

that any such document or instrument shall, as from the date thereof, or from such other date as the Commissioners shall therein declare, be deemed to be and to have been valid and effectual to effect the alienation which purports to be thereby effected; and from and after the making or signature of any such order or certificate every such document or instrument in respect of which such order or certificate is made shall, notwithstanding any defect therein, or any statute or rule of law to the contrary, be and be deemed to have been valid and effectual accordingly.

The phraseology of section 27 is incorrect. There may be an intention to alienate, but an intended alienation is an absurdity.

There are, as pointed out at length in Mr. Justice Edwards's letter of the 14th May, 1890, to the Native Minister, many cases not provided for by section 27, in which it was certainly intended that the Commissioners should have power to ratify. Some of these cases are specified in the above-mentioned letter. There are probably others which will not be discovered until they arise in actual practice. By far the most satisfactory way is to give the Commissioners general power, specially excluding the cases with which they are not intended to deal.

3. If the Commissioners shall in any such inquiry as aforesaid find as is in the last-preceding section mentioned, save only that they shall find that the consideration or any part of the consideration purporting by any such document or instrument, or by any collateral instrument, to be paid has not been duly paid, they may require the person claiming under any such document or instrument to pay within such time as they shall direct to any Native whose interest in any land is claimed under any such document or instrument, or to his successors, such sum of money as they may find to remain unpaid in respect of the consideration purporting by any such document or instrument, or by any collateral document or instrument, to be paid, together with interest thereon at the rate of 8 per cent. per annum from the date of such document or instrument; and they may also require the person claiming as aforesaid within such time as they shall think proper to enter into such covenants with such persons as they shall deem requisite for the purpose of carrying into effect the intent or meaning of any such document or instrument; and upon the due performance to the satisfaction of the Commissioners of any such requirements as aforesaid the Commissioners may make an order or certificate as is provided by the last-preceding sections, which order or certificate shall have the effect in the last-preceding section mentioned.

This provision is absolutely essential to enable justice to be done, as was pointed out at length in Mr. Justice Edwards's letter above mentioned. Purchases of Native lands have ordinarily to be made through agents, many of whom have, without the knowledge of the European purchaser, deducted sums from the purchase-money for commission or otherwise. In such cases it will be found that the Natives have acknowledged receipt of the full purchase-money, and have made declarations under "The Native Lands Frauds Prevention Act" to the like effect. In a recent case it was said that the European purchaser first heard of this in the shape of an action.

4. Any moneys payable in pursuance of any requirement of the Commissioners may be paid to the Public Trustee, on the account and for the benefit of the person in respect of whose interest the same shall be paid, although he may be dead; but the person paying such moneys shall pay to the account of such person as aforesaid a further sum of £10 per cent. upon the amount of such moneys. Any moneys so paid to the Public Trustee shall be paid out by him to such person or to his successor lawfully appointed. Any covenant entered into in pursuance of any requirement of the Commissioners may be entered into with the person whose interest is claimed, notwithstanding he may be dead, and any such covenant may be enforced by action or suit by the person entitled to the benefit thereof, in the same manner as though the same had been entered into with such last-mentioned person.

This provision is absolutely necessary to meet the cases, which are numerous, in which Natives whose shares are sought to be effected have died, and no successors have been appointed. It is also desirable in the interests of the purchaser in many cases in which the Natives are scattered at long distances, and are difficult of access, and in some cases in which the Natives may decline to receive the moneys. The additional payments provided for in cases in which the claimants avail themselves of this provision are to enable the Natives to receive their moneys from the Public Trustee without costs to themselves.

5. If any land in respect of any shares, in which any order or certificate shall be granted by the said Commissioners under the provisions hereinbefore contained, has heretofore been divided or partitioned by the Native Land Court, and an order made as part of such division or partition purporting to declare the person entitled to the benefit of any such order or certificate to be entitled to a parcel of the said land, as representing all the shares of the Native owners thereof, in respect of which any such order or certificate shall be made, and no other shares, such division or partition order shall be deemed to be a valid order as from the date of the making thereof; and if any such order is incomplete it may be completed accordingly. The Chief Judge shall, upon production of any such order or certificate of the said Commissioners as aforesaid, indorse upon every order validated by this section a certificate of such validation.

The wording of the proposed clause 25A, subsection (1), as printed, has been preserved as far as possible. That clause as drafted is not sufficient, and is inaccurate in its terms. Certificates of the Commissioners are not made in favour of any person, but simply validate the alienation. The person entitled, whoever he may be, gets the benefit of the validation. Before the officials of the Land Transfer Department could act upon any certificate validated by this clause, a certificate of the Native Land Court of the validation would seem to be necessary. Subsection (1) is only applicable in cases in which the partition order of the Native Land Court, and the certificate of the Commissioners, are in respect of the same shares, and no other. It will frequently happen that the partition order covers shares which are not affected by the certificate of the Commissioners. This contingency is not provided for by the proposed clause 25A, but is provided for by the next section.

6. If no such order of the Native Land Court as mentioned in the last paragraph has been made the Native Land Court may, upon the application of the person entitled to the benefit of any such order or certificate as aforesaid, or of any other person interested in the land any share or interest in which is affected by such order or certificate as aforesaid, proceed to partition the said land in accordance with the ordinary procedure and practice for the time being of the said Court, and the production of the document or instrument in respect of which any such order or certificate as aforesaid shall have been made by the said Commissioners under such order or certificate shall be conclusive proof of the matters therein ordered, certified, or declared. Upon any such par-