

SESS. II.—1887.
NEW ZEALAND.

NATIVE AFFAIRS COMMITTEE

(REPORT OF), ON THE PETITION OF SIR JAMES FERGUSSON, TOGETHER WITH MINUTES OF EVIDENCE AND APPENDIX.

Report brought up 22nd December, 1887, and ordered to be printed.

REPORT.

No. 408, Sess. II.—Petition of Sir JAMES FERGUSSON.

PETITIONER prays that a Crown grant for the Maungatautari Block may be issued, free from all restrictions as regards alienation, as promised by Mr. H. T. Clarke, Under-Secretary for the Native Department, in his letter dated the 5th January, 1874.

I am directed to report as follows: That, in the opinion of this Committee, the Crown grants should issue in accordance with the recommendation of the Court.

WILLIAM KELLY,
Chairman.

22nd December, 1887.

[TRANSLATION.]

No. 408, Sess. II.—Pukapuka-inoi a Ta HEMI PAAKIHANA.

E INOI ana te kai-pitihana kia tukuna here koretia te karaati mo te Maungatautari Poraka pera ano me te whakaaetanga a te Karaka, Te Hekeretari o te Tari Maori, i roto i tana pukapuka o te 5 o nga ra o Hanuere, 1874.

Kua whakahaua ahau kia ki penei: Ki te whakaaro a tenei Komiti me whakaputa te Karauna karaati i runga i nga whakaaetanga a te Kooti.

WILLIAM KELLY,
Tumuaki.

22 o Tihema, 1887.

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 premisses 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.

4. *Major Jackson.*] As a matter of fact, the Crown grant has not been issued?—No.

5. Only the certificate of title?—Only the certificate of title.

6. At present there is no restriction upon the land?—There is no grant issued.

7. But there is no restriction to remove?—Not in the ordinary sense. I would submit to the Committee that the explanation I have just given is important, because all the early correspondence on this subject proceeds under the assumption that the grant had issued with the usual restrictions, and that the restrictions were to be removed in the usual way. Upon Mr. Maclean's letter Mr. Clarke minuted that he did not see how the Governor could be advised to take off the restrictions, as it would be seen by the slip attached—an extract from a report of Mr. James Mackay—that the land belonged to the tribe; and the application was ordered to stand over. In September, 1873, Major Wilson wrote to the Native Minister as follows:—

Wellington, 9th September, 1873.

SIR,—I have herewith the honour to bring under your notice the state of the Maungatautari Block in Waikato. At a Court held at Hamilton there were ordered two Crown grants, numbered respectively one and two, in each of which were ten grantees. These all signed a lease, which subsequently became the property of Messrs. E. and R. Maclean of Howick. Many of these grantees wished to sell their interests in the blocks to these gentlemen, but found they were unable to do so in consequence of a clause in the Crown grants making them inalienable by purchase or otherwise unless with the approval of the Governor. The Natives then drew up a petition to the Governor, requesting this clause to be altered, that those who wished to sell might be enabled to sell. In the No. 1, the larger, block all the grantees signed the petition, and in the smaller block seven out of the ten signed. The other three were absent and could not be seen in time; I have no doubt, however, but that they also would have signed the petition, as they all consider it a hardship to be bound by the clause mentioned. The tenure upon which these Natives held the land was by right of conquest—"Te rauo te patu," as they expressed it—and not by descent—"Te tupuna." They are, therefore, all equal in point of ownership. I am negotiating with the Natives for the purchase of these blocks for the Messrs. Maclean, and I cannot well move further in the matter until the restrictions be withdrawn, in terms of the petitions. I have therefore the honour respectfully to request that they may obtain your favourable consideration.—I have, &c., JOHN WILSON. The Hon. D. McLean, Native and Defence Minister.

8. *Major Jackson.*] Does he say what were the sizes of the respective blocks?—No; but I can give you that information presently.

9. *Mr. Graham.*] He was acting as agent for Maclean, was he not?—Yes; and he, like Mr. Maclean, writes upon the assumption that the grants had issued, and contained ordinary restrictions removable by the Governor. Upon this application Mr. Clarke placed the following minute:—

The Hon. the Native Minister.—As I stated in a former paper, these lands referred to are claimed by others beside those in the grant. They are two of the cases mentioned by Mr. Mackay in his report. I cannot recommend anything being done in the matter at present.—H. T. CLARKE. 15th September, 1873.

10. *Major Jackson.*] What is the date of that minute?—The 15th September, 1873. There is a subsequent minute of Mr. Clarke of the 31st December, 1873. It is as follows:—

The Hon. the Native Minister.—Mr. Mackay has been communicated with; he sees no objection to the alienation. The proper course, therefore, would be to have the conveyances from the Natives drawn up and, before they are executed by the Natives, send them to this office to have the Governor's certificate indorsed. The certificate should be drawn up and engrossed by Mr. Maclean's solicitor.—H. T. CLARKE. 31st December, 1873. That minute is approved by Mr. McLean, and the letter quoted in the petition, dated the 5th January, 1874, was written in consequence of that approval.

11. He had been opposed to removing them except on inquiry?—Mr. Clarke apparently based his objection upon Mr. Mackay's report, but Mr. Mackay subsequently stated that there was no objection to the removal of the restrictions, and the letter quoted in the petition was written accordingly. The next thing in the correspondence is a telegram from Major Te Wheoro to the effect that many of the Natives were annoyed at Mr. Every Maclean's cattle running upon the land. Is it the wish of the Committee that I should read the correspondence?

The Chairman.] You had better read all the correspondence relating to the land the subject of the petition.

Translation of telegram from Major Te Wheoro read as follows:—

The Maungatautari people are angry on account of the European's cattle which are running there; they belong to Mr. Every Maclean. The land has been sold by the people whose names were in the grant, those outside the grant were opposed to selling the land. They are at present living there, together with some of the Hauhaus. They are displeased on account of the sale of that land, because it is disputed and causes trouble. Hakiriwhi, Te Rahi, and others whose names were in the grant sold the land. I am annoyed at the haste with which the assessors passed this block through the Court, and permitting it to be sold, knowing at the same time that it would cause trouble. I spoke to them myself on the subject, and advised them to let it remain in abeyance for the present, but they were very persistent. It will be said hereafter that this trouble arose through the action of those connected with the Government.—Major TE WHEORO. 15th January, 1874.

12. *Mr. Graham.*] What is the date of that?—January, 1874. A translation of that telegram was sent to the Hon. Mr. E. Maclean. Next comes a long letter from Hori Kukutai and others to the effect that the grantees had sold this land without the knowledge of the tribe. Upon this Mr. Clarke said he almost regretted that the alienation of the land had been approved, and was afraid there would be some trouble about it.

13. What is the date of that minute?—3rd February, 1874. Sir Donald McLean directed that a reply should be sent to Kukutai and others, and that a copy of the letter should be furnished to Mr. E. Maclean. Mr. Clarke also appears to have telegraphed it to Mr. James Mackay. I will read the translation, as requested:—

The Hon. D. McLean, Native Minister.—Greeting to you. This is a word from the tribe, hapu, and all the people who were not included in the Crown grants of Weraateatua No. 1, Owhareture No. 2, and Maungatautari. Those lands were made inalienable by the Court for the benefit of the tribe, and they have now been sold, by those persons whose names were inserted in the Crown grant, without the knowledge of the tribe, who knew nothing of their work; also of their writing an application for the restriction to be removed. It is only now within this month that it has been discovered. The said proceedings were not at the instigation of the tribe, but at their own—the said grantees—in order to secure the money for themselves; for some of those who are included in the grant do not live on the land, and that is why they are so anxious that trouble should come upon those who are living permanently on the land, and all those also who have claim to it. It is not as though the land belonged to one hapu, or ten persons, but to the tribe in general, according to the claims of each respective hapu. Now trouble has fallen on those whose names do not appear in the grant. We have no land anywhere else, and that was why the Court made it inalienable, for the maintenance of the tribe. Now that this trouble has befallen us in consequence of the said land being sold, we request you not to grant the removal of the said restrictions placed on that land by the Court. Do not let the sale

of this land be the cause for having the restrictions removed from the lands. If lands under restriction are treated in this way, then it will be said that the law has no authority, and it will remain as a cause of trouble with the tribe, and it will also be said that all dealings with respect to Native lands would be like this, and that restrictions can be removed by sale. It would be right enough if all the people outside the grant agreed to it. We, the undersigned, consider that the said restrictions should not by any means be removed. Do you send us a reply, that we may know.—From us all, Hori Kukutai and 39 others. Cambridge, 5th January, 1874.

Hori Kukutai and others. — Friends, salutations. Sir Donald McLean has seen your letter of the 5th January, objecting to the action of Ngatihaua in selling the lands at Maungatautari. Hearken you, a copy of your letter has been made and sent to Mr. Mackay: he may perhaps have something to say on the subject.—H. T. CLARKE. Wellington, 11th February, 1874.

The next thing in the correspondence is in February, 1874. Judge Fenton writes saying that Messrs. Hill and Son had applied for copies of the order of the Court:—

Native Land Court Office, Auckland, 24th February, 1874.
SIR,—I have the honour to transmit herewith copy of an application made to me by Messrs. Hill and Son, solicitors, dated the 23rd instant, applying for copies of the orders of Court made in connection with the blocks of land named in the margin (Maungatautari Nos. 1 and 2). I beg to state that I have hitherto refrained from making certificates for these blocks, for reasons with which you are already acquainted. The orders would suffice for the preparation of conveyances, and I submit that copies should not be furnished. I am prepared to withhold them if the Government give me their sanction.—I have, &c., F. D. FENTON, Acting Chief Judge.—The Hon. the Native Minister, Wellington.

