

Question 2 : Whether anything existed in section 373 of the Native Land Act, 1909, to prevent the Native Land Purchase Board lawfully purchasing or which rendered any purchase invalid ?

28. Section 373 of the Native Land Act, 1909 provided :—

“(1) Save in the case of a purchase made in pursuance of a resolution of the assembled owners duly confirmed under Part XVIII of this Act, a purchase of an interest in Native land shall not be made by the Native Land Purchase Board unless the Board is satisfied that no Native will become landless within the meaning of this Act by reason of that purchase ; and it shall be the duty of the Board to make due inquiry in that behalf.

“(2) No purchase shall be invalidated by any breach of the requirements of this section.”

This section has been repealed and re-enacted in section 453 of the Native Land Act, 1931, in a slightly different form.

The Native Land Amendment Act, 1913, section 109 (10), provided :—

“It shall be the duty of the Native Land Purchase Board, before completing a purchase of the interest of any Native owner in any land, to ascertain that such purchase will not render the selling Native landless within the meaning of the principal Act. The Native Land Purchase Board shall in each case obtain from the Registrar of the Native land district or districts in which any lands owned by the selling Native are situated particulars of all land in which such Native is beneficially interested.”

According to section 2 of the Native Land Act, 1909, the term “landless Native” means, unless a contrary intention appears, “a Native whose total beneficial interests in Native freehold land (whether as tenant in fee-simple or as tenant for life and whether at law or in equity) are insufficient for his adequate maintenance.”

Subsection (1) of section 220 of the Native Land Act, 1909, provided that “No alienation shall be confirmed unless the Board or Court is first satisfied as to the following matters : . . . (c) That no Native will by reason of the alienation become landless within the meaning of this Act.” This was amended by the Native Land Amendment Act, 1913, section 91, by adding what the statute itself calls the following “exception” : “Excepting in cases where it appears to the satisfaction of the tribunal dealing with the application for confirmation that the land which is the subject of alienation is not, having regard to all the circumstances, likely to be a material means of support to such Native, and excepting in cases where the Native alienating is qualified to pursue some avocation, trade, or profession or is otherwise sufficiently provided with a means of livelihood.”

Section 220 was not operative so far as alienations in favour of the Crown were concerned, for such alienations, by virtue of the provisions of section 369 (2) of the Native Land Act, 1909, did not require to be confirmed by a Maori Land Board or the Native Land Court. Nor did the proviso introduced by section 91 of the 1913 Act in terms apply to section 109 (10) of that Act. That is to say, the qualification applied where the alienation was to a private person, but not where the Crown was the purchaser. There do not appear to be any reasons why the discretionary power vested in the Maori Land Boards or the Native Land Court should not have been vested in the Native Land Purchase Board. The Legislature itself later withdrew the distinction, and since 1931 the exception applies alike to purchases by the Crown and to purchases by private individuals.

29. Section 373 imposed a prohibition on the Native Land Purchase Board in respect of purchases calculated to render the Native vendor landless and also the duty of making inquiry to satisfy itself that its purchases did not have that effect. Subsection (10) of section 109 of the 1913 Act restated the Board's duty to ascertain that its purchase would not render the seller landless, and prescribed the means by which it might be enabled to discharge that duty. The two enactments are not in conflict and must be read together. The final result is that, even if the duty was not discharged and the prohibition ignored, a purchase was not invalidated.

30. The Native Land Purchase Board itself did not have before it particulars of other lands in which the Native sellers were beneficially interested. It did not as a Board, according to the evidence before me, consider the effect of each purchase and ascertain that the Native seller would not become landless by reason of the purchase. There is no evidence that it had before it any schedule of “other” properties such as was contemplated by section 109 (10) of the 1913 Act. The Board, acting as a Board, did not itself discharge the duty imposed by section 109 (10) of the Native Land Amendment Act, 1913. It was impossible for the Board to consider every detail arising in the course of a purchase of a block of Native land, and it had perforce to discharge its duty through others. The duty imposed by section 109 (10) was not, however, as will hereinafter appear, fully discharged by the purchase officers actually entrusted with the work. Information as to other lands was in the possession of the Crown's agent when the papakainga purchase was undertaken. Mr. Mays had a search of other lands when he commenced his purchases in the Orakei Block, and a schedule of other lands certified by him as a correct search was placed before the Tokerau District Maori Land Board on or before the 27th March, 1914. There is no evidence that such a schedule was in the possession of Mr. Bowler or of Mr. Goffe, but it is a fair inference that the Native Land Purchase Officers knew, in any event, approximately what other lands the Native vendors had. Mr. Bowler said that his instructions were to consider the position and not to buy the land and render the vendors landless. He said, “I paid due regard to this.” The instructions issued to Native Land Purchase Officers on the 18th September, 1916, directed their attention to the effect of the purchase rendering a Native landless, in these words : “The necessity for ascertaining that vendors will not be left landless and for deducting survey charges and Court fees wherever possible need scarcely be adverted to.” The files available since November, 1916, do not contain any material pointing to a consideration of the question whether the purchases would render the Natives landless and, but for the statement of a responsible officer that he paid due regard to this, I should have been disposed to think that in these purchases the requirements of