only just coming under the operation of law, and I can imagine nothing more detrimental to the public interests, or to public morality, as effected by these questions, than to teach the Natives that the proper step to be taken in the case of a European not performing covenants which he has entered into with them is to make another contract with a third party. It does not appear from the evidence that Mr. Lundon urged the Natives to make a new lease to him on the ground that the prior lease to Mr. De Hirsch was invalid. And there is no doubt that the influence that worked upon their minds was a certain dissatisfaction with Mr. De Hirsch, arising partly from irregular payments or ill-kept accounts, and partly from trifling affronts, but more especially the prospect that was before them of getting larger rents. The evil effect of this teaching upon the Native mind was well shown in the Court. Hirawa Te Moananui said that although he had signed two leases, he considered himself still at liberty to make a third if he could get a rent in advance of what Messrs. Whitaker and Lundon had agreed to give him. He also said, "I consider the lease given after the sitting of the Court (Mr. De Hirsch's) valid still. And in reply to the question, "Do you consider Mr. Lundon's valid?" he said, "They are the same." We heard from Mr. De Hirsch, also, how, when he asked the Natives for a confirmatory lease, one of them asked him £250 per annum rent for his share alone. Now, if my opinion of the legal position of the parties, as already declared, is correct, and neither of them have valid instruments from the native owners, what, I would ask, will become of the numerous sub-lessees if I refuse to make this order? They will be entirely at the mercy of the Natives, and how cruel these mercies will be we may judge from the demand mentioned above. I have no doubt in my mind, therefore, that the opposition having failed to establish its own legal position, this Court will be carrying out the intention of the Legislature by making an order as asked for, and I so determine. I refrain from expressing any opinion as to whether I should have thought proper or otherwise to make this order if the opponents had succeeded in establishing an unassailable legal right. And I must confess that the narrowing prejudices of a legal education would have made it a matter of very great difficulty for me to determine what would have been "justice" between the parties under the "circumstances of the case" placed before the Court if the opponents had been right in law. What is justice in the abstract, and apart from any laws which might guide the understanding in coming to a judgment, is a matter of philosophical enquiry upon which scarcely any two minds would come to the same conclusion. Justice must vary with every condition of society, and what would be justice to a member of a civilised state might be extreme cruelty to a barbarian. And I think that a lawyer constitutes a very bad tribunal before which to bring such questions. He, of all men, is to my mind the least fitted to determine, as an abstract question, where proper assertion of legal right ends, and where sharp practice begins. One of the most acute thinkers and observers of the last generation (Disraeli: "Curiosities of Literature") says:—"The truth is that lawyers are rarely philosophers; the history of the heart, read only in statutes and law cases, presents the worst side of human nature. They are apt to consider men as wild beasts." Still, as the Legislature gave me no choice, I have been compelled to sit, and have executed the duty thus imposed, according to its intention, as nearly as I can discover.

No. 4.

DE HIRSCH V. WHITAKER AND LUNDON.

The following Judgments in the above case were given by H. A. Monro, Esq., Judge, and Wiremu Hikairo, Assessor, in the Native Lands Court, on Friday, 28th January, 1870:—

This is an application to the Court for an amended certificate for Kauaeranga No. 16, and Kauaeranga No. 24, in accordance with Section 8 of the Native Lands Act, 1869.

This case is remarkable as being one in which the interference of the Legislature has been sought, on the ground that it could not be decided on its merits, or in accordance with the moral equity of the case, unless certain technical difficulties were removed.

The question was entertained by three several Committees of the House of Representatives; also by a Select Committee of the Legislative Council, the result being that what now stands as Section 8 of the Native Lands Act, 1869, was recommended by a Select Committee of the House of Representatives as a clause to be inserted in the Bill; it was inserted accordingly, and became law.

It is evident that the object of the Legislature in their procedure was to enable the Court to decide the case upon its merits, without being hindered by a legal technicality. In coming to a decision on the case, I shall follow out the manifest intention of the Legislature, which is to the *bona fides* of the transaction, rather than to any enactment which may have been imperfect or may have been misunderstood. By the Act of the Legislature itself I am relieved from difficulty in this respect.

The first question which arises is this:—Was De Hirsch's contract with the Natives fair in itself, and understood by them?

I have no doubt that it was fair, and that the lessors distinctly understood the nature of the bargain. Indeed, no attempt has been made to impugn the fairness of the transaction. The defendants take up other ground.

The next question is this:—Did De Hirsch believe that the transaction was good in law, as well as in conscience?

I think the evidence is conclusive that he did so; and if the presumed and believed intention of the Legislature had taken effect in the Crown Grants Act, his title would have been good.

It is argued, however, on the other hand, that De Hirsch had violated the law by an antecedent transaction in negotiating with the native owners for a lease before the order of Court was made. It is alleged that this transaction was illegal. It is not necessary for me to enquire whether such transaction took place or not, for the question is immaterial. I do not consider that such transaction would have been illegal in the sense of its being forbidden by the law. It would have been merely void. The law, possibly for political reasons, refuses to recognise such dealings with the Natives, and in my opinion very