36, Shortland Street, Auckland, 23rd February, 1874.
SIR,—*Maungatautari Block Nos. 1 and 2.*—On behalf of our clients, Messrs. R. and E. Maclean, we apply for copies of the orders made in the matter of these Native lands, to enable us to register some leases from the Native owners. Would you have the goodness to cause them to be furnished to us, and oblige?—Yours, &c., HENRY HILL AND SON (per WM. COLEMAN).—F. D. Fenton, Esq., Chief Judge, Native Land Court, Auckland.

On receipt of Mr. Fenton's letter the following telegram was sent to Mr. Mackay:—
James Mackay, Junior, Esq., Taupo.—No. 279. *Re* Mr. E. Maclean's Maungatautari purchase, Blocks Nos. 1 and 2: Do you hold to your former opinion that no harm will ensue if Governor grants alienation of above lands? Te Wheoro and Hori Kukutai have written strongly against it.—H. T. CLARKE, Under-Secretary. 11th March, 1874.

Mr. Mackay replied as follows:—

H. T. Clarke, Esq., Wellington.—*Re* Mr. Maclean's Maungatautari purchase, I hold to the opinion that neither Hori Kukutai or Te Wheoro have anything to do with it. If the grantees who are now at Te Kuitu come to Cambridge and execute the conveyance, I do not think any difficulty will arise. I do not speak of Pukekura or Puahoe, which Kukutai and Te Wheoro include in Mangatautari.—JAMES MACKAY, Junior, Agent, General Government, Taupo, 12th March, 1874.

Next in the correspondence is the following letter from Mr. Fenton:—

Native Land Court Office, Auckland, 2nd April, 1874.
SIR,—Referring to your letter of the 19th ultimo, No. 255/1, enclosing copies of telegraphic correspondence with Mr. James Mackay, Junior, as to the issue of certificates for the blocks of land named in the margin, I have the honour to draw your attention to my communication of the 24th February last, No. 90, and beg that the Government will favour me with an expression of their own views on the subject.—I have, &c., F. D. FENTON, Chief Judge.—The Hon. the Native Minister, Wellington.

Reply was sent as follows:—

Native Office, Wellington, 8th May, 1874.
SIR,—In reference to your letter No. 185, of the 2nd ultimo, in which you request the opinion of the Government as to the issue of the certificates for the blocks of land named in the margin (Mangatautari 1 and 2), I am desired by the Hon. Dr. Pollen to inform you that the subject came under his notice when in Auckland, that he was informed that, if the claimants whose title was recognised claimed in person to be furnished with a copy of the certificate, the Court would not refuse it, but that the request of an agent might properly be declined. Therefore he does not see any good reason why the rule, as laid down above, should be departed from, in respect to the claim above referred to.—I have, &c., H. T. CLARKE, Under Secretary.—The Chief Judge, Native Land Court, Auckland.

Then follows a letter from Mr. Fenton, dated the 12th September, 1884, enclosing copy of a letter from Hori Wirihana, and stating that he (Judge Fenton) had hitherto refrained from issuing the certificate for these blocks under the apprehension of future difficulties. A letter was written to Hori Wirihana, in accordance with Mr. Fenton's suggestion:—

Native Land Court Office, Auckland, 12th September, 1884.
SIR,—I have the honour to enclose herewith the accompanying copy of a letter, with translation, addressed to me by Hori Wirihana on the subject of the Maungatautari Blocks Nos. 1 and 2, and beg to state that I have hitherto refrained from issuing certificates for these blocks, under the apprehension of future difficulties. I do not know whether the persons named in the orders of Court have dealt with the land, and I do not think that any legal authority now exists for any transaction. Perhaps the Government may think fit to ask the writer to state specifically what has been done or attempted to be done.—I have, &c., F. D. FENTON, Chief Judge.—The Hon. the Native Minister, Wellington.

Mr. Fenton, Chief Judge, Native Land Court.—Friend, we have received your letter, in which you say that the decision rests with the persons who own the land. Friend, the land and the dead persons belong to us conjointly with those guardians of Maungatautari Nos. 1 and 2. The guardians of the land have acted wrongly, and the tribe (400 in number) are in difficulty, caused by those twenty persons who are now applying to have the restrictions removed from Maungatautari Nos. 1 and 2. Friend, do not consider the guardians alone, but the tribe. This is all.—From your friend, HORI WIRIHANA. Maungatautari, 3rd August, 1874.

Then follows a long letter from Horomona Torenui and others, in which reference is made to the sale of this land; but it is not important. The next letter of any importance on the file is dated the 9th June, 1875—from Mr. Fenton to the Native Minister:—

Native Land Court Office, Auckland, 9th June, 1875.
SIR,—I have the honour to transmit herewith copy of a letter, dated the 1st instant, addressed to me by Messrs. Whitaker and Russell, respecting their application for copies of the orders of Court issued for Maungatautari Nos. 1 and 2, and to request that you will be good enough to instruct me in this matter.—I have, &c., F. D. FENTON, Chief Judge.—The Hon. the Native Minister, Wellington.

Wyndham Street, Auckland, 1st June, 1875.
SIR,—We have the honour to acknowledge the receipt of your letter of the 26th May, in which you state that you are informed by Dr. Pollen that, if the claimant whose title was recognized claimed to be furnished with a copy of the certificate of title, the Court would not refuse, but the request of an agent might properly be refused; and you therefore decline to supply us with the copy orders applied for by us relating to Maungatautari Nos. 1 and 2. If we are not mistaken, the reason above given was furnished a long time back, and at a time when, in consequence of Sullivan's murder, the Government deemed it advisable, on political grounds, to withhold the certificate referred to; but we venture to submit that those grounds do not now exist, and respectfully request, on behalf of our client, Mr. R. H. D. Fergusson, who holds leases from all the Native owners, and conveyances from nearly all of them, that copies of the orders of Court referred to for Maungatautari Nos. 1 and 2 be forwarded to us to enable us to register the purchaser's title.—We have, &c., WHITAKER AND RUSSELL.—The Chief Judge, Native Land Court, Auckland.

In reply to that, Mr. Fenton was referred to the letter of the 8th of May, 1874, in which a decision was given in a parallel case. He was told that if the Natives themselves applied in person they would be entitled to a copy of the certificate, but that the applications of agents were not to be recognised. The point in this letter was not the removal of restrictions, but the application for the certificates of title to be issued.

14. *Major Jackson.*] In whose interest did they apply?—I do not know; but the reply made by Dr. Pollen, on behalf of the Government, was that, if the Natives themselves applied he saw no difficulty, but he did not think the principle applied to agents.

15. *Mr. Graham.*] Suppose the Natives applied for certificates and they were granted, would they have been issued without restriction?—The object of applying for the certificate was probably to get something on the register. The certificate would simply have been a copy of what had been issued by the Native Land Court, including, I presume, the indorsement.

16. *Mr. Ormond.*] Do you say that no Crown grant has ever been issued?—None.

17. Was this case referred to the Commissioner that was sent round by the late Government to inquire into these cases where restrictions were sought to be removed—Mr. Barton?—Mr. Barton did not inquire into this case. I am, at the request of the Committee, giving a detailed history of the case, and shall come to the point further on. I next come to 1881. There is a letter from Mr. Robert Fergusson (Captain Fergusson) to Mr. Rolleston, enclosing a lot of correspondence between himself and his lawyers, including Mr. Clarke's letter and telegram.

Gaton, Cambridge, 8th May, 1881.

DEAR SIR,—I beg now to send, for your information, certain papers with reference to the Blocks Nos. 1 and 2, Maungatautari. You will see by them that there is no restriction of alienation in the grants. Mr. James Mackay made a recommendation to the Government of that time that the Crown grants should be temporarily withheld, for political purposes. If you can assist me in this matter I shall feel exceedingly obliged. I have been at considerable expense over the matter, and certainly was led to this expense by the promises of Sir Donald McLean and of Mr. Sheehan.—I have, &c., ROBERT FERGUSSON.—The Hon. Mr. Rolleston.

Mr. Rolleston's reply was as follows:—

Native Office, Wellington, 23rd May, 1881.

SIR,—I have the honour to acknowledge the receipt of your letter of the 8th instant, and enclosures therewith, relative to the restrictions as to alienation imposed on Blocks Nos. 1 and 2, Maungatautari, and, in reply, to inform you that I am making inquiries into the subject. So far as I see at present, the case is one of which there are a good many in a similar position, and that they will require to be dealt with on some general principle to be prescribed by the Legislature.—I have, &c., W. ROLLESTON.—Robert Fergusson, Esq., Cambridge.

Some correspondence next ensues in regard to the same difficulty in connection with occupation. Shall I read that to the Committee?

18. *Major Jackson.*] That has nothing to do with the title?—It has no direct reference to it. The next letter is one bearing date the 2nd March, 1882, from Captain Fergusson, and addressed to the Native Minister:—

Gaton, Cambridge, 2nd March, 1882.

