pollen examine and hear what the Natives had to say about this land?—No.

80. Was there not a conversation with Dr. Pollen and the chiefs about it?—Yes. He only said one thing, and the chiefs would not agree to what he said, and they all went out.

81. Was not that *korero* after Mr. Sutton had summoned Paul in the Supreme Court?—It was, I think.

82. What was the proposal that the chiefs disagreed to?—Dr. Pollen proposed that they should give this piece into his hands, that is to say, for him to settle the matter.

83. *The Chairman.*] Settle the matter by giving up the land?—Yes, by handing it over to him.

84. *Sir W. Fox.*] Is the witness personally acquainted with the facts with regard to the survey,

and speaking from his own knowledge, or from what he has heard?—I am speaking from my own knowledge. I have heard the subject discussed generally

85. You were not present when the instructions were given?—I was not present.

86. Then it is hearsay evidence?—I have heard, but not at the time the thing was done.

87 I wish to know whether the witness understands what "pending before the Court' means. The case had been tried in a lower Court, and the decision had been appealed against in a higher Court, and that Court on hearing the case gave judgment in favour of Mr. Sutton. What does the witness mean, then, in saying that the matter is before the Court?—I was referring to what was stated in the petition of the judgment given in the Supreme Court.

88. As you now understand that the case is not pending before the Supreme Court, but that that Court has given its final decision, do you think it right to resist the officer sent by the Court to obtain possession of the land?—In my opinion, considering the statements of the different Natives that they did not part with that land, I felt grieved for them, and I thought I was perfectly justified in acting as I did.

89. Notwithstanding that the Court had decided that they had parted with their land?—We would abide by the law We would not resist the law if we had known that the purchase of this block was free from unfair dealing. The Maoris are not aware that this block has been sold. Mr. Sutton has many large blocks. They give up all claim to them. This smaller piece they have not sold.

90. *The Chairman.*] I understand that the witness's answer may be shortly stated that the Natives understand that they have a right to maintain their original claim notwithstanding the decision of the Court?—I admit that it was wrong to oppose the law, but had the judgment been according to our ideas we should have no longer opposed the Court.

91. *Sir W Fox.*] If you are told that the land is Mr. Sutton's, will you still oppose the Sheriff?—I cannot give an answer to that. I am the only one here. My people are all at their places. I should have to consult them. In my opinion, as we all know, all the occupants of this piece have no other land to live upon, and, though we are wrong in opposing the law, it is only fair that the Government should give them this small piece of land. That was the application made to Dr. Pollen.

92. So far as you can see at present, you are inclined to persist in the line of action that you have taken up?—I will persist in applying to the Government to exclude this piece from the sale. Let the Government compensate Mr. Sutton.

93. *Mr. Russell.*] It does not seem to me quite clear about the survey He says that no instructions were given to include that piece. Does he know that instructions were given to exclude it?—Yes, instructions were given to exclude that piece.

94. To whom?—To Mr. Ellison.

95. Who attended the survey with Mr. Ellison to show him the boundaries?—Muopoko conducted the survey of the land; but he is dead.

96. Who gave Mr. Ellison instruction to exclude this place?—The person who is dead, Hoera; Hamahana, who is also dead; and Hohaia.

97 How do you know that these men instructed Mr. Ellison?—Such were the statements in the Supreme Court in the case with Mr. Sutton.

98. To whom was this land granted?—To Paora Torotoro, Rewi, and, I think, to Hare.

99. Was it possible for Paora Torotoro to sell this piece without consulting Hohaia and Hcera, knowing that this small piece was in the block?—No. He knew that the small piece was outside. Paora did not sell this small piece; he only sold the larger one.

100. That is, in effect, that he did not know that the smaller piece was included?—Yes.

101. *Mr. McMinn.*] I wish to know if you yourself have any right in this piece of land?—I was acting on behalf of the Natives.

102. *Mr. Sutton.*] Do you remember a surveyor attending the Supreme Court in Napier and giving evidence?—I am aware of his appearing in the Supreme Court, but I do not know what he said.

103. Do you not remember the surveyor producing his book showing that he had surveyed the whole block?—No.

104. In reference to the burial-ground, are you quite certain that the burial-ground is on this piece or on the Omaranui Block, near where the fight took place a few years ago?—There are two burial-grounds: one at Omaranui and another at the small piece on the 163 acres. The burial-ground has been at Omaranui since the young people went there to live. The burial-place on the small block is a very ancient one.

105. Is it fenced in or cultivated?—The place is fenced in. There is no cultivation on it. The Maoris are not fond of cultivating on burial-grounds.

