

39. That your petitioner, Frederick Alexander Whitaker, commenced a prosecution against Mr. James De Hirsch for libel in connection with his statements as to these matters before the House and elsewhere, which Mr. De Hirsch evaded by leaving the country clandestinely.

40. That your petitioners, since Mr. De Hirsch left New Zealand, have been put in possession of the original declaration made by him at Wellington, from which declaration it is now manifest that Mr. De Hirsch gave false evidence before the Native Lands Court.

41. That the passing of the 8th section of "The Native Lands Act, 1869," by the General Assembly has resulted most injuriously to your petitioners, as they have thereby been deprived of valuable property by retroactive legislation of an unprecedented character, without any provision being made for compensating them.

Your petitioners, therefore, humbly pray that your Honorable House will be pleased to grant them such relief as the justice of the case fairly entitle them to and your Honorable House shall think fit.

And your petitioners will ever pray, &c.

JOHN LUNDON.

FREDERICK ALEXANDER WHITAKER.

No. 2.

REPORT

Of the Public Petitions Committee on the Petition of John Lundon and Frederick Alexander Whitaker.

11th August, 1870.

The petitioners, John Lundon and Frederick Alexander Whitaker, appeal to the House for compensation, on the plea that they have sustained loss by decisions of the Native Lands Court, given under clause 8 of "The Native Lands Act, 1869."

I am directed to report that the Committee cannot recommend the prayer of the petitioners to the favorable consideration of the House.

J. CRACROFT WILSON, C.B.,
Chairman.

No. 3.

DE HIRSCH V. WHITAKER AND LUNDON.

The following judgment in the above case was given by F. D. Fenton, Esq., Chief Judge in the Native Lands Court, on Friday, 28th January, 1870:—

This is an application made by James De Hirsch to obtain an amended certificate of title for a piece of land at Grahamstown, known in the books of the Court as K 16.

Messrs. Whitaker and Lundon oppose the application on the ground that they have legal interests in the property, which would be destroyed if the application should be granted. The counsel for the opponents objects to the appearance of Mr. De Hirsch on the ground that he has not "entered into any transactions" about the land since the order of the Court; and that, therefore, he has no *locus standi* here. His argument is that the transactions which were effectuated by the lease made after the settlement of the case were entered into before that event, and he quotes a case (*Fisher v. Bridges*, 3, Ellis and B., 642) to show that a deed will not set up an invalid contract. On referring to that case, I find that the deed fell, not because the contract was invalid, but because it was, as the Court said, "tainted with illegality." If his argument is just, all deeds founded on contracts not made in writing must under the Statute of Frauds be invalid—a conclusion which is evidently unreasonable. But, without considering minutely the legal aspect of the point raised, I cannot doubt for a moment that Mr. De Hirsch's case is one which the Legislature intended should be heard and determined under the 8th clause of the Act of 1869, and that his lease was one of the "transactions entered into after the decision of the Court" to which it directed its legislation.

The course of events which have led to this litigation is as follows:—On the 23rd June, 1868, the Court sat at Shortland, and made an order for the issue of a certificate to Aperahama Te Reiroa and nine others for Kauaeranga, lot No. 16. On the 10th of July these owners executed a lease to the applicants for twenty-one years, at a rent of £22 per annum.

At different periods shortly after the issue of the lease De Hirsch made numerous sub-leases to persons, some of whom have again under-let, and buildings have been erected on the land to the value of £8,000 or £10,000.

On the 22nd of July the certificate of title was signed by the Chief Judge. On the 31st of July it was issued to the Governor. On the 29th of May, 1869, two of the Native owners executed a lease of the same lot of land to Messrs. Whitaker and Lundon; and on the 20th of August three others of them executed another lease of the same land at a rental of £100 per annum.

At an early stage of the proceedings it became evident to me that the "Constitution Act" would form a very important element in the question before the Court, and I called the attention of the several counsel to the importance of thoroughly arguing the effect which it would have on these transactions. Counsel intimated that when the proper time came they would treat the question. I was therefore very sorry to find, when they made their concluding addresses to the Court, that none of them were prepared to deal with it; that, as Mr. Rees expressed himself, the subject was so vast, and it required such a great knowledge of the antecedent history and legislation of the Colony, that a thorough and well considered argument could not be prepared in the time at their disposal. No doubt this is true; but the consequence is that the whole burden of investigating this question is thrown upon the Court, without the aid of