SIR,—With reference to our conversation with respect to the removal of the inalienability on Maungatautari Nos. 1 and 2, which took place on the 23rd ultimo, I beg to bring before your notice the following facts, which, I claim, help my case materially: First. In conversation with Mr. Every Maclean to-day he said that, after the blocks Maungatautari Nos. 1 and 2 had been passed through the Court, the grantees of each block signed a memorial to the Government praying that the restriction might be withdrawn. Second. This memorial was in existence before Mr. Maclean purchased the lease from Mr. E. B. Walker, and that, had it not been so, he (Maclean) would not have purchased. Third. Mr. E. Maclean sent this memorial to the Government. Fourth. The Government of the day promised Mr. E. Maclean that the restriction as to inalienability would be removed, and, in fact, went so far as to propose to him, after the conveyance had been signed by the Natives, that it should be sent, when completed, to Victoria, for Sir George Bowen's signature, the transaction having taken place during his Governorship. These foregoing four facts Mr. E. Maclean is prepared to swear to, if necessary. After Sullivan's murder—acting upon a report from, I think, Mr. James Mackay, junior—the Government thought it well not to take any active steps in the matter. I then bought from E. Maclean, on the strength of the letter shown by me to you on the 23rd ultimo, and the promise of the Government, or rather of Sir D. McLean, that as soon as I could get peaceable possession restriction would be removed. Mr. Maclean also was repeatedly promised that the restriction would be withdrawn. I claim that, having occupied peaceably, the objection as to alienability should be withdrawn.—I have, &c., ROBERT FERGUSSON.—The Hon. the Native Minister.

The reply sent to that letter is dated the 27th April, 1882:—

Native Office, Wellington, 27th April, 1882.

SIR,—I have the honour, by direction of the Native Minister, to acknowledge the receipt of your letter of the 2nd ultimo with respect to the removal of the inalienability on Mangatautari Nos. 1 and 2. In reply, I have to inform you that it has been ascertained that the certificates of title of the lands in question have not yet been signed by the Chief Judge of the Native Land Court, and the Government therefore have no functions to perform in the matter.—I have, &c., W. J. MORPETH (for the Under Secretary).—R. Fergusson, Esq., Gaton, Cambridge, Waikato.

Mr. Ormond: I do not think it is necessary to continue to read the correspondence.

19. *Mr. Ormond.*] Who was the Native Minister then?—Mr. Bryce. Then there is a letter addressed to him by Rapata Tukere, asking that the restrictions be not removed.

20. *Major Jackson.*] Was he a grantee?—I think not.

21. He was only interested by marriage?—He is not in the certificate. Then, on the 14th September, 1882, Mr. Fenton sends a letter, simply a covering letter, forwarding the certificates of title.

22. *The Chairman.*] Simply forwarding them to Wellington?—Yes.

23. *Mr. Ormond.*] Was there any recommendation?—The certificates were forwarded without remark, which would have been the ordinary course, except for the long interval since they were issued by the Court. In Sir Frederick Whitaker's memorandum he points out that the duty was imposed by the Act of 1865 upon the Governor of deciding whether the recommendation of the Court should be carried out in regard to the imposition of restrictions. As a matter of practice, without any exception, the Governor simply followed the recommendation of the Court. But what is urged by Sir Frederick Whitaker is that, under the Act of 1865, it rests with the Governor to decide whether they shall be followed out.

The Chairman: There is a letter dated the 5th January, 1874, signed "Henry Tacy Clarke," to

the Hon. E. Maclean, in which it appears to him that the Government would be bound to have the restrictions taken off.

24. *Mr. Ormond.*] Is there any recommendation by Mr. Sheehan?—No; there is a telegram in which he inquires whether the Governor had ever been advised to assent to the alienation of Native shares.

25. *The Chairman.*] The only question was whether the removal of the restriction would affect the Natives?

26. *Mr. Ormond.*] Was this case referred to Mr. Barton?—The papers were forwarded to him; but it was afterwards considered that it was not within his province to inquire into it, as no grant had ever been made. As I have already stated, many of the letters read were written under the impression that the grant had actually issued. At the time the letter referred to by the Chairman was written there was no grant.

Sir G. Grey: I think the Committee must overthrow this letter altogether. No Minister has a right to tell what advice he has given to the Crown. That would be a very wrong transaction. Sir James Fergusson ought never to rely on that.

Major Jackson: It is not Sir James Fergusson; it is Mr. R. Fergusson.

Sir G. Grey: He is in this petition. Sir James Fergusson was Governor at the time—in 1874. No Minister can tell what he will advise the Governor to do. It is absolutely an unconstitutional thing to do, and a matter which this Committee has not any right to recognise at all. It is absolutely, as far as I know, unparalleled in British history. It is inconceivable that a Governor, who is trustee for the Natives, should assume that advice would be given, and that he should take that advice without discretion. I think this was a very unconstitutional proceeding.

The Chairman: I think that the Natives have not suffered in any way—

Sir G. Grey: I am going on this letter, and I say that it ought not to be taken into consideration.

27. *The Chairman.*] The land was awarded in 1872, Mr. Lewis?—No; it was before the Court in 1871. The first correspondence on the subject with the Native Department took place in 1873.

28. *Mr. Graham.*] Can you tell us now why the Crown grant is not issued?—Yes.

29. *Sir G. Grey.*] Is it because of the illegality of this letter, or is it because the Natives were wronged in any way?—It is withheld at the present moment on the application of the Europeans who are interested in the land.

30. *Mr. Monk.*] Has it not been held in abeyance in view of the possibility of the whole of the Natives, in the course of time, wishing the grant to issue without any restriction whatever? Was not that the idea?—I do not think that was the idea.

31. Is it not usual to delay as long as some of the Natives hold out?—In following the practice under this Act there has never been any departure from the recommendation of the Court. All the restrictions that have been removed in the manner stated in Mr. Clarke's letter are in the grant itself.

32. If their titles were individualized that would have the effect of removing the restriction as to alienation, only it would disengage them from the claims of the Europeans?—New grants could be ordered without restrictions.

33. *Mr. Taipua.*] How many of these Natives have not sold, and do you know their names?—I only know what is stated in one of the letters that I have read—namely, that nearly the whole of the grantees sold in one case, and seven in the other case. I have no knowledge myself who has sold or who has not sold.

34. Do you think that the two or three non-sellers have not sold since?—I do not know what is the position of the title.

35. Were these titles under the Act of 1865?—Yes. Some other Acts are mentioned in the certificates, but the Act of 1865 is the important one.

36. Does the Act provide that, if the whole of the grantees sell to any person, the sale should be legal, and that it should be confirmed?—I believe the grantees have power to sell under that Act.

37. *Mr. Graham.*] If the restriction were removed the purchaser would only have to stand on his conveyances, whatever they were?—He could only get what they gave him.

38. *Mr. Taipua.*] Does not the Act of 1865 provide that if any one of the ten persons refuse to sell no conveyance can be made?—I do not remember that clause. What I think is that there is no power to prevent them selling; but, in the event of a less number than the whole selling, there was formerly no power of subdivision.

39. Before the Europeans commenced to purchase, had restrictions been proposed?—When the certificate of title was issued by the Native Land Court a recommendation was made that restrictions should be imposed when the Crown grant was issued.

40. Then, have the two or three non-sellers in one block ever applied to the Government not to withdraw the restrictions?—I do not know who are non-sellers; but I have already stated that some Natives have applied for the restrictions to be removed. There are others against it; but I think, in the latter case, outside the grantees.

41. Why does the Government keep this matter in abeyance all these years? Why not agree to request the Natives interested to withdraw the disability from this land?—About the time this correspondence ensued there was trouble in the district. Sullivan was killed. A surveyor named Todd was killed in another part of the district. These circumstances made the Government cautious what they did in this matter.

42. Then the three Natives who have not sold, their shares are intact?—I do not know who have sold. But any who have not sold, of course they still have their interest in the land.

43. *Sir G. Grey.*] I think, Mr. Lewis, you said that some Natives were in favour of this prohi-

bition being taken off, and that others were against it?—Yes; I have already read correspondence from certain Natives asking that the restrictions might be removed. This matter was opened, Sir George, before you came into the room, with a memorial, signed by ten grantees in one case and seven grantees in the other, praying that the restrictions be removed. Most of the correspondence as to removal or non-removal of restrictions has been with Natives who are not in the grant at all, but who, it is alleged, are interested in the block. For instance, almost immediately following the letter referred to in the petition there was a letter from Te Wheoro and Hori Kukutai, both protesting against the restrictions being removed. Mr. James Mackay, however, reported that neither Kukutai nor Te Wheoro had any interest in the land.

44. Did any Court sit to inquire into the subject?—The only Court has been the Native Land Court.

45. I mean the subject of application being made for taking off these restrictions?—No inquiry beyond the official inquiry of the department.

46. What I mean is this: that, in all European communities where restrictions of that kind exist for the protection of certain persons, it is only a Court of the highest instance that can order such restrictions to be taken off: because there might be very remote interests unknown. Te Wheoro and Kukutai may be interested here to some extent. In the case of a death, there might be no immediate interest, but remote interests would be considered. What I ask is, did any Court sit to inquire before restriction was taken off?—No restriction has been taken off; what was done was to direct the letter to be written which I have read, after the inquiry made by the Native Department from Mr. Mackay.

47. But no Court of law has inquired into the matter; or Court of equity, like the Court of Chancery?—No.

48. Then all you have is Mr. Mackay's opinion?—Mr. Mackay's opinion seems to have been what led the Government to think that the restriction should be removed.

Major Jackson: And the application of the Natives interested?

Sir G. Grey: Some Natives interested.

The Chairman: All that sold.

49. *Sir G. Grey.*] Did any Court sit to inquire into the matter?—No.

50. *The Chairman.*] Do you know what lands these Natives that sold have remaining?—No; I do not know.

51. Could you ascertain?—I will make inquiry from the Land Court.

The Chairman.] I think it would be necessary for us to know if this is the only land they have.

Major Jackson.] I know that some of these Natives have large interests in lands besides these.

52. *The Chairman.*] You would be able, Mr. Lewis, to find that out from your Native Agent in the Waikato?—Yes; or from the Land Court.

