Mr. Wakefield or the New Zealand Company; but the Court was inclined to think that the deed did suffice to extinguish the title of the Ngaitahu Tribe in the lands described therein, and that a private person making the attempt to acquire the land will, if the transaction be fair, extinguish the Native title, gain nothing for himself, but give a title to the Crown. The Court then goes into reasons why, even if that were not good law, the Court could compel the specific performance of a parol contract for the sale of the land under the circumstances cited; "and it will be the duty of the Court," it says, "under the order of reference, to ascertain all the terms of the contract, and to make such orders as will secure the due fulfilment of them, by the Crown on one side and the Ngaitahu Tribe on the other."

Following the delivery of the judgment, Mr. Rolleston, on behalf of the Crown, asked for an expression of opinion from the Court as to what further quantity of land the Natives should be entitled to, and the Crown would immediately carry out whatever decision was given by the Court, a release from the deed being obtained. The Chief Judge replied that evidence would first be required as to the lands used about the homes, then as to fisheries, pahs, and burial-grounds. This concluded the Kaitorete case. 2 MacKay, p. 210.

Claims were then taken as to the reserves asked for by the Natives. Some Native evidence, claiming extended reserves, and the evidence of Messrs. Mantell and MacKay (called by the Crown) was taken. In the course of Mr. MacKay's evidence the suggestion was made that the reserves should be brought up to 14 acres per head all round, to make them equal to the average granted to the Kaiapoi section. The Court, on the 6th May, 1868, gave judgment, in part as follows: "As to the clause promising that the Governor would cause to be marked out other land for them later, the Court feels altogether bound by the evidence of the Crown witnesses. Whatever may be the demands of the Natives under this head, we think that in interpreting the contract we are bound, under the terms of it, by the Crown witnesses, for the discretion rests purely in the Crown, and accordingly we entirely follow them. At the same time we ought to express our opinion that the concessions of land proposed to be made, according to their testimony, go as far as a just and liberal view of the clause would require. We take the quantity to be provided, including what has already been set apart, at 14 acres per head, and are prepared to make an order accordingly. The Natives must sign a deed of release of their claims under these clauses, and no persons refusing to sign the general release to be entitled to any interest in the above order." S. Is., M.B. 1, p. 85.

Later on, a memorandum is made by the Chief Judge: "I intimated that on reconsideration I did not think it necessary that a release should be signed of claims under the deed, as the orders of the Court are evidence of the satisfaction of their rights—*i.e.*, under both the clause of reservation and the further clause containing the promises of the Governor—though I will leave the order standing as it is, but it need not be acted upon." S. Is., M.B. 1, p. 89.

Formal orders were drawn up on the 8th May, 1868, ordering that the agreement referred to the Court should be forthwith completed in terms of the deed of the 12th June, 1848, and that the stipulations in the deed should be observed by making certain grants, on the performance of which condition the claims under the deed of all the Natives specified in the order are to be absolutely released. This judgment did not remain unchallenged on the part of the Natives, who took proceedings in the Supreme Court at Christchurch to raise the question of the validity of the order of reference and the correctness of the judgment of the Chief Judge. A rule *nisi* was obtained, and made absolute on the 27th November, 1868.

Meantime the Ngaitahu Reference Validation Act, 1868, had been introduced. The purport of this was to validate the order of reference and the Native Land Court proceedings and orders. A protest against its becoming law was made by Mr. Mantell, on the ground that litigation was pending. The Act, however, was passed. This in effect made the order of reference as valid as if it had been signed by the Governor, and the Ngaitahu deed was to be a valid 1868, 4 *Hansard*, p. 185. See signed protest in *Hansard*.