106. Is not the pa on the part of Omaranui and immediately in front of Te Mingi Pa?—The pa that I have spoken of is on the Omaranui Block.

107 Is it not a fact that these people who are all living there have gone there during the last two or three years, and belong to Tareha and Paora Kaiwhata's pa?—No.

108. How many houses are there on the land?—I could not remember them at present.

109. Do you think there are more than four or five?—I do not know Before Mr. Sutton got that land, and when I was young, Natives occupied that block.

110. *Mr. Hobbs.*] Why do you think that the Government should compensate Mr. Sutton?—It was a proposal from Dr. Pollen. It was said that the Maoris should receive some money, and that Mr. Sutton was to get the land. That was the reason I spoke about compensation.

111. Did you hear Dr. Pollen make that promise?—I almost forget, but I believe that he said so.

112. *Hon. Mr. Nahe.*] Do you know the copy of the *Wananga* in which the surveyor's notice appeared about the survey?—No.

113. What did the notice contain?—The words in the paper were to the effect that he surveyed that piece of land, and was not aware of the small piece (163 acres) being included in the former piece.

114. Why did you persist in resisting the Court which gave that land to Mr. Sutton as against yourselves?—Because the Natives are so strong in stating that that block, the small piece, has not

been parted with. I will not say that there was fraud connected with the transaction, but it may have been included by some secret survey

115. Which is the new burial-ground and which is the old one?—The one at Ngatahira is the old one, as I have already stated.

SESSION II., 1879.

FRIDAY, 14TH NOVEMBER, 1879.

Mr. H. A. CORNFORD examined.

116. *The Chairman.*] Have you seen the petition?—Yes, I have.

117 Can you give the Committee any information upon the subject of this petition?—I am only acquainted with the facts of the law case in which I was engaged when I held a brief. I think the Committee would get a good deal of evidence from the original record, handed to me by the Registrar of the Supreme Court, which I now hand in. This is the original record of the case, in which an appeal was granted and heard. The case was decided in the month of December, 1875. Both sides agreed to the case as stated for the Appeal Court. Further than what is stated in that record, and correspondence between Mr. Sutton and the Minister of Justice, I cannot say that I know anything about the dispute as between the Natives and Mr. Sutton.

118. To which case are you alluding?—I am alluding to the Omaranui case. That is the special case in which counsel on both sides agreed to the statement of argument as to the pleadings and the findings of the jury

119. Do you wish to make any statement?—I will answer any questions the Committee may desire to put to me; but I do not think that I can make any statement adding to what was agreed to by counsel on both sides.

120. *Mr. Wakefield.*] Was the case in which a mistake was said to have been made in the Omaranui deed respecting a reserve of 163 acres?—Yes. The finding of the jury was that there was no mutual mistake; that there was no evidence to prove that Rewi Haokore understood the deed, and *per contra* there was no evidence to show that he did not understand it. The man was not an idiot, and was presumed to understand his own language when it was spoken to him. Possibly, after honorable gentlemen have read the record, they might wish to ask me some questions about it. It is rather a lengthy document to peruse. [Record read.] I might add, after the decision in this case, another action had to be brought to evict the Natives from the ground. There was no real defence set up. The writ of possession issued under the seal of the Court, but the Sheriff was not able to give possession. That was after the first case. The petition, if I think rightly, specifies the action of the Sheriff in respect to the writ, and the futile result.

121. *Sir G. Grey.*] Can the record be left with the Committee for the purpose of allowing them to read the judgment given by the Chief Justice?—The Registrar of the Supreme Court instructed me to place it in the hands of the Chairman.

122. *The Chairman.*] Is this a true record of the state of the case in regard to the writ of ejectment?—Yes. To the best of all the information I have, the petition is a correct statement of all the occurrences after the first judgment of the Court.

123. *Colonel Trimble.*] Has Mr. Sutton any legal remedy from any Court?—None whatever. He has exhausted his legal remedies, and the Sheriff of the district is unable to hand him the fruits of the judgment of the Court of Appeal. The *posse comitatus* could not be called out in New Zealand as in the Old Country In England the Sheriff is empowered to summon all the able-bodied men of the bailiwick to his assistance to give effect to a writ of ejectment. In this country that cannot be done. Mr. Sutton has exhausted all the legal remedies at his command.

124. I understand that his legal position as owner of this land has been absolutely established by the Supreme Court?—Yes.

125. And the only reason that Mr. Sutton cannot get possession is that the Sheriff was unable to carry out the instructions of the Court?—That is so.

