

- (g) The work of purchase was entrusted to the Crown Solicitor at Auckland, the Hon. J. A. Tole, and it was carried out by Mr. Selwyn Mays, a barrister and solicitor of experience employed by the Crown Solicitor. It was arranged that Mr. Mays should have the benefit of the data and material collected by Messrs. Earl and Kent, who had been acting for the private purchasers, and that they should afford the Crown Solicitor information and assistance, and in some degree act in collaboration with him. Mr. Mays continued to act until November, 1916, by which time the greater part of the Orakei Block had been purchased by the Crown.
- (h) The purchase operations were then taken over by Mr. W. H. Bowler, who was Native Land Purchase Officer in the Native Department. He continued to act until November, 1921, when he was succeeded in office by Mr. W. E. Goffe. By November, 1921, practically the whole of the interests in blocks other than the papakainga had been acquired by the Crown.

TITLE OF THE NATIVE VENDORS.

9. In the first place it is necessary to refer to the partition order made by the Native Land Court on the 10th January, 1898, by which certain Natives were declared to be the owners of Orakei No. 1 Reserve. In *Solicitor-General v. Tokerau District Maori Land Board*, (1913) 32 N.Z.L.R. 866 it was held by the Court of Appeal that the Native Land Court had, in 1898, jurisdiction to partition among the beneficial owners thereof the land known as Orakei Block held in trust in accordance with the Orakei Native Reserve Act, 1882, and that the effect of the partition orders was to give to the persons therein named a statutory right to a Land Transfer certificate of title to the parts allotted, and that as by virtue of sections 207 to 210 of the Native Land Act, 1909, all restrictions upon alienation other than alienation of equitable interests had been removed, the holders of such certificates of title were free to alienate the land therein contained.

This decision applies to Orakei No. 1 Reserve, or the papakainga.

I accept the authority of this decision, and proceed upon the view that the individual Natives named in the partition order of the 10th January, 1898, or their duly appointed successors, were competent to alienate to the Crown their interests in Orakei No. 1 Reserve, subject to any restrictions or conditions imposed on such alienation by the Native Land Act, 1909. The validity of the partition order cannot now be impugned: the Native Land Act, 1931, section 51.

STATUTORY REQUIREMENTS.

10. The statutory provisions in force at the time when the Orakei purchase was undertaken are to be found in Part XIX of the Native Land Act, 1909, and in sections 107 to 113 of the Native Land Amendment Act, 1913.

11. For the purpose of the administration of the Part of the Act relating to purchases of Native land by the Crown there was constituted, by subsection (1) of section 361 of the Native Land Act, 1909, a Board called the Native Land Purchase Board, consisting of the Native Minister, the Under-Secretary for Crown Lands, the Under-Secretary of the Native Department, and the Valuer-General. Meetings of the Board might be summoned by the Native Minister, and thereat three members of the Board should constitute a quorum: section 361 (2) and (3). Section 362 provided that the duty of the Native Land Purchase Board should be to undertake, control, and carry out all negotiations for the purchase of Native land by the Crown and the performance and completion of all contracts of purchase so entered into by the Crown.

All the members of the Native Land Purchase Board were present at the meeting on the 25th October, 1913, when the Board resolved to purchase the Orakei Block. The minutes of that meeting were read and confirmed at a meeting held on the 22nd December, 1913.

The precise terms of the Board's resolution were "that purchase as authorized by Cabinet resolution be completed subject to certificate of Crown Law Office as to interests proposed to be acquired being in order." The proviso to the resolution was, in effect, the delegation to the Crown Law Office, as represented in fact by the Crown Solicitor at Auckland, of the duty of making essential inquiries as to the interests in the land which was the subject of the resolution.

12. By section 370 (1) of the Native Land Act, 1909, it was provided that when any Native land was owned for a legal estate in fee-simple by more than ten owners in common no Native owner thereof should be capable of alienating any interest therein to the Crown, otherwise than by way of a resolution of the assembled owners under Part XVIII of the Act. The papakainga was owned by more than ten owners. Prior, however, to the first purchase, on the 17th December, 1914, of an interest in the papakainga section 370 (1) was repealed by section 109 (7) of the Native Land Amendment Act, 1913. Thereafter it was open to the Crown to deal with individual owners.

13. Section 109 (2) of the Native Land Amendment Act, 1913, provided that "notwithstanding anything contained or implied in any part of the principal Act, and notwithstanding anything contained or implied in any other statute, the Crown may purchase, lease, or otherwise acquire any land as hereinbefore defined from the owner or owners thereof . . .". "Land" as specially defined in subsection (1) meant Native freehold land, and included any undivided share, estate, or interest held in joint tenancy or tenancy in common.

The Orakei No. 1 Reserve Block was Native land held in common by a number of Natives. Their interests therein were defined but undivided—that is to say, each owner had a determined share in the whole block, but not an exclusive right to any part of the block. The owner might dispose of his undivided interest in the land, or a part of such interest, but he might not, until his interest had been individualized by partition, dispose of a particular part of the block. These were the interests which the Crown might lawfully purchase.