

3. That the said letters so appearing in the said Exhibit A are true copies of the letters whereof they purport to be copies.

4. That on the 16th day of January, 1891, a report was made by the Commissioners appointed under the 20th section of "The Native Land Court Acts Amendment Act, 1889," extracts whereof are hereunto annexed and marked as an exhibit with the letter B.

W. J. MORPETH.

Sworn at the City of Wellington, this 14th day of May, 1891, before me—

LEONARD G. REID,

A Solicitor of the Supreme Court of New Zealand.

This and the forty-five pages following is the exhibit marked "A" referred to in the annexed affidavit of William Johnston Morpeth, sworn before me this 14th day of May, 1891.

LEONARD G. REID,

A Solicitor of the Supreme Court of New Zealand.

A.

SIR,—

Wellington, 14th May, 1890.

With reference to the letter of the 10th March last, addressed by Mr. J. Aitken Connell to you, and referred by you to me, and to my subsequent conversation with you upon this matter, I have to state that, although I do not agree with Mr. Connell's deductions or his recommendations, it is, in my opinion, desirable to amend the powers given to the Commissioners appointed under the 20th section of "The Native Land Court Acts Amendment Act, 1889," in such manner as will render clear the intention of the Legislature with respect to the matters hereinafter mentioned. I agree with Mr. Connell that the wording of the last sentence of section 27 is not very appropriate, and that in many instances it will prove altogether inapplicable.

The only instances which at present occur to me in which instruments which have been validated by certificate of the Commissioners under section 27 may (subject to what is hereinafter mentioned) prove to be registerable under the Land Transfer Act are those in which, after execution of the instruments validated, the interests of the selling Natives have been ascertained by the Native Land Court and a Crown grant or certificate under the Land Transfer Act has been issued to the selling Natives.

The case of *Paraone v. Matthews* (6 N.Z.L.R., 744) is a case of this class, and I understand that there are many other blocks of land in the same position, especially upon the East Coast. To this class of case the whole of section 27 is strictly applicable—and this was probably in the mind of the draftsman who prepared the section.

No doubt there is another large class of cases in which the interests of the selling Natives have not been ascertained by the Native Land Court, and the land still remains under memorial of ownership or certificate of the Native Land Court. In these cases it is clear, as pointed out by Mr. Connell, that the instruments validated (if they can be validated) cannot be registered under the Land Transfer Act.

It does not appear to me, however, that the consequences of this are those anticipated by Mr. Connell, or that, if they are, the remedy suggested by him is the proper one. As at present advised, I see no reason why in such cases the latter part of section 27 should not be rejected as inapplicable, and why those who claim under instruments validated by certificate of the Commissioners under section 27 should not apply to the Native Land Court under the provisions of section 23 and the subsequent sections of "The Native Land Court Act, 1886."

No doubt it would have been better if the draftsman of section 27 had made it clear that this was the proper course to take in all cases in which the concluding part of the section did not apply, and if the Act is to be amended it may be as well to do this in the amending Act.

The clause proposed by Mr. Connell is, however, something very different to this, and would throw upon the Commissioners the duty of measuring the quantum of interest represented by the undivided shares purchased as between the purchasers and the non-selling Natives who would not be represented before the Commission. This is a duty which belongs strictly to the Native Land Court in the ordinary exercise of its jurisdiction. It would be most undesirable to interfere with this; nor is the Commission a tribunal which could satisfactorily exercise such a jurisdiction.

The amendment which I have suggested is all that is desirable to meet the objection raised by Mr. Connell. The substantial matters in which (as I have intimated) amendments should, in my opinion, be made are of a very different character.

Section 27 is (as has been justly pointed out by Mr. Connell) the only part of the enactment from which any substantial relief can be hoped for by those whose cases are apparently intended to be met. But a critical analysis of that section will, I think, show that it is at least doubtful whether the object of the draftsman has been attained. The section in question runs as follows: "If the Commissioners shall find that any intended alienation of land cannot be registered, or is liable to be or has been impeached because such alienation being of land held under memorial of ownership or Native Land Court certificate of title did not include the whole of the signatures of the Natives owning under such memorial of ownership or Native Land Court certificate, or that the completion of such intended alienation was prevented by a subsequent alteration of the law, and that the transaction was entered into in good faith and was not in any way contrary to equity and good conscience, and that the agreed purchase-money has been properly paid, they may sign a certificate to that effect, and thereupon such intended alienation shall be deemed to be valid and effectual from the date of the instrument purporting to effect such alienation, or from such other