

allegation, for the reason that I believe the basis of the application for and issue of the certificates was another agreement altogether, that has not been seen by the Committee. As the Committee could not see its way to allow me to make this amendment to the evidence yesterday, I ask permission to have it placed on record in this form.

The Chairman and members, Native Affairs Committee.

I have, &c.,

JOSHUA JONES.

WEDNESDAY, 6TH June, 1888.

Mr. J. E. MACDONALD, Chief Judge Native Land Court, examined.

Witness made the following statement: I have to give evidence upon the question whether a certificate granted by me under section 25, "Native Land Administration Act, 1886," was rightly granted or not. It may be convenient to first set out the facts involved and then the law applicable to them. As to the facts: An agreement, dated in 1881, was signed by certain Natives, who thereby promised to make a mining lease to George Stockman of an area of land very generally described, but admittedly including "Mangapapa," such lease to be made "when and so soon as the making might become lawful;" this stipulation being inserted, no doubt, because the ownership of the land had not then been determined by the Native Land Court. The petition of Mr. Richmond alleges that the agreement promised a lease for a term in excess of twenty-one years, and I accept that it was so. His interest, real or imaginary, under that agreement Stockman is alleged to have dealt with so as to give various persons equitable claims upon it, among such persons being the petitioner and those with him—Messrs. Owen, and finally Mr. Walker. Mr. Walker applied in the prescribed form for a certificate under section 24 in respect of Mangapapa, such application being on the face of it founded on rights of his own; but, as it turned out, his claim was based solely on rights, or claim of right, originally Stockman's. The petitioner did not lodge any application under the Act, but contented himself by delivering to me a letter which, after reciting dealings with Stockman relative to Mangapapa, concludes with these words: "Under the circumstances, if it should be within the power of the Court to apportion a certificate and grant one to the company I represent as the assign of George Stockman, in respect of the piece [of Mangapapa] surrendered to Boswell and others, this would be the most satisfactory course to my clients." At an appointed time and place all parties interested attended before me in support of their rival claims to certificates in respect of Mangapapa, when, after discussion, I negatived the claims of both Owen and Walker to certificates in their own rights. In support of their claims under Stockman, neither Messrs. Owen or Richmond produced any documents, while Stockman repudiated them. Walker produced Stockman's agreement of 1881, and also an agreement by Stockman that any lease he obtained over Mangapapa should be assigned to Walker. I held that Stockman only was entitled to a certificate, but agreed, on Stockman's request, to make it in favour of Walker instead of Stockman. Now, as to the law applicable in the case: Reference, in the first place, is due to "The Native Land Administration Act, 1886," already mentioned, the pertinent parts being clause 24 and paragraph (d) of clause 25. Clause 24 is to the effect that a Judge, on being satisfied (*inter alia*) that an applicant had before the passing of the Act procured a conveyance or lease of the share or interest of some out of several owners of land, might give to the applicant a certificate to that effect. Clause 25, paragraph (d), prescribes that a person having obtained a certificate under clause 24, and complied with other stipulations may, on getting a further certificate from a Judge, that "such person had, before the first day of July, one thousand eight hundred and eighty-six, obtained the signatures of one or more owner or owners to a writing purporting to be or agreeing to grant a lease of such land or of a share or interest therein," obtain, within a limited period, execution of a lease of such land. Beyond these two clauses, attention is required to sections 32 and 33 of the same Act, which prohibit any leasing of land, except as warranted by section 25 aforesaid. The petition also recites section 87 of "The Native Land Act, 1873." Having referred to the facts and the law, it remains to consider them jointly. About clauses 32 and 33 there is no ambiguity; but the earlier sections 24 and 25 necessitate careful consideration as applied to the case in hand. At the outset (omitting mention of conveyances as unnecessary) it appears that a certificate under section 24 is only to be granted after the existence of a lease has been established; but that a certificate may issue under section 25 on a bare agreement for a future lease; but unfortunately the right to apply, even for a certificate, under section 25 only accrues to the person after he has obtained a certificate under section 24. The only way in the instance of an applicant having an agreement for lease, was for the Judge to issue the preliminary certificate under section 24 *pro forma* on the agreement, instead of on the prescribed actual lease. I, at all events, adopted that course as the only way of insuring effect to section 25; and, unless my construction is maintainable, there is no question but that my certificate under section 24 was improperly issued, while in that case, I had no right to receive an application even under section 25. Leaving that part of the case, but assuming, for the sake of argument, that a certificate might issue under section 25 on an unobjectionable agreement for lease as well as on an actual lease, there comes the question whether, considered apart from clause 24, the document put in by Stockman, having been signed before the land passed the Court, was such an "agreement for lease" as to satisfy clause 25. Certainly an illegal lease or agreement ought not to have been accepted, but Stockman's agreement of 1881 was before Mr. Bryce's Act of 1883, which, in terms, made such transactions as Stockman's illegal. Mr. Richmond set up that section 87, "Native Land Act, 1873," which enacts that, except as therein mentioned, every conveyance, contract, &c., relative to Native land before it shall have become vested in freehold tenure shall be void; but, query, had not the words "except as therein mentioned," reference only to the immediate preceding sections, 85 and 86, which prescribe how deeds, &c., are to be attested, &c. As to its attestation, &c., Stockman's document has not been impeached. But, assuming the execution of Stockman's agreement before the land passed the Court made the agreement invalid, it would not, as there are no degrees of invalidity, be thereby in worse plight than every other deed or document (except those relating to Crown-granted land) which came under