126. *Mr. Wakefield.*] You said just now that the Sheriff could not carry out the order of the Court?—I have read the Sheriff's affidavit on the subject, and I think the terms used were sufficiently strong to justify me in saying that he could not carry out the order of the Court.

Mr. Rees: I should like to ask Mr. Cornford if in the years 1869 and 1870 it was not contrary to the statute law to sell or give spirits to the Natives?

127 *The Chairman.*] Can you answer that question?—I cannot say I would be very sorry to give an opinion without reference to the statutes. I do not profess to have them all in my memory

The Hon. Dr. POLLEN, M.L.C., examined.

128. *The Chairman.*] Can you give the Committee any information on the subject-matter of Mr. Sutton's petition?—I should like to see the papers in the Native Office on the matter. The circumstances are very much out of my recollection. There is a particular point, I remember, upon which the case turns.

129. Then you would prefer postponing your evidence to enable you to have access to the papers in the Native Office relating to the subject?—Yes. I am aware of the facts of the case being in dispute, also my going to Napier one day and having a meeting with the Natives, when I was on the point, as I hoped, of effecting a satisfactory settlement.

Mr. SUTTON, M.H.R. further examined.

Witness: I have read the evidence given by Mr. Henare Tomoana, in which he refers to a letter said to have been written by the surveyor, denying that he had included this portion of land in the survey. The letter to which he referred was published in a newspaper in Napier called the *Wananga;* and, although the Maori translation did convey that impression, I was informed immediately by several Native experts that the translation was a very poor and incorrect one. Mr. Ellison, the surveyor himself, addressed a letter to one of the local papers denying that he had written the letter in the terms as published in the *Wananga.* At the trial of the first case in Napier Mr. Ellison produced his field-

book, and showed the Court very positively that when he had surveyed the land he surveyed the outer boundaries of the block. It was attempted to be shown on the trial that Mr. Ellison had surveyed land other than that which he was expected to survey; but Mr. Ellison proved that certain Natives were with him on the survey and over the whole land, and showed conclusively to the Court that the survey made by——

130. *Sir G. Grey.*] What were the names of the Natives?—Paora Torotoro and Rewi Haokore.

131. What did the Court find with respect to the knowledge of these two persons?—The Court found, in the case of Paora Torotoro, that he did understand the transaction; but in the case of Rewi Haokore there was no evidence to show that he did or did not understand it. I do not know whether these were the exact words or not.

132. Were you aware that the Natives did not admit that the portion of the land claimed was included in the sale?—I was not aware of it until shortly before the action commenced.

133. You did not know in the beginning of your connection with the transaction?—No; certainly not. The question was never raised. I think the action was commenced in 1874. I think the question was raised in 1873.

134. Did you purchase the land?—Yes.

135. Was there nothing in the deed that gave you warning that that land was included?—No. I inspected the grant, which showed the area of the block to be 3,570 acres, I think.

136. Who was it you purchased it from?—From Paora Torotoro and Rewi Haokore.

137 Did Mr. Braithwaite have nothing to do with the transaction previously?—Yes; he had a lease of about 3,410 acres, being all the block except 360 acres.

138. Which is the disputed piece?—The 360 acres.

139. Were you aware that Mr. Braithwaite did not lease that piece?—I was aware that it was not included in Braithwaite's lease, because I had previously searched the Registry Office.

140. Then you did not believe that you were purchasing only what Mr. Braithwaite leased?—Yes; Braithwaite offered me £500 to include the whole block in the purchase.

141. Then you purchased from Paora Torotoro?—Yes; Paora Torotoro and Rewi Haokore.

142. What did you say was the name of the second Native who was found not to be included?—Rewi Haokore. He was found not to be included. I think the finding of the jury was, that it was not proved that he understood the deed or not.

143. And he was one of those who sold to you?—Yes, one of those who sold. The decision was made by the Court of Appeal, and argued in Wellington and decided in my favour. The appeal was only on behalf of the one plaintiff Rewi. There was no appeal on behalf of Paora.

144. How many Natives were interested in the block altogether?—Only two. It was granted to them.

145. Did this man sign the deed without giving you warning?—What man?

146. Rewi Haokore?—The question was never raised until some time after the signing of the deeds.

147 Was the deed interpreted to him?—Yes.

148. Who was the interpreter?—Henry Martyn Hamlin. He is dead since.

149. *Major Te Wheoro.*] Who sold the whole block to you? Paora Torotoro and Rewi Haokore.