53. You state that Natives have applied to have the restrictions taken off?—Yes; in 1873.

54. Do I understand you right that the grantees applied to have the restrictions remain on?—I do not recognise them in the correspondence. I may be mistaken; there might be but I do not think there are any grantees who have applied to have the restrictions remain on.

55. I suppose that restrictions against alienation have been removed in regard to land situated similarly to this?—Yes; in a great number of cases where ordinary restrictions had been imposed in the grant.

56. When you say land in a "similar position" you mean land with the same kind of restriction, imposed by the Native Land Court?—With respect to the removal of restrictions, the custom has been that inquiry is made by the Native Department as to whether the removal of the restriction is in the interest of the Natives, and if the applications are *bona fide*; and if no objection appears they have been removed.

57. Are there restrictions put on by the Court that cannot be removed except by the Court, and restrictions by Proclamation?—There is one class of restriction which is not removed except by legislation, or cancellation of grant: all removable restrictions are worded as removable by and with the consent of the Governor.

58. *Major Jackson.*] Without reference to the Court at all?—Yes; without reference to the Court. I should mention that in this case the form of recommendation is that an absolute restriction be imposed. And, if the grant issued as recommended by the Native Land Court, then nothing but an Act of Parliament, or cancellation of the grant, could remove the restriction.

59. *The Chairman.*] It appears that the Natives have not remonstrated in any way against the restrictions being taken off. They are satisfied; they sold the land to these parties and got the money—to Mr. Every Maclean, first; is that not so?—There is no exact information as to the different ownerships. The land appears to have been first leased to Mr. Hamlin, then to have passed to Mr. Every Maclean and his brother, and from them to Captain Fergusson.

60. There would be no injury done to the Natives if these restrictions were taken off?—Not to the grantees. The contention at first was that these grantees simply represented others.

61. Do you know any blocks that have been subdivided where the ten grantees are put in?—I do not call any to mind; probably there are.

62. *Mr. Ormond.*] What is the practice with regard to dating Crown grants issued when the restrictions are withdrawn; does it bear the date when the restriction is removed, or is it ante-dated?—I cannot answer the question. I believe that in most cases the date of the grant is the date when it is signed by the Governor; but in many cases it is necessary that the date should be the same as the order of the Native Land Court, and an authorising clause is inserted in such grants. If the Governor were recommended at the present time to do away with the restriction recommended in this case, and the Crown grant were to be issued in the ordinary way, it would be necessary to do in this case as in the others—that is, to antevest the estate in the land from the date of the certificate.

The ordinary removal of a restriction will not meet this case, for, as I have pointed out, the recommendation of the Native Land Court is for an absolute restriction. It is to the following effect:—

Native Land Acts, 1865 and 1867.

MAUNGATAUTARI No. 1 BLOCK.

Upon hearing the parties, and upon evidence taken, it was ordered that the Presiding Judge do report the opinion of the Court that it is proper to place the following restrictions and conditions on the estate to be granted in the above-named block—that is to say, that the whole block be made by the Crown grant inalienable by sale, gift, or mortgage, or by lease for a longer period than twenty-one years.

Witness the hand of Henry A. H. Monro, Esq., Judge, and the seal of the Court, the 18th day of April, 1871.

(L.S.) HENRY A. H. MONRO, Presiding Judge.

MAUNGATAUTARI No. 2 BLOCK.

Upon hearing the parties, and upon evidence taken, it was ordered that the Presiding Judge do report the opinion of the Court that it is proper to place the following restrictions and conditions on the estate to be granted in the above-named block—that is to say, that the whole block be made by the Crown grant inalienable by sale, gift, or mortgage, or by lease for a longer period than twenty-one years.

Witness the hand of Henry A. H. Monro, Esq., Judge, and the seal of the Court, the 18th day of April, 1871.

(L.S.) HENRY A. W. MONRO, Presiding Judge.

63. *Mr. Ormond.*] That is the ordinary form, is it not?—It is the ordinary form; but the words “except by and with the consent of the Governor” are struck out.

64. Are there cases similar to this?—Yes.

65. *The Chairman.*] What was the position of the Rumunga Block? Was it not like this?—I do not remember; that is the usual form which I have read, except that part of it has been struck out. If the Government and Mr. Clarke had been aware of the terms of this recommendation of the Court the letter quoted in the petition would not have been written in that form, for the proposed conveyance would have been useless.

66. Were they aware that the block was restricted in that way?—No.

67. *Mr. Carroll.*] What were the reasons for making the restriction absolute?—I do not know.

68. *Major Jackson.*] Did the Natives know the effect of the order when it was made? I know that when they heard of it next day they applied to have the restriction taken off?—I cannot say. This absolute restriction is, as a rule, put in the grant where there is a burial-ground, kainga, or some place that is sacred or desirable has to be secured against alienation.

69. Does the Court direct the names to be put in the grant, and the number of grantees, previously to making the recommendation?—Yes. The recommendation given by the Court is in accordance with clause 18, which I have read, and is distinct from the certificate and supplementary to it.

70. I want to know if the Court was aware who the grant was made to when the restrictions were put in?—Yes; the recommendation is a distinct instrument, which they make under this clause.

71. Where are the Court books connected with this case?—In Auckland.

72. Do I understand that this recommendation was absolute?—Yes.

73. Excluding the Governor from giving his assent?—That is so.

74. *Major Jackson.*] But it is only a recommendation: it does not deprive the Governor of any powers he may possess?—This was only a recommendation that there should be an absolute restriction against alienation by sale.

75. *Mr. Ormond.*] Are you aware that Sir Frederick Whitaker gives his opinion, in this memorandum of his, that the Court had no power at that time to do so under the Act of 1865—that in 1867 the power was vested in the Governor, and not in the Court?—I have explained to the Committee that the Court were entirely within their powers in making the recommendation; the power is conferred by the 28th section of the Act of 1865.

76. That is different from the powers afterwards given, to put an absolute condition in the grant?—What I said was quite correct. I said that if a grant in accordance with this recommendation were issued then nothing but an Act of Parliament would remove the restriction. As the matter now stands the recommendation is in abeyance.

77. It rests with the Government to act, if they think proper, in accordance with that recommendation?—Yes. I am not aware, however, of any case where the Government did not follow the recommendation of the Court.

78. Have you any evidence on this point which is stated by Sir Frederick Whitaker?—Inquiry has been made in respect of these Maungatautari lands, and no objection was raised by the grantees to alienation.

79. Do you know on what Mr. Clarke's statement is founded, that the Governor would be advised to remove the restrictions?—On a communication from Mr. Mackay, the Civil Commissioner for the district. Inquiry was made of Mr. Mackay, who explained that the Maungatautari Blocks were in a different position from the Puahoe and Pukekura lands, and stated that he saw no reason why the restrictions should not be removed.

80. Would not that be the ordinary course?—Yes.

81. The ordinary course taken by the Minister before making a recommendation to the Governor?—Yes.

TUESDAY, 13TH DECEMBER, 1887.

Sir JULIUS VOGEL, examined.

82. *The Chairman.*] You have seen this petition, Sir Julius. Will you be good enough to state what you know in respect of the subject of it?—My knowledge of this matter is through a representation having been made to me of Sir James Fergusson suffering a great injustice in that he

should have purchased this property with the assurance that he would be able to get a proper title; that he had spent a great deal of money on it, and that he was put to serious loss through his title being imperfect. I mentioned the matter to my colleague Mr. Ballance, and he placed all the papers before me, and, in addition, told me that if I wanted any information I could obtain it from the Chief Judge of the Native Land Court (Mr. Macdonald). I went through these papers, an enormous heap of them, and spent several days in doing so. I understand that you wish me to give you the impressions I have formed in consequence of the knowledge which I have obtained through my study of these papers. I may state that I had no personal interference with this matter. I should like to remove any impression that when the Government gave assurance through the Native Minister with regard to removing these restrictions there was any knowledge that Sir James Fergusson entertained the idea of purchasing. If I may be allowed to express an opinion, Sir James Fergusson, at that time, had no idea of making a purchase, and the purchase he made was made by him in 1875; but at what part of the year I cannot say, and whether it was before he left New Zealand I do not know. But the assurance as to removing the restrictions was given.

The Chairman: I think it was in 1874; there is a letter here which appears to indicate that as the date.

