

poses should be given to the Commissioners appointed under the 20th section of "The Native Land Court Acts Amendment Act, 1889."

In reply, I have to say that I think Mr. Rees's suggestions are worthy of consideration, and that it is desirable to enable the Commissioners to make orders validating voluntary arrangements, and to enforce arrangements come to with the assent of a majority of the Native owners if satisfied that such arrangements do not occasion injustice to the dissentients.

The subject must, however, be dealt with as a whole, and Mr. Rees's suggestions, even if adopted, would not obviate the necessity of dealing with the matters to which I have already called your attention. In my opinion no satisfactory legislation is likely to be obtained unless a Bill, embodying such principles as you may deem expedient, is prepared by a barrister who has had considerable actual experience in dealing with these matters, and such Bill is passed through the House unaltered. No Bill which is amended off-hand in Committee is likely to prove satisfactory or to be found workable without litigation in the Supreme Court to discover its meaning. I return the correspondence.

I have, &c.,

The Hon. the Native Minister, Wellington.

W. B. EDWARDS.

SIR,—

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

Referring to your recent interview with me with respect to the proposed clause 25A, which is intended to be inserted in the Native Land Bill of this session, and to your enquiry whether, in my opinion, that clause will be sufficient to remove all doubts as to the Commissioners' powers, and to enable the work of the Commission to proceed in a satisfactory manner, I have to say that, in my opinion, the clause is quite inadequate for the above purposes.

I have the honour to refer you to my letters to the Hon. the Native Minister of the 14th May, 30th May, and the 31st July, 1890, and to the judgment of the Commissioners in the matter of the Tokomaru Block, in all of which the matter is exhaustively dealt with; and I have to add that nothing that has occurred since has in any way altered my opinion as to the necessity of legislation for the purposes stated in the letters above referred to.

It is true that since the above dates His Honour the Chief Justice has decided, in the case of *Piripi v. Smith and Arthur*, that the Commissioners have power to validate alienation of land notwithstanding non-compliance with the provisions of sections 59, 60, and 61 of "The Native Land Act, 1873," but it involves no disrespect to His Honour's judgment to say that the point cannot be deemed to have been thereby finally disposed of.

It is certain that sooner or later this point will be the subject of appeal, if it is not sooner disposed of by legislation; and the most cursory reference to the pages of "The New Zealand Law Reports" will show how frequently the decisions of single Judges in Native matters have been reversed by the Court of Appeal. In the meantime the uncertainty which exists in the matter precludes applicants from coming forward, and leaves the proceedings of the Commission at a standstill.

Apart altogether from this question, there are moreover numerous defects in the existing legislation, to which I have already fully called attention, which must go far to render the proceedings before the Commissioners nugatory.

The clause which it is now proposed to enact does not pretend to deal with a single one of the difficulties which I have pointed out, but it is directed altogether to meeting a difficulty which has arisen in the Tokomaru Block with respect to the proceedings in partition, and even for this purpose it is in my opinion unsatisfactory and inadequate.

I have a strong objection to becoming the draftsman of provisions which I shall afterwards have to interpret, but, as it is plain that my suggestions upon the subject have not so far been appreciated, I have thought it a lesser evil to draft the clauses which I conceive to be necessary than to allow the matter to remain in its present position. I have therefore drafted the necessary clauses, to each of which I have added an explanatory note, and I have the honour now to enclose the same for the consideration of the Hon. the Native Minister. I am unable to add anything to these notes and to the letters and judgment to which I have already referred.

I have, &c.,

The Under-Secretary, Native Department.

W. B. EDWARDS.

1. Section 27 of "The Native Land Courts Acts Amendment Act, 1889," is hereby repealed, and in lieu thereof the following provisions are hereby enacted:—

This section as drafted removes the doubts referred to in the Tokomaru case, and other doubts. This is essential to the success of the Commission, as, although the particular point has been decided in favour of the European claimant in *Piripi v. Smith and Arthur*, the point cannot be said to be settled; and unless this is done by legislation it will most certainly be the subject of appeal, if not in the Tokomaru Block, then in some other.

2. If the Commissioners shall find in any inquiry instituted by them under the provisions of "The Native Land Court Acts Amendment Act, 1889," that *any document or instrument purporting to effect or intended to effect any alienation* of any land held under any memorial of ownership, certificate of title, or other instrument of title issued by the Native Land Court, or of any interest in any such land, has been impeached or questioned, or is liable to be impeached or questioned *for any reason whatever save as hereinafter mentioned*, and the Commissioners shall also find that the transaction or negotiation evidenced or intended to be evidenced by any such document or instrument was entered into in good faith and without fraud, and that it is not in any way contrary to equity and good conscience, and that the consideration purporting to be paid, given, or secured by any such document or instrument, or by any collateral document or instrument, has been duly paid, given, or secured, they may, by any order or certificate under their hands, order, certify, or declare