

not think of entering. I merely allude to it in order to emphasize the position that it is not suggested that there should be any validation of transactions which were of a fraudulent or even improper character.

4. The subject of future legislation is too extensive for the limits of such a letter as this. The main objects appear to me to be—(1) to insure the reservation of ample areas of land in every district for the occupation of the Natives, such reserves to be absolutely inalienable; (2) to simplify the means of alienation of the large tracts of country in the North Island which are now lying idle, and which are useless to the Natives; (3) to provide security of title.

The Native Land Commissioners, Wellington.

I have, &c.,

A. J. COTTERILL.

No. 10.

Chief Judge H. G. SETH SMITH, Wellington, to the NATIVE-LAND LAWS COMMISSIONERS.

SIR,—

Native Land Court Office, Wellington, 16th May, 1891.

In reply to your letter of the 14th instant, enclosing a copy of the reference to the Native-land Laws Commission, and requesting me to favour the Commissioners with any written statement in relation thereto that I may desire them to consider, I regret that, in consequence of being obliged to leave Wellington next Monday, the time at my disposal is so limited that I cannot enter into the details of the subject, and I must ask the Commissioners to excuse me from doing more than making a few general remarks on each of the matters referred to them.

1. The existing laws relating to the alienation and disposition of interests in Native lands are complicated and uncertain, and require a number of formalities to be observed which are harassing to the purchaser, and afford only a partial protection to the Native vendor, at the same time materially increasing the cost of obtaining a title, and proportionately decreasing the consideration-money that is paid to the Natives.

In amending the law in this respect the objects to be aimed at are—(1) to introduce uniformity in the restrictions upon alienation to which the lands of Natives are subject; (2) subject to such restrictions, to facilitate the transfer of such lands in the simplest and most economical manner; (3) to provide an inquiry for the purpose of frustrating any attempt to infringe the restrictions. This might, in my opinion, be accomplished without any serious cost either to the country or to intending purchasers, the two principal objects to be aimed at being—(a) to prevent any Native parting with all his land, so as to become a pauper; (b) to see that each Native vendor understands what he is doing, and gets an equivalent in money or money's worth for the land he is parting with.

2. Although there are many matters of detail in which the practice and procedure of the Native Land Court may be improved, the general principles by which it is guided are those which must necessarily determine the action of any tribunal charged with the duties which are imposed on the Court. In order to ascertain the rights of Natives to their lands in accordance with Native custom, it is necessary that the Court should hear all that the various claimants have to say in support of their claims. As, in the great majority of cases, the claims are based on ancestral rights, known only by tradition, an opportunity for invention is offered which some of the claimants are not slow to avail themselves of. Proceedings are thus not unfrequently protracted by the necessity the Court is under of listening to evidence in support of claims which ultimately are shown to be without foundation. So far as my observation has extended, this is by far the most serious impediment to progress in investigation of Native titles. If some special penalty could be imposed on offenders who set up fictitious claims, or who attempt to support their claims by false evidence, it would, I believe, have a deterrent effect, which the extremely remote danger of a conviction for perjury entirely fails to produce at the present time.

What is needed to effect the purposes for which the Native Land Court has been established is a tribunal that shall be hampered as little as possible by legal formalities, supreme in all matters relating to its own procedure, and capable of giving final and authoritative judgments, binding upon all the world, in all matters within its jurisdiction. The Court should have jurisdiction—(a) to declare the rights of the Natives *inter se*; (b) to supervise transactions by way of alienation from Natives to Europeans; (c) to give an indefeasible title to *bond fide* purchasers, with all the subsidiary powers necessary for carrying out these objects effectively. The decisions of the Court on matters of fact should be as final as the finding of a jury, and decisions upon questions of law should be subject to appeal, within a limited time, to the Supreme Court or Court of Appeal; but proceedings by way of prohibition and *certiorari*, which frequently seriously delay, and in some cases render wholly abortive, the proceedings of the Court, might with advantage be abolished.

As every tribunal is liable to err, whether through want of care on the part of its officers or through the ignorance or carelessness of the parties before it, it would be well to establish a fund for the purpose of compensating any person who might be shown to have been deprived of a right; but no title once established by order of the Court should be liable to be defeated by reason of any error not attributable to fraud. Out of the duty payable on sales of land, a portion might be set aside for this purpose, and the Governor might be empowered to grant an area of Crown land instead of making a money payment, in cases in which the payment of a sum of money might seem undesirable.

3. With regard to alienations or attempted alienations which were commenced under laws now repealed, and cannot now be completed, it is important to distinguish between those transactions which were entered into in defiance of the law, in the hope of being able at some future time to obtain a validating measure, and those which were entered into with the intention of complying with the requirements of the law so far as they were known and understood. The former class of transactions deserve no consideration; the latter should be provided for by establishing a tribunal competent to remedy the existing defects and to do what the justice of each case may demand. Mis-