Sir J. Vogel: On the 5th January, 1874, the assurance was given by the Native Minister, in his capacity of Native Minister, by letter, and the month previously it was given by telegraph. I feel perfectly certain that at that time Sir James Fergusson was not in any way in treaty for this property, and had not proposed to buy it. That is my conviction, although I am not able to adduce any proof. Having said so much, I may say, further, that, if Sir Donald McLean gave an assurance that the Governor would remove these restrictions, Sir James Fergusson being Governor, and intending to purchase the property, that would be an obvious impropriety. My impression is that Sir James Fergusson did not become the purchaser until he was about to leave the colony, in 1875, or had left it. I presume that the Committee has power to call for persons and papers, and therefore that I am justified in giving to them a *précis* of the documents relating to the case. I have a *précis* of the correspondence, which I will read to you: On the 9th September, 1873, Captain Wilson asked for the removal of the restrictions. On the 31st December, 1873, a telegram was sent to Mr. Every Maclean to the following effect: "Inquiry has been made respecting the Maungatautari lands. No objections to alienation; the Governor will be recommended to remove restrictions at once.—Signed by order. H. T. CLARK." This was followed by a letter written on the 5th January, 1874, to Mr. Maclean, saying that the Governor would remove the restriction by signing the certificate engrossed on the deed of conveyance before the Natives signed. On the 20th January, 1874, a telegram came from Te Wheoro to the Hon. Mr. McLean, objecting to the sale of the land. On the 3rd February, 1874, Mr. Clarke minutes the memorial signed by Kukutai and others, saying, "I almost regret the alienation of this land was approved. I am afraid that there will be some trouble about it." Sir Donald McLean minutes, underneath, "Send reply, and furnish copy of this to Mr. Every Maclean." On the 11th February, 1874, Mr. Clarke answers the Natives and says, "Copy of your letter sent to Mr. Maclean, who may have something to say on the subject." On the 24th February Judge Fenton writes, "Application from T. Hill for a copy of the orders of the Court." Judge Fenton says he is prepared to withhold them, if the Government give their sanction. I wish to bring out the extraordinary way in which the Land Court appears to have been acting in subservience to the Government. On the 11th March, 1874, a telegram is sent to Mr. James Mackay, junior, asking him if he holds to the opinion that no harm would ensue from the alienation. Mr. Mackay replies on the 12th March that he still holds to that opinion. This is followed by a reply to the Chief Judge of the Native Land Court (Mr. Fenton), merely sending him a copy of the telegram to and from Mackay. On the 2nd April Chief Judge Fenton calls attention to his previous letter, and asks that the Government should give him their own views on the subject. Dr. Pollen minutes, "That requests from claimants in person, whose title was recognised, for copies of certificates should be complied with, but not the requests of agents." Then there is a letter from Judge Fenton, dated the 12th September, 1874, enclosing a copy of a letter from Hori Wirihana complaining of the removal of restrictions. Judge Fenton suggests that the writer should be asked to state specifically what had been done. A letter is sent in reply to Fenton on the 19th September, 1874, saying that his suggestion has been complied with. Hori Wirihana replies, asking for the names of the Crown grantees, and saying that he would then be able to inform them (the Government) of the wrongs that have been done. On the 1st June, 1875, Messrs. Whitaker and Russell acknowledge the receipt of a letter of the 26th May from Judge Fenton, written in the foregoing sense; and they ask, on behalf of Mr. R. H. D. Fergusson, who holds leases from all the Native owners, and conveyances from nearly all of them, for copies of the Native Land Court orders. Mr. Fenton, on the 9th June, asks the Government to give him instructions. To this the Government replied—21st June, 1875—and directs him to see letter of the 8th May, 1874, for the decision of the Government on a parallel case. Then comes a telegram from Major Mair—13th August, 1875—advising that the restrictions should not be removed; he says that the Natives named in the orders do not represent half of the owners. On the 13th March, 1878, Mr. Sheehan, who was then Native Minister, asks, by telegram, "Has the Governor ever been advised to assent to alienation of freehold shares of Native owners?" On the 8th May, 1881, Mr. Robert Fergusson appeals to Mr. Rolleston for certificates; and on the 17th May, 1881, Mr. Lewis minutes that there are no restrictions ordered, and that Crown grants will follow certificates. Then, on the 23rd May, 1881, Mr. Rolleston writes that he is examining into the matter, and that as far as he can see the case is one of many, and will require to be dealt with on some general principle prescribed by the Legislature. In a later telegram—9th August, 1881—to Fergusson it is stated that in the certificates it is recommended by the Court that the grants contain restrictions making the land inalienable. On the 2nd March, 1882, Mr. Fergusson

writes pressing for removal of restrictions. Here is one of the most remarkable features of the whole thing: that, although the Government had promised the removal of restrictions, and Mr. Fenton was prepared to act accordingly, no effort was made to carry out the assurance given by Sir Donald McLean. On the 27th April, some months afterwards, Mr. Bryce directs Mr. Morpeth to write to Captain Fergusson that it is ascertained certificates of title of blocks have not been signed by Chief Judge, and that therefore the Government have no functions to perform in the matter. Having first stated that they had been issued with restrictions, it is found afterwards that they had not been issued at all;—an extraordinary discrepancy. Then there is a correspondence with Natives on both sides, to which evasive replies only are returned. On the 14th September, 1882, Judge Fenton at length forwards the certificates; and Mr. Lewis, on the 9th October, 1882, writes that the certificates make the land inalienable excepting for lease. Mr. Bryce minutes letter, on the 9th October, 1882, "Let the matter stand over;"—that this long delay was extraordinary; and on the 16th June, 1883, Messrs Jackson and Russell, for the Native owners, ask for issue of Crown grant to enable subdivision. On the 18th June, 1883, Mr. Bryce directs reply that the grant is in course of issue but cannot be ready as soon as asked for; and on the same date he advises the Governor to direct the issue of grants, and the Governor does so. It is not very clear why they were not issued. There appeared to be some personal interference not recorded why they were stopped. Here is a copy of the certificate: "Court recommends that the land be made inalienable without power to the Governor to authorise otherwise." On the 26th July, 1885, Chapman and FitzGerald ask for the issue of the Crown grant without restrictions. They refer to the telegram of December, 1873, and also to the letter of the 5th January, 1874. Mr. Ballance minutes, "Refer to Mr. Barton"—who asks for plans. On the 23rd November, 1886, Mr. Lewis, Under-Secretary, writes or wires Judge Macdonald ("confidential") asking if case cannot be dealt with under the Equitable Owners Act. The Judge replies decidedly discouraging the suggestion, and says, "If restrictions not removed, will defeat Fergusson, but will not aid Natives not mentioned in the grant." He also mentions that the Court has made no restrictions, merely recommended them to the Governor, who is empowered to act or not as he thinks fit. The above are most of the important papers which I have examined relating to the case. I should remark that they disclose a most extraordinary state of things: the Native Land Court for years delaying its decision in trying to ascertain what the Government wished it to do. The Government, in my opinion, were bound by the decision in December, 1873, and July, 1874, conveyed by the Native Minister under the telegram and under the letter. Under both they undertook that the restrictions should be removed. The Chief Judge's decision was not given until the 27th of April, 1882; that is, eight years afterwards. During the whole of that time the Court was willing to sign the grant without restrictions, if the Government had wished it. You are therefore brought to this conclusion: that, the Government having given a pledge in 1873 and 1874 that the grant should be issued without restriction, yet for eight years they allow the Court to delay issuing the certificate, although Mr. Fenton asked for instructions in the matter. In 1882 Mr. Fenton appears to have been tired of the subject, and issued the certificate with the recommendation that the land should be inalienable. Mr. Macdonald says, on the 28th of October, 1886, that the Court, in recommending that the certificate should issue without restriction, was merely, in effect, a recommendation to the Governor, who is empowered to act on it or not as he thinks fit. When the certificate was issued with that recommendation the Ministry had power to carry out the undertaking given on its behalf eight years before. Mr. Macdonald then points out that if the restriction were not removed it would injure Fergusson but would not aid the Natives. This is a point which more particularly, as it appears to me, requires the attention of the Committee. There has grown up a habit of considering restrictions should be regarded in the light of there being or not a satisfactory title. As far as I know, the principle at stake is not the title, but whether the grantees have other resources and would not become paupers if the land were alienated. This provision, which was intended to protect the Natives from pauperism, has been used in this case, and, I believe, in a great many other cases, to delay the title, on the ground that the Government is not satisfied with the decision of the Native Land Court. Judge Macdonald points out that the decision in this case does not touch the question of ownership, and that if the restrictions were not removed it might hurt Fergusson without assisting the Natives entitled outside the grantees, for the title would still be vested in the grantees. It appears to me that this is a typical case. I have never gone through any Native land case so thoroughly as I have gone through this, and it seems to me to disclose a horrible state of things. A judicial Court is made the mere instrument of the Government of the day, and in this special case the Government purposely delayed to give effect to the assurance, made in the most absolute manner on their behalf, both by letter and telegram, that the land would be made alienable. There is no possibility of denying that such an assurance was given; there is no possibility of denying that the Government could have carried it out. But by means of the Land Court thirteen or fourteen years have elapsed, yet still the restrictions are not taken off. I wrote a minute on the subject, which I shall hand to the Committee. I did not attach it to the papers, as I was not sure whether I was in a position to do so—that is to say, whether I was examining the papers officially. I have told you that Mr. Ballance authorised me to speak to the Chief Judge, and that gentleman assured me there was no reason whatever why the restrictions should not be removed. He said the only question which he would consider, if the papers were put before him to advise, was whether the grantees were sufficiently provided for not to make it necessary to set apart the land inalienably for their use. He was aware, he said, that the grantees in this case were men of substance; and he would have no hesitation whatever in minuting that it was not necessary to make this land inalienable.

Sir Julius Vogel then read the following:—

Memorandum on Blocks 1 and 2, Maungatautari: I have carefully gone through these papers, and am painfully surprised at the subjection which the Native Land Court has appeared to occupy in relation to the Government. I can see no reason whatever for refusing the issue of the grants without restrictions. The Government promised this, by telegraph and letter, in 1873-74 to Mr. Every Maclean, from whom the property descended by subsequent purchase

some time afterwards to Sir James Fergusson. Although there were frequent subsequent allegations that the grantees did not comprise all the Natives interested, no action was taken thereon nor rehearing given. Probably, concerning most of the Land Court adjudications there are similar complaints. The Chief Judge points out that it is in the Governor's power to remove the restrictions; and that, if he does not do so, he only injures Fergusson, without benefiting the Natives who claim outside the certificate. It appears to me the power of removal or retention of restriction was not meant, nor should it be used, to further a Minister's idea of the justice of a Native Land Court's decision of title. Presumably, no decision is ever given—or very rarely—by a Native Land Court to which there are not dissentients, as is the case with most other legal judgments. In my opinion, to use the power of enforcing a restriction because of doubting the title is a misuse which answers no purpose, except to bring into contempt the title awards. The plain fact is that, if the Crown grant issues with restrictions, the Government will break its promise; its excuse for doing so will be puerile, for the allegation of the proper Natives not being in the grant will not be met, since the Crown grant will settle the title in the same grantees. The result will be simply this: The Crown will break its pledged word; Natives whose title the Government doubts will have that title confirmed, and they will be allowed to deprive Europeans of money paid to them (the Natives) because of the express promise made by the Government and deliberately broken. As regards the doubts as to the correctness of the title award, if the discontent of Natives left out is to be weighed—without a legal rehearing—there is no title in the country worth the paper it is written on. That there has been a great deal of injustice and miscarriage of justice with regard to past titles seems to be beyond dispute; but the evil would be multiplied manifold if the Government set itself to override the law and to indirectly or directly review titles.