150. Which did Mr. Braithwaite lease?—He was leasing the whole block excepting the 163 acres. I think it was 3,410 acres.

151. Was the land surveyed which was leased to Mr. Braithwaite?—Yes.

152. When were the 163 acres surveyed?—At the same time as the other.

153. Was this not excluded from Braithwaite's piece?—Excluded from what?

154. From the block?—It was not excluded from the block. I am informed that Braithwaite had a lease previous to that land being Crown-granted; but I am not aware of that from my own knowledge.

155. Who ordered this survey?—I do not know at all. The survey was made some years before I had anything to do with it. Mr. Ellison says it was the Natives who ordered the survey, but I do not know from my own knowledge.

156. Is this land near Moteo?—The whole land, I understood, was known as Moteo.

157 When you bought this land how many Natives were living upon it?—I am not at all aware. I was not on the land at the time of the purchase, nor for some two or three years afterwards.

158. Where is the place of Paora Kaiwhata?—Paora Kaiwhata lives about a mile and a half further from Napier than this land along the river-bank.

159. Has Henare Tomoana any claim to this land?—Not that I am aware of.

160. Did Henare Tomoana say anything to you about this land when he had heard that you got it? Did he not ask that he should have some acres out of it?—I do not remember. I do not think that Henare Tomoana and I conversed about this portion until after the action in the Court.

161. Was it after the case was tried in the Court that Henare Tomoana spoke to you?—I am not certain, but I think it was somewhere about that time.

162. *Mr. Henare Tomoana.*] Did Paora Torotoro and Rewi Haokore both sign their names at the one time?—I believed they both signed at the one time.

163. Do you know when they signed?—One at Paora Torotoro's place, and the other at Tareha's house.

164. Which house of Tareha's?—I could not say I think it was at the pa.

165. How many miles away from the pa?—About three miles. I am not certain whether they were together on that occasion or not, or whether they executed at that time a mortgage of the land.

166. Do you not know that the Natives were living on this land?—I do not know At that time I think they were living on land sold to Neal and Close, now sold to Bennett. The land was called Omaranui. Some called it Kohurau.

167 When did you find out that the Natives were living on the land?—I could not say for certain. I should think it was some time about 1872.

168. Do you think that was when the Maoris first went there?—I could not say I am under the impression that they only went there lately

169. How did you find out that the Natives went there?—I saw them there.

170. What did you go up there for?—I went up there to look at the land. I was in the neighbourhood.

171. You did not go up then to turn the Natives off the land?—No.

172. What year did you go up to turn the Natives off the land?—I never went to turn them off—not that I am aware of. I wrote to them telling them that I should require the land shortly, and asked them to remove off the land. I do not think I ever went up for that purpose.

173. Did you not go up in a trap to turn them off?—I went up there, at their request, to talk about the position of the matter. I met you there. I went up with Mr. J R. Hamlin; but that was a long time subsequently

174. And when you saw me there, what did you do?—I showed you a copy of the deed, and explained to the Natives that the land was mine.

175. Did I not tell you that you had better go back?—I think it is very likely I know the Natives at that time did not admit my claim to the land, but that was after the action had been commenced.

176. Did you not say that you would take all the improvements, the wheat, and crops of the Natives on the land?—I am not certain. We had an argument on the land. The Natives did not attempt to dispute the execution of the deed or the purchase-money

177 Did you not tell the Natives to take their threshing-machines out of the place, and that if they did not you would seize them?—My impression is that I told them to take their machine off the land.

178. What did the Maoris say?—They said that they were advised by their solicitors that the land was not mine.

179. What Maoris said that?—I could not say what Natives. You would remember, Henare Tomoana. Manaena was there. I think that there were about a dozen or fifteen Natives. I think the late Karaitiana Takamoana was there.

180. I want to know the reason you went up. Did you go up in a friendly spirit or not?—I went up to claim my own, and what I believe still belongs to me.

181. Will you not say plainly that you went up to turn the Natives off the land?—I went up to tell the Natives that the land belonged to me. I took up copies of the deeds with me to show them that the land was mine. I also took up a certified copy of the Crown grant from the Registry Office in Napier.

182. Did the Maoris then acknowledge the land to be yours?—No. They said that they had been advised by their solicitor that the land was not mine.

183. That is not a plain answer to my question. I want to know what the Maoris said their lawyers had told them?—They said that their lawyers had told them that the land was not mine.

184. After you went up that time what was done about this land?—The case came on for trial in the Supreme Court. That is my impression.

