

but had no right to sell any portion which did not belong to them. It was the undue readiness of land-purchasing agents to accept any vendors' assurances of ownership at their face value which led to so many abuses prior to and during the period in question. These abuses (so history says) originated the Maori King Movement and led up to the Maori Wars. They also compelled the Legislature to pass the Act of 1862 setting up the Native Land Court as the proper judicial tribunal to fix Native ownership in land. Prior to 1862, purchasing agents for the Crown seem to have been a law unto themselves, bound neither by the ordinary law as to conveyancing and compliance with the Statute of Frauds, nor by the terms of the Treaty of Waitangi.

(11) *Execution of Deed.*—The execution and witnessing of the deed were certainly irregular and even seriously defective according to conveyancing standards in force at the time for private purchases. However, it has not been proved to the Court that agents of the Crown in those days (1859) were legally bound by such standards in the exercise of the Crown's prerogative, the pre-emptive right. Moreover, the number of signatories and witnesses, coupled with the fact that a 200 acre reserve was afterwards accepted by four members of Ngatiwhiu in terms of the deed, precludes any possibility of fraud in the actual execution of the deed. Had any fraud as to execution of the deed really taken place, it should have been the subject of proceedings soon after 1859. It is far too late now to raise any questions as to the method of execution of the deed.

(12) *Occupation by Natives since 1859.*—Native occupation since 1859 seems to have been limited to the 200 acre reserve where the orchards and cultivations existed and to pigeon-shooting and the bleeding of kauri-trees for gum. The two latter activities could be explained by weak forest control prior to 1900, and therefore were not necessarily inconsistent with Crown ownership. The Court cannot accept the Native evidence that the whole 7,224 acres was a pigeon reserve from 1859 onwards, however it may have been regarded in older times.

(13) *Extinguishment of Native Title.*—*New Zealand Gazette*, 19th August, 1863, page 345, notified that the Native title to the "Manginangina" Block of 7,224 acres, with description as shown and excluding the 200 acre reserve, had been extinguished. This *Gazette* notice did not mention the name "Mokau." Section 87 of the Native Land Act, 1909, provided for lawful extinguishment of Native customary title in cases where land had, during the period of ten years immediately prior to the 1909 Act, been continuously in possession of the Crown as being Crown land free from the Native customary title. The Court holds it is Parliament's privilege, however, to grant redress, notwithstanding lawful extinguishment of Native title by statute or deed, if the circumstances justify redress. In this connection one curious feature is to be observed. Active control of the forest as Crown land seems to have remained in abeyance for over forty years. No evidence of effective Crown occupation of the 7,224 acres during those first forty years from 1859 was given to the Court. No explanation of that lack of effective occupation was offered to the Court. Is it possible that the Lands Department itself doubted the efficacy of a sale by Ngatiwhiu alone for a mere £240 as covering the purchase of the whole 7,224 acres. Delay in upholding claims was not wholly on the side of the Natives. The evidence for the Crown and the representations of Mr. Meredith were curiously silent on this point, thus opening up the possibility that effluxion of time and the absence of Native claims strengthened the Crown claim to the whole area. The Court recommends that the files of the Lands Department, Native Department, and Forestry Department be made available for inspection by the Native Affairs Committee of the House of Representatives. They were not made available to the Court at the inquiry, although extracts were.

(14) *Price paid for the 7,224 Acres.*—The Court now comes to the crux of the whole question—the price, £240, paid for 7,224 acres of rich kauri forest.

The Court points out first that no official figures quoting the quantity of kauri and other timbers in this 7,224 acres (the Puketi State Forest) were given to the Court. This compelled Mr. Hall Skelton to quote £5,000,000 as the probable value of the *sawn* timber likely to be taken from Puketi Forest. The Court has no doubt whatever but that the timber has been accurately appraised by Forest officials and that the figures were available on State Forest files. The Court therefore recommends that the Native Affairs Committee of the House insist upon production of the quantities and present-day values, together with particulars of the market values of the different classes of timber as ruling in the Bay of Islands district in 1858-59. The Court considers, also, that a sketch showing what portions (if any) of the 7,224 acres were in scrub and fern (not forest) in 1858 should be made available to the House. According to the Court's information, the great bulk of the 7,224 acres was in heavy forest and comprised magnificent stands of kauri trees equal to anything found elsewhere in New Zealand. Mr. Kemp's letter of 1st July, 1858, to the Chief Commissioner said that the area (then estimated at 10,000 acres) was "*chiefly forest, comprising some very fine kauri and other timber.*" It is situated north-west of Waimate distant *ten miles, with an available road.* The chief, Wi Hau, a well-known and useful servant of the Government, is the seller." On the 4th October, 1858, Mr. Kemp wrote again to the Chief Commissioner, and said: "I now beg to recommend for the Governor's approval the payment of the above-mentioned sum (£240 for 7,224 acres), which I think *fair and reasonable, and as low as it could be made, taking the ascertained quantity and other favourable points* into consideration." The Chief Commissioner, Mr. Donald McLean, replied on 20th October, 1858, that His Excellency the Governor authorized completion of the purchase at £240. Therefore the Government of New Zealand accepted responsibility for the purchase of 7,224 acres, chiefly kauri forest, from a few chiefs of Ngatiwhiu for £240.

(15) *Was the Price, £240, unconscionable?*—The Court says firmly and definitely that the price was unconscionable and even outrageous, but that the Crown's officers and the Government of the day were not the only ones to blame. Wi Hau and the others who assisted him in this unconscionable bargain betrayed the interests of their own sub-tribe Ngatiwhiu and of its individuals as well as the interests of other sub-tribes which, in the opinion of the Court, must have had rights in the portions of