This was written, I believe, in 1866; I am under the impression about the end of the year. I must have forgotten the date of it.

83. *Sir G. Grey.*] In reference to Sir Donald McLean's letter, I would ask what right has any person to assume that the Governor would take his advice if offered; that is to say, that the Governor would be compelled to take such advice when tendered to him? In this matter the Native Minister appeared to have exercised more than the ordinary power belonging to the Government?—It is frequently the case that a single Minister pledges the Government. Presumably, he does so on points that are unimportant, or those upon which he knows the mind of the Government. As regards Native matters, as far as my experience is concerned, not in one case out of a hundred does the Minister consult the Government. He is in the habit of acting on his own responsibility, not only with respect to his own action, but with assurance and confidence that the Government will act in accordance with his recommendations.

84. I will put my question in another way. The rule at Home is, that any advice tendered by a Minister of the Crown cannot be divulged without consent of the Crown previously obtained: Why should it not be the same here?—You know more about that than I do; but I am under the impression that the case often arises, when it is intended to bestow distinctions, that the Minister tells the proposed recipient what he intends to submit, and asks whether he would be willing to accept the distinction. The inference from that is, that the advice would be given, and that the Crown would act on it.

85. What I know of the practice in such matters is rather to the contrary. What would take place would be to ask whether, if I tendered such advice to the Crown, and the Crown were disposed to take it, "Would you accept"?—Well, that seems to me nearly the same, perhaps the same thing.

86. But that did not bind the Crown?—Certainly not; but our practice here has been different, and it is presumed that the Governor will act upon the advice if tendered.

87. I can only say I know nothing of that practice. It was not so in my time. What I understand from your evidence is that it was a binding promise that was given by Mr. Donald McLean, a promise that would bind the Governor to carry out a certain thing. Mr. Donald McLean had no right to tell the advice he intended to give. Such promise could bind neither the Government nor any one else. No one could give an unconditional promise that the Governor would act in a particular direction. I am quite clear that this ought not to be allowed to become a precedent at all?—With regard to the letter and telegram in the petition, I agree with you that they go no further than that the Minister promised to recommend that the Governor would remove the restrictions. There was no necessity for the indorsement; it amounted to nothing more than a simple promise to recommend. But the recommendation has not been given, and should have been given long since.

88. The Governor was trustee for the Natives; that was the meaning of the very large powers given to him?—If there were any doubt as to the expediency of issuing the grant without restrictions, it appears to me there would be no medium between allowing a rehearing and giving the grant without restrictions. The grantees would have the land whether the restrictions were removed or remain.

89. But, besides these grantees, the other Natives interested would have descendants. Remote interests might arise?—But their interests are protected.

90. But ought a Minister to divulge to another any portion of the advice he intends to give to the Crown?—I think the whole conduct of Native affairs has been of the loosest possible description over a large series of years. Ministers have constantly pledged the Cabinet and the Cabinet pledged the Governor before assent was given. In most cases the Minister goes straight to the Governor. In all cases it seems to be understood that the Governor will accept the advice tendered, except in cases of extending the prerogative of mercy with regard to the infliction of capital punishment, or a dissolution. Ministers are rarely near the Governor, except during the session of Parliament.

91. Does each Minister send his advice to the Governor without it going through the Premier?—It is done frequently. Suppose the Premier is in Otago, the Governor in Christchurch, and there are three or four Ministers in Wellington. The chief of the Executive, in that case, would not be the Premier, but the senior Minister. Although I was not Premier in the late Government, I was frequently in the position of head of the Executive.

92. But, as a general rule, would the Premier send it on?—Yes; I should say that would be the case, as a general rule, if he were in Wellington.

92A. But, if I may be allowed to refer to a question that has not been touched, suppose a

Minister, having undertaken to give advice to the Crown, and failed to do so over a series of years, would not persons, acting *bonâ fide* on the assurance that the advice would be given, failing its being given, have a claim to compensation?—That point has not been raised; it is probably one for the Committee to consider, if they see fit.

93. But I would like to ask you this question, which has reference to the extension of that principle: Suppose the promise made in this instance would injure innocent parties whose names are not in the grant, would not that give rise rather to a claim for compensation against the State? Would not these innocent parties have a claim to compensation because the promise was ignorantly made?—Yes; quite as much; that is, if there had been injustice done to the grantees and their heirs, but not as regards reopening the awardship.

94. Suppose this promise then made to the injury of innocent people, ought the State to carry it out because a promise had been made to another?—which is now said to be a recommendation which would have the effect of doing such an injustice; who would have the first claim to be considered—the innocent people, or the man to whom such a promise had been made?—I should say that both would be entitled to consideration. The innocent persons I understand you to mean are the heirs of the grantees, who derive injury through the grantees being allowed to sell their property would have the first consideration; but both parties would be entitled to consideration. The point depends on this: whether the recommendation is operative on the Government or not. I understand that it is not. It is a question within the Governor's own discretion, acting on the advice of Ministers, whether or not he accepts the recommendation of the Court. I have shown you that the Court has considered itself an instrument of the Government, and merely done what they wished.

95. Are you aware that in the majority of cases in England the Judicial Committee of the Privy Council would consider such a recommendation, and would decide the question whether the law required the Crown to give effect to the recommendation before anything further could be done?—That is a point which I have not considered; but I recognise that such a tribunal is different from the Land Court, and is a proper one to try such matters, and that the Crown would follow its decision.

FRIDAY, 16TH DECEMBER, 1887.

Sir F. WHITAKER, Attorney-General, examined.

96. *The Chairman.*] We have before us a statement made by you in reference to this petition of Sir James Fergusson?—Yes; it was I who made that statement; it contains all that I know on the subject.

97. The Committee is anxious to have produced the several papers and documents referred to in your statement?—Yes; first, here is a telegram, stating that inquiry has been made respecting the Maungatautari lands, that the Government make no objection, and that the Governor will be recommended to remove restrictions. The next is a letter dated the 5th June, 1874; refers to Captain Wilson negotiating the purchase, &c.: it is from Mr. Clarke, Native Under-Secretary, and says that His Excellency the Governor will be advised to remove the restrictions. The next is a deed of conveyance.

98. A conveyance from the Natives?—Yes.

99. *Mr. Hutchison.*] Have you the certificate?—The certificate is, of course, with the Court. I have a copy of the certificate, or certificates, for there are two certificates.

100. *Major Jackson.*] For the two blocks?—Yes; for the blocks No. 1 and No. 2.

101. *Mr. Hutchison.*] The date here is important; what is the date?—17th April, 1871. I should state here that the petition does not ask that a title should be vested in the petitioner. All that is asked is that the title be vested in the Natives. There appears to have been some impression that Sir James Fergusson was buying lands off the Natives while he was Governor. That has no foundation.

102. It would be necessary to show to the Committee how Sir James Fergusson has derived his title, and for that purpose it is required to produce all the papers?—But, in point of fact, there is no title. You are not asked to mix up the question of the title of the Natives with the prayer of this petition. If the Committee should decide in favour of the prayer of the petition, everything will have to be done that is required by the Native land laws before the petitioner can obtain a title.

103. But it is important to know how the title originated?—Under the Native Land Act of 1865. In one of the certificates there are ten Natives, and there are one or two names absent.

104. Where the whole of the names do not appear in the conveyance?—There would have to be a partition; as I have already said, the petitioner would have to do everything that remains to be done by law to complete his title. He would, among other things, have to apply to the Court for a partition.

105. Under what Act?—Under the Act of 1886; Mr. Ballance's Act.

106. You are aware of the judgment recently given by Mr. Justice Richmond in the case of *Seymour versus Macdonald*; that case appears to be on "all fours" with this?—It is exceedingly like this, except that in this case there was an undertaking on the part of the Government to remove the restrictions. The effect of the case was this: The Court held that clause 24 provided only for cases where the land was held under Crown grant—it did not include certificates of title. There is a misapprehension in reference to this case. The restrictions were recommended by the Court. There it was a different provision under the Act of 1873. Under the Act of 1865 the Court (the Native Land Court) had only power to recommend any restriction it pleased, but not to put any on: the Governor was left to put it on or not as he pleased. The distinction is that the restrictions under the Act of 1873 could be put on by the Court. In this case there is a mere recommendation. The case has been misunderstood; they have been treating it as a case under the Act of 1873.

107. Who are "they"?—The Government, apparently.

108. *The Chairman.*] I understand that with respect to one block the whole of the ten names required appear, but not so in the other?—Here are the certificates.

109. Are the names the same in each?—I think one or two are the same; they are not all the same.

110. *Mr. Hutchison.*] Does this require the certificate of the Trust Commissioner?—It will have to go through all that yet.

111. Then it is not complete?—No; it could not be proceeded with because the parties could not get in all the Natives to sign a conveyance.

