

The actual position of the matter cannot be finally determined as regards the individual acreage until the whole of the Court-work is completed, and the records of acreage allotted individually are made up for each settlement. A very large proportion of the additional land awarded in 1868 and subsequently, is of very inferior character, being very far below the original reserves in the quality of the soil; and this is one of the chief difficulties to be contended with in selecting land for any of the objects under contemplation.

In the report submitted by the Commissioners appointed in 1879 to deal with the Middle Island question, allusion is made to the system of tenths in connection with Kemp's Block as having been intended as the proportion to be set apart for the Natives within the aforesaid block. This view of the matter, I beg to submit, is a misconception, caused probably by the fact that one of the contracting parties named in the deed of June, 1848, is the agent of the New Zealand Company, the inference being that it was a purchase effected by the company, whereas, as a matter of fact, no authority existed to enter into a contract of the kind until the Crown's right of pre-emption had been waived; but even then a legal title would not have been obtained without such purchase had been confirmed by a Crown grant, as the Governor had no authority to grant a waiver of pre-emption. The agreement, therefore, between the Native vendors and Colonel Wakefield, the company's agent, did not create any title in the purchaser, and had no force to operate as a conveyance of the land therein to the person and in the manner therein expressed.

At the time of the execution of the Ngaitahu deed "The Native Land Claims Ordinance, 1841," and the 13th chapter of the Royal Instructions of 1846 were in full operation. The ordinance of 1841 enacted, *inter alia*, that the sale and absolute right of pre-emption from the aboriginal inhabitants of New Zealand vested in, and could only be exercised by, "Her Majesty, her heirs and successors." All titles to land, however, obtained either mediately or immediately from chiefs or individuals of the aboriginal tribes, unless allowed by the Crown, were declared absolutely null and void. Under another clause the Governor was authorised to appoint Commissioners to hear, examine, and report on claims to grants of land in virtue of titles acquired from the Natives.

The 13th chapter of the Royal Instructions of 1846 contains the following provision relative to the acquisition of land by private individuals from the Natives: "The conveyance or agreement for the conveyance of any of the lands of or belonging to any of the aboriginal natives in common as tribes or communities, whether in perpetuity or for any definite period, whether absolutely or conditionally, whether in property or by way of lease or occupancy, which may be henceforth made, shall not be of any validity or effect unless the same be so made to, or entered into with, us, our heirs and successors."

It will be seen that the principle of the then existing law was that private individuals could not acquire land from the Natives, and if any attempt was made, as was done in the case of the purchase of Kemp's Block, it would operate as an extinguishment of the Native title, and vest the estate in the Crown. Any informality that formerly existed in connection with the Ngaitahu deed has been cured by clause 2 of "The Ngaitahu Reference Validation Act, 1868."

By another Act of Parliament, passed in the tenth and eleventh year of Her Majesty's reign, it was enacted, *inter alia*, that the several provisions contained in the 13th chapter of the Instructions of 1846 should be suspended within the Province of New Munster (the Middle Island) until the 5th day of July, 1850, and for such further period as should be directed by Parliament, and that during the suspension of the said Instructions all the demesne land of the Crown in the said province, and all the estate and right of Her Majesty therein, shall be absolutely vested in the New Zealand Company, in trust, to sell and otherwise dispose of the same. It was under this Act that the New Zealand Company obtained the necessary authority to carry on colonising operations in the Middle Island within the Ngaitahu territory, and not under Kemp's deed; consequently this block did not come within what was then known as the company's scheme of settlement, or within the scope or meaning of the 13th clause of the agreement of 1840 between the Imperial Government and the company. If the position of the question is correctly stated, it follows that the stipulation in regard to reserves in Kemp's Block was between the Government and the Natives, an arrangement with which the company had no concern.

In the report of 1879, previously alluded to, the Commissioners state that it is a task beyond their power to estimate the damage sustained by the Natives from the nonfulfilment of the promises made them at the cession of their lands; but as the duty has devolved on me to recommend the quantity of land to be awarded them as compensation for the nonfulfilment of any of the terms or stipulations contained in the deeds of purchase, or of any promises made in connection therewith, it behoves me to address myself to the task, however difficult of accomplishment it may seem, or however impossible it may prove to achieve a satisfactory result.

As many of the conditions on which the land was ceded are impossible of calculation, it is necessary to adopt a basis of operation that will render it possible to determine, if the question had been treated in a practical manner at the outset, the remuneration either in money or land that should have formed the consideration for the cession of so valuable an estate at the time it was purchased. I propose, therefore, as no other formula exists upon which to base a calculation, to adopt an acreage basis, and for that purpose I have procured the most reliable information obtainable from the general and local Survey Departments as to the condition of the country at the time it was purchased, together with a classification of the areas comprised within the territory acquired. The land has been classified for the purpose into three classes—good, medium, and inferior.

Before entering upon the consideration of the main question as regards the quantity of land to be recommended, I would beg to submit the two following examples as bearing on the question of quantity—one of which was a statutory provision for the setting apart of Native reserves, and is contained in clause 24 of "The Native Land Act, 1873," as follows: "Provided always that no land reserved for the support and maintenance of the Natives, as also for the endowments for their benefit, shall be considered a sufficiency for such purposes unless the reserve so made for these