185. Was that the first time it went to the Court?—I think so.

186. Then, after the decision of that Court had been given, you applied to the Court to eject the Natives?—That was after the second decision. I was told by several Natives that although the decision had been given by the Court, and was in my favour, they would not respect it.

187 It was because the Natives were persistent that the case was tried a second time?—Because I could not get what the Court said I was entitled to get.

188. Can you say what year the first trial of the case was in?—I think it was in 1875. It was in 1874 or 1875.

189. In the first action did the Natives appear at all?—The Natives were plaintiffs. I was defendant. Tomoana was there himself. In the second case, after putting me to £200 or £300 expense, Mr. Travers, their lawyer, threw up his brief, as they had no case. My impression is that no witnesses were examined in the case at all. The counsel for the Natives had consented to judgment.

190. Is that all the land of these Natives that you have got?—It is impossible for me to say for certain. It is my opinion that they have a large quantity of land in the vicinity

191. Is this the only land of these Natives that you have? Is this all the land you have got from the Natives?—No.

192. Were all the other lands fairly got?—I believe so.

193. Are they all settled?—No; they are not all settled. There are a good many in the Supreme Court—cases which have been nominally in existence for the last five years.

194. *Sir G. Grey.*] I would ask, Mr. Sutton, if you had a lease of these lands previously from the Natives?—No; I had not.

195. Had you a mortgage on the land?—I had a mortgage on the whole of the land in the grant, being of the same description as the land in the conveyance.

196. What was the mortgage for?—I could not say I should think it was for some £400 or £500, owing principally by Paora Torotoro.

197 Whom was it owing to?—To myself.

198. Was it owing for money advanced, or goods?—Both; but principally for goods. I advanced him money at times.

199. What was the nature of the goods?—Clothing and groceries.

200. Any spirits?—There was a certain amount of spirits—about 6 or 7 per cent. of the whole transaction.

201. There were spirits?—Yes.

202. Was the mortgage drawn up by your solicitor or their solicitor?—By my solicitor.

203. Was there any agent with the solicitor acting on their behalf?—No, none on their side.

204. Did they both sign it the same day?—My impression is they both signed it the same day I do not know whether they signed it in the same room or not.

205. Where did they sign it?—I think at Paora Torotoro's house and Tareha's pa. I think both deeds were signed in those places, the mortgage and conveyance.
206. Did you go out there?—I went out by appointment, and at Paora Torotoro's request.
207. Was the mortgage interpreted to them?—Yes. It is signed both in English and Maori.
208. Was any spirits given on the occasion of that signing?—No; or on any other occasion.
209. On this occasion there were none?—I do not think so.
210. Then you are not certain?—I was not in the habit of taking spirits to Native pas.
211. Who was the interpreter?—Mr. Hamlin.
212. Which Mr. Hamlin?—Mr. Martyn Hamlin. He interpreted both the mortgage and the conveyance.
213. You said that the Natives had no legal advice?—I am not aware that they had.
214. You said that there was no lawyer present?—There was no lawyer present on their side.
215. Your lawyer prepared the deeds?—Yes.
216. They were submitted to no solicitor on their behalf?—No.
217 Then they had no legal advice upon the matter?—It is impossible for me to say whether they had consulted a lawyer previously to signing or not.
218. How many acres was the land?—The entire block?
219. The entire block?—I think 3,573 acres; I am not quite certain.
220. Did you have the land surveyed?—No; I never had the land surveyed.
221. Whom was it surveyed for?—It was surveyed for the Natives at the time of the Native Land Court, some two or three years before my connection with it.
222. Had Mr. Braithwaite a lease at the time it was surveyed?—I think he had an illegal lease before the land went through the Court. After the Court he obtained a legal lease.
223. Then he did not lease this place in dispute?—No.
224. Was this land surveyed at the same time?—It was: at least so I am given to understand by the surveyor.
225. Is it shown in the lease, or cut out specially?—No.
226. The block—the 163 acres—is not shown in the lease?—I am not quite certain whether it is shown on the plan. It is not shown in the description of the land.
227 Was the plan in your possession?—No, the plan was in the Registry Office.
228. How long was the mortgage for? How long was it supposed to be for?—I could not say I fancy it had been in existence for about eighteen months.
229. Had the mortgage expired when you bought the land?—No, the mortgage had not expired.
230. Was the deed for the purchase of the land?—I think it was.
231. Was it submitted to any solicitor on their behalf?—I did not submit it.
232. When they signed it, was there any solicitor present acting for them?—I am not aware that there was.
233. You were present at the time it was signed, and you do not know whether there was any solicitor present or not?—There was no solicitor on either side.
234. In fact, spirits were part of the payment?—I believe that there was a small quantity of spirits, some 6 or 7 per cent.
235. Did the law allow the sale of spirits?—It is a moot point, which the Supreme Court of the colony has not decided.
236. When they signed the deed of purchase there were no spirits given to them?—I think not.
237 You were there at the time?—Yes.
238. Then you would know if such was the case?—Yes. There were no spirits.
239. How much did you pay for the land?—£2,500.
240. Was that paid in money?—A portion of it was paid in money and a portion of it paid in goods.
241. How much of it was paid in money?—I could not say exactly
242. Was the mortgage included in the purchase-money?—Yes, it was.
243. And in the remaining goods that paid for the land were there any spirits?—I think, as I said before, out of the £2,500 there was about 6 or 7 per cent. for spirits—a much less proportion than the average percentage of spirits taken by white people.
244. I do not quite understand your last answer?—A much less proportion of spirits, considering the amount of the transaction, than would be supplied in similar transactions with the average Europeans.
245. Do you mean that other Europeans would give more spirits?—No; that the average white man would take a larger quantity
246. You mean if you were buying land from a white man you would have given him more spirits?—I do not wish to be misrepresented.
247 Then I do not understand you?—What I wish to say is this: that the percentage of spirits in that purchase-money was much less than would probably have been the case in a transaction of £2,500 with a white man.
248. Then I put the question in this way: that if you were buying land from a white man you would not pay him 6 or 7 per cent. in spirits?—I think in the case of dealing with a white man there would have been 50 or 60 per cent. in spirits. There is no doubt that spirits is a legal consideration to a white man, and, unfortunately too many properties pass for that consideration.
249. Would the ordinary rule have been, if a white man was selling his property, for him to have a lawyer to advise him?—I do not think so. I have sold properties without any solicitor to advise me.
250. Who prepared the deeds?—I would submit them to my solicitor.
251. *Colonel Trimble.*] You were talking just now about 6 or 7 per cent.—do you mean 6 or 7 per cent. of the account of goods rendered?—Yes.
252. And when you said that a white man would have probably more than 6 or 7 per cent. do you mean a white man buying a similar quantity of goods?—Yes.