112. I think it is necessary that all the documents referred to by Sir Frederick Whitaker should be produced and recorded, as I understand that they cannot be left with the Committee. Perhaps Sir Frederick Whitaker would produce them?—Yes; you have already the telegrams and letter referring to the recommendation of the Court, and stating that His Excellency the Governor would be advised to remove the restrictions; you have next the conveyances from the Natives interested in each block to the Macleans (the conveyances for Maungatautari Nos. 1 and 2); then there is the agreement between Messrs. Maclean and R. H. D. Fergusson. I should like to have them in order: First in order are the certificates of title [produced], then the telegram [produced], next the copy of the certificate under the Act of 1865 for Maungatautari No. 1, dated 18th April, 1871, with the names filled in: Waati Tahī, Parakaia, Tuterangi Pouri, Piripi Whanatanga, Tamati Touru, Te Raihi, Teni Ponui, Peripi Matewha, Matene Pototo, Rapata Mohi.

113. What is the acreage?—3,185 acres.

113A. It would be as well to have the terms of the certificate recorded?—Terms of certificate: That the whole of the block be made by the Crown grant inalienable by sale, gift, or mortgage, or by lease for a longer period than twenty-one years.—A. H. MONRO, Judge.

114. Now for Block No. 2: What is the acreage of that?—2,330 acres.

Mr. Hutchison. The terms of the certificate are the same. The Chairman would perhaps allow the names of the Natives in this block to be taken down.

The Chairman. Yes; Te Hakiriwhi, Ihaia te Ori Ori, Keoni Tawari, Nepia Marino, Tana te Wahara, Hote Tamihana, Harete Tamihana, Rihia te Kanee, Tiriki te Huru, Eruera te Ngahue.

115. *Mr. Hutchison.*] You produce the deed of the 31st December, 1873, from Pirihi and six others in respect of No. 1 Block?—Yes. [Produced.]

116. And a deed from Tana te Wahara, of the same date, for No. 2?—Yes. [Produced.]

117. Are there not deeds connecting Maclean's title with Fergusson's?—I will produce them if you like.

118. There are four deeds; we have two of them?—There is a deed, undated, but executed by Ihaia te Ori Ori in respect to No. 2 Block; there is a deed dated the 23rd May, 1876, executed by Erena Waata in respect to No. 1 Block.

119. The next thing mentioned is an agreement between Maclean and Fergusson?—An agreement from Macleans to Robert Henry Duncan Fergusson, dated the 21st June, 1875, for the sale of land.

120. Does that agreement refer to leasehold land?—No.

121. Has the lease been certified?—Yes.

122. And registered?—I could not say; the lands were leased prior to the purchase. I have not the leases here.

123. The petition does not refer to leasehold land at all?—No, only to freehold.

124. Have you any more documents connected with the cases?—Yes; there is a conveyance from Macleans to Fergusson, based on the agreement which has been read, and dated the 1st March, 1879.

125. It is unstamped and unregistered?—The whole thing stood still; it was not completed, because they had to get the whole ten grantees in each block before they could do anything with it. Then there is a conveyance from R. H. D. Fergusson to the New Zealand Loan and Mercantile Company, in trust for Sir James Fergusson. The reason was that Sir James Fergusson was in Bombay at the time, and he had employed the New Zealand Loan and Mercantile Agency Company as his agent; they made a declaration of trust.

126. *The Chairman.*] Are these all the papers?—Yes.

127. *Mr. Hutchison.*] None of these Native deeds, I understand, have been certified to by the Trust Commissioner?—None; before they could be used the whole ten Natives would have to be got; they were therefore incomplete.

128. *Sir G. Grey.*] I am told you say that the Court had no power to put on this prohibition of alienation?—Not under the Act of 1865; they could only recommend, and leave to the discretion of the Governor what he pleased to do.

129. But they had power to recommend?—Yes; they had power to recommend. I find there has been a general impression that the Native Land Court could put on restrictions under the Act of 1865. That was thought to be applicable to this case; but, on looking into it, it was found to be nothing of the kind. All they could do was to recommend, and the Governor had the discretion whether he would act on that recommendation or not; he could do so or not, as he pleased.

130. Is it the usual rule that another Court sits to review such recommendation—that, say, the Judicial Committee of the Privy Council would make a report to the Crown upon such recommendation?—I am not aware whether that is so.

131. Have you ever known an instance to the contrary?—No; from here we have had only three or four appeals altogether. I have, of course, read a good deal on the subject.

132. Then have you ever found that the Queen disallowed a recommendation?—No. I have never found that.

133. *Mr. Hutchison.*] Does not Mr. Justice Richmond say, in his judgment in *Seymour versus*

Macdonald, that where a recommendation is made, as here, until the Governor exercises his discretion by not adopting it, it is not proper to deal with these lands—that the Governor will follow the recommendation?—Here, in this case, there were no restrictions; the Court had no power to make them; it had only power to recommend, but power was left to the Governor to do as he pleased.

134. *Mr. Ormond.*] Would you say whether it is the practice for restrictions recommended to become effective?—It is different under different Acts: it is different under the Acts of 1865 and 1873, for instance.

135. *Mr. Carroll.*] Then the recommendation by the Native Land Court in this particular case had no effect at all, and would not prevent any one purchasing the shares?—I do not know that you could purchase shares, because you could not buy a few shares out of the number.

136. Could you look on these blocks of land as being restricted from sale?—I would not look upon them as restricted until the Governor, who has the power to do so, put on the restriction. The Court recommend the Governor to do so, but until the Governor acts upon the recommendation there is no restriction. He may act upon the recommendation or not as he thinks fit: it is within his discretion.

137. Then it is the Governor who would put the restriction on the grant?—He may do so or not, as he pleases.

138. Could he put on a restriction without the recommendation of the Court?—Yes; he could put on a restriction without the recommendation of the Court, under the Act of 1865.

139. *Mr. Hutchison.*] It is the same recommendation with the same powers as in the case of Seymour and Macdonald?—The cases are different. That was a certificate issued under a different Act—under the Act of 1867. The order was dated 1870, after two or three other Acts had been passed. In this case the purchase of the land was made by the predecessors of Sir James Fergusson, upon the authority of the Government foregoing any restrictions.

140. *Mr. Hutchison.*] They relied on the promise that the restrictions would be removed?—It is a mistake to say, until “the restrictions were removed;” there were no restrictions.

141. *Sir G. Grey.*] The Minister considered it necessary that the Governor should remove the restrictions?—There were no restrictions; you are mistaken about that.

142. *Mr. Hutchison.*] There is an inaccuracy running through the petition. Even the Minister appears to be under the impression that there was a restriction, and assumes that, as he promises to remove the restriction, until the Governor should issue the grant without restriction. It must be considered, according to that, that the land was inalienable?—The mistake was in thinking there was any restriction.

143. Your answer goes to this: that, although the certificate might be issued against alienation, until the Governor exercises his discretion the land must be treated as under no restriction?—Under no restriction.

144. Is not that opposed to the judgment of Mr. Justice Richmond [Extract from judgment read]?—I do not think that has anything to do with the case.

145. *Sir G. Grey.*] Suppose the Governor did not exercise his discretion for a month, but the land were sold within the month?—If dealt with before the Governor exercised his discretion no title would be conferred.

146. Well, at the end of two months, or any time?—Nobody could prudently touch it until the Governor dealt with the recommendation.

Mr. Hutchison.: But if they took the risk, and the Governor ignored the recommendation, they would be all right.

Sir G. Grey.: But would not that be unfair to the rest of the Queen's subjects?

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

147. *The Chairman.*] You undertook, Mr. Lewis, to give the Committee some further information in respect to these Natives?—Yes.

148. *Mr. Ormond.*] Perhaps Mr. Lewis could tell us, first, between what dates Sir James Fergusson was Governor?—I read from the “Statistics of New Zealand (1883),” Blue Book, that Sir James Fergusson was Governor from the 14th June, 1873, to the 3rd December, 1874.

149. Have you any papers showing the date at which Sir James Fergusson became interested in this transaction?—Yes; that was one of the points which I undertook to look up for the Committee. Sir James Fergusson's name appears for the first time in the correspondence of the Native Department relating to this block in a letter dated the 26th July, 1886, from Messrs. Chapman and FitzGerald to the Native Minister. Before the receipt of that letter, so far as I know, the department was not aware of Sir James Fergusson having any connection with this transaction.

150. *Mr. Carroll.*] In 1886, that was the first information the department had of Sir James Fergusson being connected with this block?—The clause in the letter is as follows: “We are applying on behalf of Sir James Fergusson, into whose hands the property has now come through Mr. R. H. D. Fergusson, who bought from Macleans on the faith of the correspondence with the Government which we have referred to.”

151. *Mr. Hutchison.*] Has a Crown grant been issued yet?—No.

152. *Mr. Ormond.*] Is there any mention of the consideration?

Sir F. Whitaker.: That will be found in the deed. [Deed read.]

Mr. Lewis.: Perhaps I might be allowed to say, in continuation of my answer to Mr. Hutchison, that, if the Crown grant issues in accordance with the recommendation made by the Court, it puts the Government and every one else out of Court. I mean, if the grant so issues the restriction is not removable by the Governor.

Mr. Hutchison.: Unless the grant were recalled or cancelled.

Mr. Lewis.: When under examination on this subject I received directions from the Chairman

to obtain and furnish certain information to the Committee. I produce the following telegrams forwarded and received, in accordance with the Chairman's direction :—

"Urgent" Telegram, 12th December, 1887.—From Under-Secretary, Native Department, to Registrar of the Native Land Court, Auckland.—Chairman, Native Affairs Committee, directs me to obtain by telegram the reasons which led Judge Monro to recommend absolute restriction on Maungatautari Blocks Nos. 1 and 2, *vide* certificates and recommendations dated 18th April, 1871. Please wire "Urgent" the minutes on the subject, and forward the minute-book by the first mail."—T. W. LEWIS.

