

but the most unequivocal language will justify the Court in holding that the powers which it may be conjectured were intended to be given to the Commissioners by section 27 are well given.

But even if it should be held that under section 27 the Commissioners may make titles notwithstanding the non-compliance with sections 59, 60, and 61 of the Act of 1873, as well as with section 48, there remain other difficulties which may perhaps, to a large extent, render section 27 nugatory.

Some of the more common difficulties in the way of titles acquired from Natives holding under memorial of ownership or certificate of title under the Native Land Acts are as follows: (a) Want of compliance with section 48 of the Act of 1873—*i.e.*, want of the signatures of some of the owners; (b) want of compliance with sections 59, 60, and 61 of the same Act—*i.e.*, want of the assent of the Native Land Court; (c) want of compliance with the Native Lands Frauds Prevention Acts; (d) non-payment of portions of the purchase-moneys; (e) payment of premiums for leases contrary to the provisions of section 48 of the Act of 1873; (f) dealings with lands in defiance of orders of the Native Land Court recommending restrictions on alienation; (g) purchases of lands in defiance of "The Native Lands Alienation Restriction Act, 1884," and "The Native Lands Administration Act, 1886."

Assuming that (a) and (b) are disposed of by the provisions of section 27, there still remains (c), (d), (e), (f), and (g), and probably other cases which do not for the moment occur to me.

Section 27 does not pretend to give the Commissioners power to validate transactions which are invalid under any of these heads, and it will probably prove that one or other of these questions will constantly arise. This, I believe, will prove to be particularly the case with regard to (f) *Seymour v. Macdonald* (N.Z.L.R., 5, C.A., 167), and *Ani Waata v. Grice* (N.Z.L.R., 2, C.A., 95), reported cases, in which this point has already arisen.

It follows, therefore, that even assuming that section 27 gives power to validate transactions which contravene section 48 of the Act of 1873, and with respect to which the provisions of sections 59, 60, and 61 of the same Act have not been complied with, still the remedial powers given by section 27 will have to be exercisable in a comparatively small number of cases only.

With respect to the latter portion of section 27 it is to be observed that the Commissioners can validate transactions only in cases in which they shall find (a) that the transaction was entered into in good faith, (b) that it was not in any way contrary to equity and good conscience, (c) that the agreed purchase-money has been properly paid.

In dealing with this part of the section, (a) and (c) do not present any difficulty of interpretation, though the requirements of (c) are perhaps too stringent. With regard to (b), however, this is not the case, as the words used have no definite legal signification.

It certainly should be made plain whether these words are intended to bear the meaning put upon similar words in "The Native Land Frauds Prevention Act, 1881" (as to which see *Bond v. Coleman*, N.Z.L.R., 1, S.C., 172), or whether, in addition, the Commissioners are to inquire into the adequacy of the consideration. If questions as to the adequacy of the consideration are to be entertained by the Commissioners, it would seem expedient and just to give power to validate transactions, notwithstanding the inadequacy of the consideration, upon payment of such further sums as the Commissioners may think just. It would probably be considered unjust that a Native should be allowed to repudiate his sale, and to take back the land, most likely with improvements made by the purchaser, upon the ground of inadequacy of consideration, unless they were so gross as to justify the Commissioners in saying that the transaction was not entered into in good faith. If, on the other hand, it is intended that the Commissioners shall not consider questions of the adequacy of the consideration, unless it should appear to be so grossly inadequate as to infer fraud on the part of the purchaser, this should appear.

With regard to the provision that the Commissioners must be satisfied that the agreed purchase-money has been properly paid, I think it would be proper to enable the Commissioners to validate transactions, notwithstanding that they may find that portions of the purchase-moneys have not been paid, upon payment of such sums as they may think just, if they are satisfied that there has been no fraud or dishonesty on the part of the purchaser in the non-payment. Purchase-moneys for Native lands have ordinarily to be paid through agents, as to whom it is sometimes difficult to ascertain when they are acting for the purchasers or for the Natives; and it would probably be considered unjust to allow non-payment by one of these persons of a part of the purchase-money to invalidate a transaction in which, so far as the purchaser himself knows, the full purchase-money has been paid.

I may remark, in passing, that titles under section 17 of the Act of 1867 are not expressly mentioned in section 27, and that it is desirable to remove any doubt upon this point.

It will be observed that I do not make any recommendation as to whether or not the difficulties to which I have referred as possibly standing in the way of the validation of Native titles in certain cases should be removed. This is purely a question of policy, as to which I expressed no opinion, and with which I have nothing to do. I wish, also, to be clearly understood as expressing no opinion upon the points to which I have referred; I merely call your attention to them as being questions which, if they are left open, will almost certainly be raised, and which will probably cause a good deal of litigation. Sooner or later, no doubt, if these questions are not set at rest by the Legislature, I shall have to deal with them in a judicial capacity. Until hearing argument of counsel upon them it would not be proper for me to come to any definite conclusion, and I have avoided doing so.

I have, &c.,

The Hon. the Native Minister, Wellington.

W. B. EDWARDS.

SIR,—

Judge's Chambers, Wellington, 21st July, 1890.

I have the honour to acknowledge receipt of your letter of 16th July, covering a letter from Mr. W. L. Rees, containing certain suggestions with reference to additional powers which he pro-