253. *Mr. Rees.*] I would like to suggest one or two questions through you, Mr. Chairman. Will Mr. Sutton state positively that less than 20 per cent. of the presumed purchase-money was for spirits?—Certainly; beyond all doubt.

254. Will you state that it was less than 10 per cent.?—I have stated what is a matter of public record. Any gentleman can ascertain the fact by searching the documents in the library

255. Will Mr. Sutton state that less than 10 per cent. of the consideration-money, he gave to the Natives consisted of spirits?—I believe so.

256. Is Mr. Sutton certain? Will he state absolutely that less than 10 per cent. of what he gave to the Natives was for spirits?—I certainly believe so.

257 Will Mr. Sutton state how much money he paid the Natives?—I cannot say how much money I paid to the Natives for a thing bought ten years ago.

258. Will Mr. Sutton state whether he asked Paora Torotoro or Rewi Haokore or any of the other Natives whether the 163 acres were included in what was mortgaged to him?—I do not think it at all likely I dealt with them for the block. I did not deal with them for the 163 acres. The whole negotiation was for the whole block as it stood.

259. Will Mr. Sutton answer in the same way with regard to the sale?—Yes. I had no negotiation for any particular portion of the block.

260. Was Mr. Sutton aware that on the plan of the Crown grant a line was run dividing the 163 acres from the other part of the block?—Yes; I am perfectly aware of that. The line was, I think, put in by Mr. Braithwaite's suggestion for the purpose of completing his title, or making it more clear in reference to the lease; and that line corresponds with the lease by Mr. Braithwaite. That was one of his boundaries.

261. Does Mr. Sutton know that it was illegal to give or sell spirits to the Natives at the time he negotiated for this land—that it was contrary to a statute of the colony?—I have understood that every honorable member of this House breaks the law whenever he goes into Bellamy's to have a liquor—that you can neither sell, give, nor allow them to take it. Every honorable member breaks it when he has a glass of liquor in Bellamy's.

262. Is Mr. Sutton aware that he was breaking the law in giving or selling liquors to these Natives at the time he did so—in 1869 or 1870?—It is the same law now as then.

263. I am not asking that, Mr. Chairman. I am asking if Mr. Sutton is aware that in 1869 or 1870 it was illegal to sell or give any spirits to Natives?—I am aware that that is a law in dispute. There is a Proclamation issued some thirty years ago, and as to the validity of that Proclamation there are serious doubts.