To that telegram I received the following reply :—

12th December, 1887.—Maungatautari No. 1 and No. 2 were made inalienable by sale on the application of the Native owners.—E. HAMMOND, Registrar, Native Land Court, Auckland.

"Urgent," 12th December, 1887.—From Under-Secretary, Native Department, to the Registrar of the Native Land Court, Auckland.—The Chairman of the Native Affairs Committee desires to ascertain, if possible, whether the grantees of the Maungatautari Blocks Nos. 1 and 2 have sufficient other land. Please obtain and supply information, if you can. Reply, in the first place, by telegram; also by letter.

To that I received the following answer, bearing the same date (12th December, 1887) :—

I could not say with any degree of certainty whether the grantees of Maungatautari Nos. 1 and 2 have sufficient other lands. Some of them are dead; some of them have interests in the Tauwhare and Maungakawa Reserves; and I think some of them have still interests in the large Maungatautari Block, heard in 1884. Judge Puckey is sitting in Cambridge. Several of these Natives are at the Court. I have wired to Mr. Puckey to endeavour to ascertain, and let me know.—E. HAMMOND, Registrar, &c.

The following morning (13th December, 1887) I received this reply from Judge Puckey :—

Under-Secretary to the Native Department.—Owners of Maungatautari No. 1 and No. 2 have sufficient other land.—E. W. PUCKEY.

Mr. Hutchison: That last telegram, the one from Judge Puckey, does not appear to me exhaustive enough; there might be fifty or sixty other owners.

153. Mr. Ormond.] Would it not be the business of the Trust Commissioner to ascertain whether Natives have sufficient lands or not? Is not that the practice?—Yes.

154. Has he yet given his opinion?—No. The deeds have not yet, I understand, been submitted to a Trust Commissioner.

The following memorandum from the Registrar, Native Land Court, received by me since the above evidence was given, has been appended, by direction of the Chairman, Native Affairs Committee (T. W. LEWIS) :—

I beg to forward herewith the minute-book containing the evidence taken at the division of the Maungatautari Block, as requested by you in your telegram of the 12th instant.

Since writing my telegram of the same date I have endeavoured to ascertain what other lands the owners of the above-named block still retain. I have not been able to arrive at this result with the degree of certainty I could wish. A number of sections were awarded to several of them under "The Confiscated Land Act, 1867" (*vide Gazette* No. 109, of the 28th October, 1879), but I find that most of them have been sold. All that remains unsold, as far as I can ascertain, in which the owners of Maungatautari Nos. 1 and 2 have interests, are as follow: Tarika te Hura, Lot 114, Tamahere, containing 39 acres; Piripi Whunatangi, Lot 129, Tamahere, containing 18 acres; Piripi Matewha, Lot 107, Tamahere, containing 19½ acres; Rihia te Kauae, Lot 106, Tauwhare, containing 17½ acres; Te Raihi, Lot 97, Tauwhare, containing 1 acre; Te Raihi, Lot 56, Te Puna, containing 38 acres; Hakiriwhi Purewa, Lot 90, Tauwhare, containing 1 acre; Hakiriwhi Purewa, Lot 71, Tamahere, containing 630 acres. About the half of this block appears to have been sold, and the balance leased. Te Raihi and the survivor of Piripi te Matewha seem still to have interests in about three hundred acres of the Maungakawa Block, which appears not to have been sold. Many of the Ngatihaua reside on this land. I assume that the lands above mentioned have not been sold, as no deeds of transfer have been registered against the titles in the Registry Office.

The under-mentioned owners of the Maungatautari Nos. 1 and 2 Blocks had interests awarded to them in the large Maungatautari Block, which passed the Court in 1884, and, as the orders for Crown grants have not yet issued, for want of survey, probably still retain them: Piripi Whunatangi, Matena Patoto, Tarika te Hura, Ihiaia Tioriori: Maungatautari No. 3A, 15,000 acres (inalienable). Hate Tamihana, Harete Tamihana, Tana te Waharoa: Maungatautari No. 4A, 857 acres and 23 perches. Wi Piripi Matewha, Te Raihi: Maungatautari No. 4H, 2,922 acres. Eruera te Ngahuru: Maungatautari No. 4H, Section 4, 1,262 acres 3 roods 10 perches. Hote te Waharoa: Maungatautari No. 4H, Section 6, 724 acres. Tana te Waharoa, Harete Tamihana: Maungatautari No. 4H, Section 7, 420 acres. Harete Tamehana, Hote te Waharoa, Hakiriwhi te Purewa, Te Raihi: Maungatautari No. 4H, Section 8, 2,500 acres. Rihia te Kauae: Maungatautari No. 4G, Section 2, 605 acres 3 roods 22 perches. Hakiriwhi te Purewa: Maungatautari No. 5A, 1,817 acres. Eruera te Ngahuru: Maungatautari No. 4H, Section 5, 590 acres.

No transactions are registered against the under-mentioned blocks of land, in which the following persons, owners of Maungatautari Nos. 1 and 2, have interests: Tini Ponui, Pukehinau, 240 acres; Harete Tamihana, Paaturawaru No. 2, 24,229 acres; Tini Ponui, Kiwitahi No. 3A, 1,668 acres; Tini Ponui, Mangaotepua, 2,000 acres; Hakiriwhi te Purewa, Urenui, 138 acres; Tana te Waharoa, Tapui A, 105 acres; Piripi Motewha, Rihia te Kauae, Kohenu, 278 acres; Raihi Tarika te Hura, Kiwitahi No. 2, 1,674 acres; Tariki te Hura, Te Awapikopiko, 101 acres; Harete Tamihana, Te Miro, 1,742 acres; Tana te Waharoa, Okania No. 3, 860 acres; Harete Tamehana, Tana te Waharoa, Hote te Waharoa, Raihi Toroatai, Mangawhero No. 2A, 307 acres.

There were twenty owners of Maungatautari Nos. 1 and 2. The names of twelve of these appear in different divisions of the other Maungatautari Block. Three are known to be dead—namely, Waata Tahi, Tamati Turou, and Tini Ponui. The names of the remaining five—namely, Parakaia, Tuterangapouri, Rapata Mohi, Reone Tawari, and Nepia Marino—I do not see in any of the unsold lands.

Auckland, 14th December, 1887.

EDW. HAMMOND.

APPENDIX.

MAUNGATAUTARI GRANT.

To the Honourable the Legislative Assembly of New Zealand in Parliament assembled.

THE HUMBLE PETITION OF THE RIGHT HON. SIR JAMES FERGUSON, BARONET, G.C.S.I., K.C.M.G., ETC., ETC., sheweth as follows :—

1. In the year 1875 your petitioner purchased from the Hon. Every Maclean, sometime of Howick, near Auckland, a property known under the name of "Mungatautari," situated in the district of Waikato, and Province of Auckland, in New Zealand, which property extends to 5,500 acres or thereabouts.

2. In the negotiations for the purchase of the said property it was represented to your petitioner that His Excellency the Governor of New Zealand would be advised, in the case of the grant of the Maungatautari lands in question, to remove the restriction against alienation which it was desired to attach to the certificate of title of that block of land; and it was on the faith of such representation that your petitioner was induced to purchase the said property.

3. This appears from a letter from Mr. Henry Tacy Clarke, Under-Secretary for Native Affairs, addressed to the said Hon. Every Maclean, which is in the following terms :—

Native Office, Wellington, 5th January, 1874.

SIR,—Referring to a letter, dated 9th September last, from Captain Wilson, as your agent in negotiating the purchase of a portion of the Maungatautari Block, the title to which has been made inalienable, I have the honour, by direction of the Native Minister, to inform you that His Excellency the Governor will be advised to remove the restriction, and upon your forwarding the proposed conveyance, before it is executed by the Natives, the Governor's signature to the certificate of removal of the alienation-restriction will be obtained. The certificate should be engrossed on the deed by your solicitor in the usual form.—I have, &c., HENRY T. CLARKE, Under-Secretary. Hon. E. Maclean, Howick, near Auckland.

4. In reliance that your petitioner's title to the said property would be duly confirmed, and that a Crown grant thereof would be issued without any restriction as to alienation, your petitioner has spent considerable sums of money, amounting to not less than seven thousand pounds in all, in purchasing the said land and in improvements.

5. After repeated applications for the said grant, your petitioner is now informed that his Excellency the Governor is about to issue a Crown grant of the said property, but that it is to contain a restriction against alienation. The effect of a grant in such terms would be, that your petitioner would be unable to retain the rights over the said property which he has purchased, and would, in consequence, lose not only the price he has paid in respect of the purchase, but also the sums which he has subsequently spent in improvements.

6. Your petitioner submits that, looking to the assurance of the Under-Secretary contained in his letter of 5th January, 1874, above quoted, he was justified in believing that a Crown grant would be issued free from restriction as to alienation, and that Mr. Maclean's title and his own were sufficiently secured to warrant his expending the large sums he has laid out in connection with the property.

Your petitioner therefore humbly prays that the matter may be referred to a Committee of your Honourable House, who shall inquire into the facts and circumstances set forth in this petition, and that your Honourable House will be pleased to recommend that the Crown grant of the said Maungatautari property should be issued free from all restrictions as regards alienation, or that your petitioner should have such other relief in the premisses as to your Honourable House shall seem meet.

And your petitioner will ever pray.

JAMES FERGUSON.

[*Approximate Cost of Paper.*—Preparation, nil; printing (1,275 copies), £10 6s.]

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1887.