

The Commissioners therefore directed that these points should be argued by counsel for the applicant, and they were accordingly argued by Mr. De Lautour and Mr. Skeet on the 6th January.

Upon the first point Mr. De Lautour contended that the alterations made in the deeds after their execution were not such as to void them at common law, and in support of this contention he cited several cases.

As, however, I have come to a definite conclusion upon the second point, it is not necessary that I should express any opinion on this point, and as it is not possible here to refer to the cases cited by Mr. De Lautour, I prefer not to do so. It is also unnecessary to express any opinion upon the questions arising upon the facts hereinbefore stated with respect to the shares of Paora Haupa as the successor of Marara Tahuipare, and of Apihaka Tawhiao.

With respect to the second point, Mr. De Lautour contended that the provisions of section 85 of "The Native Land Act, 1873," applied only to instruments which had of themselves a disposing effect, and that, as it has been repeatedly decided that transfers of land held by Natives under memorial of ownership have not of themselves any effect whatever save as the foundation of an application to the Native Land Court, it was not necessary with respect to such transfers that the provisions of section 85 should be complied with. I am clearly of opinion, however, that this contention is erroneous. By the interpretation clause the word "instrument" is made to include instruments affecting lands held under memorial of ownership. Section 85 is one of a series of sections, beginning with section 81, under the heading "Instruments of Disposition." Section 83 begins, "Every memorandum of transfer or of lease or other instrument of disposition affecting any land held under memorial of ownership shall be in duplicate." It is plain that in this section transfers and leases of land held under memorial of ownership are recognised as coming within the meaning of the words "instrument of disposition," as used in this part of the statute.

Section 85 provided that "no transfer, lease, or other instrument of disposition by any Natives to any person not of the Native race shall be valid unless properly explained to such Natives before the execution thereof by an interpreter appointed under this Act, and unless a clear statement of the contents thereof, written in Maori and certified by the signature of such interpreter, shall be indorsed on the transfer, lease, or other instrument. It shall be the duty of such interpreter to record in the Court of the district a certified copy of every such written statement. Every such instrument shall be signed by such Natives in the presence of and be attested by a Judge of the Court or Resident Magistrate, and at least one other male adult credible witness, or, if any Native cannot write, his mark will be made thereto in the same presence. The Judge or Resident Magistrate in whose presence any such instrument shall be signed shall satisfy himself that the Natives so signing such instrument fully understand its purport, and shall when attesting the same add thereto a memorandum to that effect." This section was amended by "The Native Land Act Amendment Act, 1878 (No. 2)," section 12, which provided that "any transfer, lease, or other instrument of disposition of any lands held under certificate of title, memorial of ownership, or Crown grant may be signed by any Native interested in the same before any Justice of the Peace, Clerk of any Resident Magistrate's Court, or any Inspector of Armed Constabulary, or a solicitor of the Supreme Court not professionally concerned or engaged for any of the parties to such transfer, lease, or other instrument, who shall have the same powers as conferred on Judges of the Native Land Court or Resident Magistrates under the provisions of section 85 of 'The Native Land Act, 1873:' Provided that any such officer holding a license as an interpreter under 'The Native Land Act, 1873,' shall not attest the execution of any deed which has been interpreted by himself: Provided, further, that the attestation of an adult witness, as required by the said Act, shall still in all cases be necessary."

It appears to me to be clear that the requirements of section 85 of the Act of 1873, as modified by section 12 of the Act (No. 2) of 1878, extend to instruments intended in any way to affect lands held under memorial of ownership. The only doubt which can reasonably be said to be raised upon the point is raised by the concluding part of sections 59 and 62 of the Act of 1873, which were no doubt inserted to remove any doubt. The last two paragraphs of section 59 run, "Sales of land held under memorials of ownership may be effected by memorandum of transfer in the form No. 2 in the Schedule hereto, or to the like effect. Such transfers shall be signed by all owners in the manner hereinafter provided in respect of the signing of deeds and instruments." The concluding part of section 62 contains a similar provision with respect to leases of lands held under memorial of ownership.

It is arguable that these provisions do recognise a distinction between instruments affecting lands held under memorial of ownership and lands held in fee, and that with respect to the former, while that portion of section 85 which relates to signature is specially adapted by sections 59 and 62, the first part of the section, which provides for explanation by a licensed interpreter prior to execution, and for a statement in Maori, is not so adapted. It appears to me, however, that this is not the correct view. The forms in the schedule to the Act of 1873 show that explanation by an interpreter was necessary with respect to transfers and leases of land held under memorial of ownership, and this is rendered additionally clear by the Act of 1878, section 12.

The provision for explanation by an interpreter is contained in the same part of the section which provides for the Maori statement, and, reading all the sections together, I feel no doubt that the interpretation and the Maori statement are both made essentials of the execution, and that sections 59 and 62 adopt the whole of section 85.

It is, however, only necessary to say that sections 59 and 62 do not exclude any part of section 85, which, apart from sections 59 and 62, does, as I have already pointed out, clearly include instruments intended to affect lands held under memorial of ownership.

I feel no doubt that the statement in Maori which by section 85 is required to be indorsed upon the instrument of disposition, and to be certified by the signature of the interpreter, is