264. Are you aware of an Act—the Sale of Liquor Ordinance of 1847?—It is not an Act, as far as I am aware, passed by Parliament.

265. Does Mr. Sutton know that there was no Parliament in 1847?—I was not here in 1847

266. How much of the £2,500, the alleged purchase-money, did Paora Torotoro owe Mr. Sutton?—I cannot say from memory exactly

267 How much did Rewi?—I could not say that either.

268. Has Mr. Sutton learned that many other Natives claim to be interested in these 163 acres besides these two?—I do not think any Natives claim to be interested in it. I never heard of any claim until long after the sale, when the Natives were put up to the action.

269. Does Mr. Sutton state that he never heard that any other Natives claimed this land until the action commenced?—Not until about that time.

270. Is Mr. Sutton aware of the nature of the action brought by Rewi Haokore and Paora Torotoro against himself?—Yes; fully

271. Is he aware that it was an action brought to rectify a mistake?—It was an action brought alleging fraud by wrongfully including the 163 acres.

272. And that it was held that, in order to rectify that mistake, there must be error on all sides?—It was held that there was no mistake proved. That was the finding of the jury

273. Is Mr. Sutton aware that, to support an action on the ground of mistake, it must be first proved that all parties were mistaken?—I have had a good deal of experience, but I am not a lawyer.

274. Does Mr. Sutton say that, when he signed the mortgage, he had no knowledge that the Natives were ignorant that they were mortgaging the 163 acres?—I state positively that the Natives were not ignorant.

THURSDAY, 11TH DECEMBER, 1879.

The Hon. Dr. POLLEN, M.L.C., further examined.

275. *The Chairman.*] Can you give the Committee any further information on the subject-matter of this petition?—I am sorry to say that since I was last here I have not been able to get the information I hoped to get from the inspection of papers in the case. I said when I was here last that I would endeavour to get the papers relating to the matter from the Native Office. But the particular papers, I find, relating to this case have disappeared from the records. I have therefore no further information to offer to the Committee beyond what I gave on a former occasion. I said then that immediately after I had taken office as Native Minister I went to Napier for the purpose of effecting a settlement of this dispute. There was a large meeting of the Natives held; and, in fact, I had almost completely come to an agreement about the settlement, and that the question should be placed in my hands—that was the Natives' expression—"the land should be placed in my hands." I had then an intimate acquaintance with the grievance of the case, and, from my general recollection of the matter now, think that the Natives have substantial grounds for claiming redress. That is all I remember about the history of the case. It has gone out of my recollection. Just as the meeting was about to break up, and understood to have come to an agreement, it was suggested to the late member Karaitiana by Mr. Grace, agent for the Repudiation Party, that there was something wrong in the agreement, as far as I recollect. He meant to obstruct the settlement that was come to with the Natives, and the meeting

broke up without anything further being done. Henare Tomoana was there, and was, I understand, one of those who consented to this arrangement that I had arrived at.

276. Then are the Committee to understand that generally the allegations contained in the petition are correct?—In the petition of whom?

277 Of Mr. Sutton?—They are statements of fact; but beyond that there is the fact lying at the bottom of the whole question that the Natives have really a grievance with respect to this case.

278. *Sir G. Grey.*] I would like to ask Dr. Pollen one or two questions. The petition states "that certain aboriginal natives—Hoera and Hohaia te Hoata—having taken possession of the said piece or parcel of land." I would like to ask Dr. Pollen, does he know when they took possession of it?—I am not able to answer that in the absence of the papers. I cannot charge my recollection with the circumstances at all.

279. Are you aware whether they took possession before or after Mr. Sutton took possession?—I cannot say

280. Then you do not know that the petition is substantially correct?—That all depends.

281. You do not at present know it?—Not at present.

282. *Mr. Ormond.*] When you went to Napier in reference to this case, you went as Native Minister?—Yes.

283. At that time the Natives had possession of the block, had they not?—Yes.

284. What was your object in going?—My object in going was to endeavour to effect an amicable arrangement with the Natives, for the purpose of preserving the peace, and having justice done to both sides.

285. You requested the parties to hand the matter over to you, did you not, to be dealt with?—Yes; the actual expression used was that the land should be given to me—that is, the land in dispute, the reserve.

286. Could you say to the Committee, generally, what the feeling of the Government was on the matter in regard to this case?—I do not know that the Government had any feeling in the matter. I myself represented the Government throughout the whole transaction, and, at the time, the only feeling that I had was that the Natives should be satisfied and justice done all parties.

