I must here observe that no evidence whatever was placed before the Court as to the lawful settlement of this block by Military Settlers, or of its disposal for the purposes of sale. Mr. Atkinson at my request promised to furnish some information on the subject, and at (or about) the conclusion of the case, placed before us copies of the notices of 6th July, 1863, and 3rd August, 1865, containing the terms on which the Government offered to grant land to Military Settlers, and stated that he was unable to give us perfect information. No contracts were proved, nor indeed did the evidence make us acquainted even with what Mr. Atkinson stated in his speech, that all the block was occupied except 2,500 acres. But I take that to be so for the purposes of this statement.

The Court was then in this position. We had in fulfiling our duties to order about 7,400 acres of good land to Natives who had remained loyal, and the Government or other authority (for we do not know what the authority was) had left only 2,500 acres to satisfy these orders. There were then two alternatives; either to oust a sufficient number of these Military Settlers, or order land somewhere else out of the block. And the question is, was either of these courses lawful, and, if lawful, practicable; and if practicable, which was most just, and most in accordance with the intentions of the Legislature. The members of the Court then proceeded to consider the matter amongst ourselves, our great difficulty being that under clause 9 of the Act of 1865, the Crown had elected that land should be given in compensation, whilst in fact there was within the block under adjudication only one-third of the quantity required to satisfy the demands of justice, all the rest having been absorbed by Government or being worthless for agriculture. In piece A. indeed only 700 acres of cultivable land had been left, and of this the Crown Agent with the consent of the Native claimants abandoned 350 acres, or one-half in favor of the children of Mr. Carrington, who had married one of the tribe. The Maoris did this in fulfilment of an old promise, but this honorable discharge of their promises left the tribe with 350 acres of available land. In piece B. and piece C. there was no available land whatever left to satisfy loyal owners. In piece D. about 1,800 acres had been left.

And here I must repeat the difficulty we found ourselves in from the absence of evidence as to what the exact state of the case was, what those allotments on the map meant, *i. e.* whether the place was devoted to military settlement, or partly so, and partly for sale and disposal, and as to who did all this, and under what authority. But we finally determined that we must base our deliberations on this fact, that all the land except 2,500 acres (not noticing the worthless land) was taken either for Military Settlers, or for sale, and we proceeded to consider the legal status of each class of land.

1. Land set apart for Sale.

We presume that some at least of the numerous townships surveyed on the block were intended for this purpose, perhaps also other portions. Then comes the legal question, where was the authority to do this.

The Act of 1863, Session 17 and 18, enacts as follows:

XVII. "After setting apart sufficient land for all the persons who shall be entitled thereto under the said contracts (Military Settlers) it shall be lawful for the Governor in Council to cause towns to be surveyed and laid out and also suburban and rural allotments.

XVIII. "All such town suburban and rural land shall be let sold occupied and disposed of for such prices in such manner and for such purposes upon such terms and subject to such regulations as the Governor in Council shall from time to time prescribe for the purpose."

Under the authority of this last clause regulations were made on the 16th May, 1865, which may be seen in the *Gazette*. The Act of 1865 repealed the two clauses above quoted and made a new provision in lieu thereof by clause 16, which is as follows:—

"The 17th and 18th sections of the said Act of 1863 are hereby repealed and in lieu thereof it is enacted as follows:

"The order and manner in which land shall be laid out for sale and sold under the provisions of the said Act shall be in the discretion of the Governor who shall have power to cause such land or any part thereof to be laid out for sale and sold from time to time in such manner for such consideration and in such allotments whether town suburban or rural or otherwise as he shall think fit and subject to such regulations as he shall with the advice of his Executive Council from time to time prescribe in that behalf Provided that no land shall be sold except for cash nor at a less rate than ten shillings per acre."

Mr. Atkinson informed us that no regulations had as he was aware been made under the clause of the Act of 1865. The question therefore arose—were the Regulations of 1865 still in force, or did they fall with the authority on which they were based, for if they had fallen, the power given by the Act of 1865 being unexercised, the allotments and townships for sale had no legal existence.

This is a question of law upon which we reasoned in this fashion:—

The rule as to the effect of the repeal of a Statute upon acts done thereunder is thus laid down—"When one Statute is repealed by another Statute, acts done in the meantime, while it was in force, shall endure and stand and be good and effectual" (Dwanis on Stat. 544). Again: "It has been long established that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed" (per. Lord Tenderden, in Surtees and Ellison, 7B. and C.752). In an old Colonial case, the learning on this subject was summed by Mr. Justice Chapman. The effect of repealing a Statute is thus broadly laid down by Tindal, C. J., in Kaye *v.* Goodwin 6 Bing. 583—"I take the effect of repealing a Statute to be to obliterate it as completely from the Records of Parliament as if it had never passed, and it must be considered as a law that never existed except for the purposes of those actions commenced prosecuted and concluded whilst it was an existing law." The language of Lord Tenterden, in Surtees *v.* Ellison, as well as that of Parke, B., in Steavenson *v.* Olliver, is to the same effect. This rule has been applied by the Courts to a vast number of dissimilar cases. In Miller's case (1 W. Bl. 451), it was held that a proceeding commenced under an Insolvent Act, but not completed at the time of its repeal, could not be continued after such repeal. So in the case of the Bankrupt Act (6 Geo. IV., cap. 16), which repealed all former Acts and contained no continuing clause, it was held that an Act of Bankruptcy committed under the former Acts would not support a commission under the new Statute, and that no proceeding under the old