

Justice Sir William Martin and Mr. Justice H. S. Chapman) in *The Queen v. Symonds*, the judgment in which case is published in the *New Zealand Gazette*, 1847, page 63, and is also reported in *New Zealand Privy Council cases* at page 387. The material part of the headnotes to the report, so far as present purposes are concerned, is as follows :—

Purchases of land by subjects from Natives are good against the Native seller—sc., subject to legislative provisions—but not against the Crown.

Such purchases, therefore, as the Judges point out, are not absolutely null and void at law, but only null and void *as against the Crown*. The Judges also point out that this is the law that has always been applied, and Mr. Justice Chapman says : “ The early settlements of Port Philip are equally in point. The opinions of eminent lawyers were without exception against the claims of the purchasers, and, as in New Zealand, the claimants were glad to take a Crown grant of a portion of their acquisitions, *leaving a large portion of territory in the hands of the Crown*.”

15. Prior to the Treaty of Waitangi in February, 1840, numerous subjects of the British Crown had made or purported to make purchases of land from the Maori owners in varying areas. In some cases the purchases comprehended immense tracts of country, all or practically all of which purchases were eventually disallowed, withdrawn, or abandoned : but, speaking generally (I am speaking now of the purchases in the North), the areas purchased were not immoderate, though in some cases running into some thousands of acres. In connection with these purchases there are two points in particular to be borne in mind. One is that surveyors were not in those days available. Anything in the nature of a survey therefore was impossible, and the land included in the deed of sale simply described the boundaries of the land by geographical or physical features. In some cases, though they form a minority, the supposed area of the land was stated in the deed. The other point is that in those days, having regard to the facts that the land was in its virgin state, that the conditions existing in the country were most primitive, that there was no such thing as any established system of law and order, that the land, except here and there in very small areas, lay uncultivated and unused by the Maori, land was of very little exchangeable value. No one could then foresee the vast changes which would take place in one hundred years, and, indeed, it must be remembered that for several decades after the Treaty of Waitangi the progress of the country was exceedingly slow, and the rise in value of land by no means rapid or considerable.

16. Of the numerous purchases prior to the Treaty of Waitangi some had been made from as far back as the early 1820's, though they increased in number towards 1840 as the prospect of intervention by the British Crown in some form or other appeared to increase. When Captain Hobson first came to New Zealand as Her Majesty Queen Victoria's Consul he was furnished by the Marquis of Normanby, who was then Secretary of State for the Colonies, with a letter of explanation and instructions dated the 14th August, 1839. I pause to observe that, whatever may be said—and a good deal has been said down the years—about the actions of Government in connection with the Maori race, the dispatches of the British Government show beyond question that the Government was actuated by the purest motives, and that much of what has been written and spoken by way of adverse criticism is most unjust. In the first place, Captain Hobson was authorized to treat with the Aborigines for the recognition of Her Majesty's sovereign authority over the whole or any part of the Islands which they might be willing to place under Her Majesty's dominion. He was also instructed to announce immediately on his arrival by a proclamation addressed to all the Queen's subjects in New Zealand that Her Majesty would not acknowledge as valid any title to land which either had been or should thereafter be acquired in the country which was not either derived from or confirmed by a grant to be made in Her Majesty's name and on her behalf. This was strictly in accordance with the legal position as I have already explained it as between the Crown and the land-purchasers.