287 For that object there was a meeting held at Napier?—Yes; a very large meeting.

288. Who was the principal, do you remember, who acted on the part of the Natives?—The late Karaitiana was there, and Henare Tomoana. I was aware that all the principal men in the district were present.

289. Do you remember if Karaitiana acted as spokesman?—He spoke frequently, and took a leading part in the matter.

290. You said just now that a Mr. Grace, who was there, interfered in a manner during the meeting that prevented the settlement from being made?—Yes.

291. Do you remember what advice he gave on that occasion?—I cannot charge my memory with the particular suggestion that he made to Karaitiana, but the arrangement arrived at was completely frustrated.

292. Which Mr. Grace was that?—He is the Mr. Grace who, I understand, is Resident Magistrate at Waikato.

293. *Sir G. Grey.*] Did Mr. Grace interfere improperly?—I cannot say that the interference was improper. He came there representing a particular interest, and I suppose he interfered for the purpose of promoting that interest, whatever it was.

294. Were you informed by anybody that the Natives had been residing there for many years?—I think I knew all the circumstances at the time, but they have gone out of my recollection.

295. What did you mean by asking the Natives to give the land up to you?—To effect an arrangement between the parties.

296. Was there any offer to restore this block of land?—There was no offer of that. The meaning of the proposition I made was that they should give up possession of the block entirely to me, and to leave the land.

297 Were you on the land at the time?—No.

298. Had you ever been on the block?—No.

299. Where was the meeting held?—In the Government Office in Napier, above the Supreme Court Buildings.

Additional Papers re *F. Sutton's Petitions of* 1878 *and Session I.*, 1879.

The CHAIRMAN, Native Affairs Committee, to Mr. TYLEE.

To J. T. Tylee, Esq., Napier.—*Re* the writ of ejectment, Sutton *v.* Hoera, Omaranui, please inform me whether you ever received any instructions from the Government, direct or implied, to refrain from the execution of the said writ.—JOHN BRYCE, Chairman, Native Affairs Committee, House of Representatives. Wellington, 24th July, 1879.

Mr. TYLEE to the CHAIRMAN, Native Affairs Committee.

To John Bryce, Esq., Chairman, Native Affairs Committee, Wellington.—Sutton *v.* Hoera. When writ was issued Sir D. McLean telegraphed to me not to take action pending Mr. Ormond's arrival in Napier. I think Mr. Ormond arrived next day. When I saw him he told me I must do my best to carry out the laws; act with discretion. Not being successful, I reported the matter to Minister of Justice, and was advised to apply to Judge at next sittings of Supreme Court for an attachment Henry Tomoana, if such course necessary. No further steps were taken, nor was I urged to do so until a year after, when I was called on to make return to writ. I saw Mr. Sheehan, and understood from him the matter would be arranged.—J T. TYLEE, late Sheriff. Napier, 24th July, 1879.

NOTICE of NAME on VALUATION LIST.—District of Hawke's Bay, County of Hawke's Bay.

To Frederick Sutton, Farndon, Clive.—Take notice that your name appears on the valuation list under "The Land-Tax Act, 1878," for the County of Hawke's Bay, Okawa District, as follows:—Name of owner, Frederick Sutton; trade or occupation, sheepfarmer; description and situation of property, 163 acres, Block 3N, Omaranui; net value, £3,000.—J. Y. COLLINS, Deputy Commissioner. Napier, 1879.

Mr. SUTTON to the CHAIRMAN, Native Affairs Committee.

SIR,—I have the honor to request that your Committee would proceed as early as convenient with a petition of mine, which was partly inquired into last session. I should like Mr. Cornford, of Napier, who is now in Wellington (in obedience to your request in the matter of Davie's petition), to be examined on my behalf. I should also feel obliged if you would apply to the House for permission to ask the Hon. Dr. Pollen to attend and give evidence.—I have, &c., F. SUTTON. Wellington, 10th November, 1879. E. Hamlin, Esq., Chairman, Native Affairs Committee.

Mr. REES to the CHAIRMAN, Native Affairs Committee.

SIR,—I have the honor to request that I may appear as solicitor for the Natives in Mr. Sutton's petition regarding Omaranui. The Natives interested are mostly my clients, and, unless I am permitted to appear and act for them, I am confident that the Committee cannot arrive at a just conclusion.—I have, &c., W L. REES. Wellington, 14th November, 1879. The Chairman, Native Affairs Committee.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1881.