

MINUTES OF EVIDENCE.

MONDAY, 12TH DECEMBER, 1887. (Mr. KELLY, Chairman.)

MEMORANDUM by the Hon. Sir F. WHITAKER.

IN 1871 two blocks of land called Maungatautari Nos. 1 and 2 passed through the Native Land Court and certificates of title issued. The presiding Judge was ordered by the Court to report his opinion that a restriction on alienation should be imposed, except by lease, for a term not exceeding twenty-one years. At that time the Court had no power under the Native Land Acts of 1865 and 1867 to impose restrictions, but the Governor had, if he thought fit. Towards the end of 1873 Messrs. Maclean were the holders of a lease of both blocks for twenty-one years, and, being desirous of obtaining the freehold, applied to the Government in reference to the restrictions, and on the 31st of December, 1873, received the following telegram from Sir Donald McLean: "Inquiry has been made respecting Maungatautari lands; no objections to alienation; the Governor will be advised to remove restrictions at once. By order. H. T. CLARKE, Under-Secretary." Messrs. Maclean then obtained the signatures of several of the Natives in each block to conveyances [produced]; and they received an official letter [produced], dated the 5th of January, 1874, confirming the telegram. On the 21st June, 1875, an agreement [produced] was made between Messrs. Maclean and Mr. Robert Fergusson, by which the former agreed to sell and the latter to buy the two blocks for £7,000. Mr. Fergusson bought the interest of two more of the Native owners in each block, and thereby became the owner of eight out of ten shares in each block, leaving two outstanding in each block which he could not purchase, as the Natives would not sell. On the 1st of March, 1879, a conveyance [produced] from Messrs. Maclean to Mr. R. Fergusson was executed. Sir James Fergusson lent considerable sums of money to Mr. R. Fergusson to buy and improve this land; and on the 19th of April, 1883, Sir James Fergusson had to take over the property in liquidation of the debt, and a conveyance [produced] was made to a trustee for him. What is asked for now is that grants should be made to the whole of the Natives in whose favour the certificates of 1871 were granted, and that there should not be imposed by the Governor any restriction on alienation, as was promised by the Government to Messrs. Maclean, on the faith of which promise all the subsequent transactions have taken place. The agents of Sir James Fergusson can then apply to the Native Land Court to make partition between him and the non-selling Natives.

8th December, 1887.

FRED. WHITAKER.

T. W. LEWIS, Under-Secretary, Native Department, examined.

1. *The Chairman.*] Will you, Mr. Lewis, give us what information you possess in regard to this petition?—This matter first came into the Native Office in 1873. The Hon. Mr. Every Maclean wrote to the Native Minister, then Mr. McLean (subsequently Sir Donald McLean), forwarding memorials from certain Natives asking that the restrictions on the sale of land leased to Mr. Hamlin should be removed. To that letter there were two memorials attached, signed by Natives, stating that certain land had been granted to them, and that the grants provided that the land should be inalienable by sale except by and with the consent of the Governor previously obtained.

2. What date was that?—1873. It is necessary to explain that the Hon. Mr. Every Maclean, or whoever prepared these memorials, was under a misapprehension as to the issue of grants having taken place, and that mistake has been carried forward through all the early correspondence relating to this land; the fact being that no Crown grants had issued for the land. The land had been before the Native Land Court, and certificates of title under the Native Land Acts of 1865 and 1867 had issued; to these certificates of title there were recommendations attached that the land should be inalienable.

3. *Mr. Graham.*] Have you the date of these certificates?—Yes; April, 1871. The recommendations attached to the certificates were in accordance with the 28th clause of "The Native Land Act, 1865." That clause reads as follows: "It shall be lawful for the Court, during the investigation, to take evidence as to the propriety or otherwise of placing any restriction on the alienability of the land comprised in any claim or of any part thereof, or of attaching any condition or limitation to the estate to be granted, and to report its recommendation on the premises to the Governor, which recommendation, if any, with any reasons therefor which the Court shall think proper to add, shall be appended to the certificate." As Sir Frederick Whitaker has pointed out in the memorandum that has been read, placing restrictions in grants under the Act of 1865 rested not with the Land Court, but with the Governor. The recommendations of the Court have, however, been followed, as far as my knowledge goes, as a matter of course in every case. But the assumption of the petitioner and that in Sir Frederick Whitaker's memorandum, is, that the Native Office letter consenting to the removal of restrictions implied that the grants for the land in question would be issued without restrictions.