A.—No. 2.

MEMORANDUM

ON

THE OPERATION OF THE NATIVE LANDS COURT,

BY SIR WILLIAM MARTIN.

PRESENTED TO THE HOUSE OF REPRESENTATIVES, BY COMMAND OF HIS EXCELLENCY.

WELLINGTON.

1871.

MEMORANDUM BY SIR WILLIAM MARTIN ON THE OPERATION OF THE NATIVE LANDS COURT.

THE Acts now in operation for defining the powers and regulating the practice of the Native Land Court are the four following:—The Native Lands Act, 1865, No. 71; The Native Lands Act, 1867, No. 43; The Native Lands Act, 1868, No. 55; The Native Lands Act, 1869, No. 26. It is believed that, unless these Acts be thoroughly and speedily revised and amended, great public mischief will ensue.

In January, 1870, Karaitiana, of Hawke's Bay, visited Auckland for the purpose of laying before the Native Minister the grievances of himself and others, arising out of the operation of the above-named Acts. Further inquiry into the subject has shown that his statements were well founded, and that he had discerned the weak points in the existing system, through which the injustice of which he complained had found an entrance.

Moreover, it has now become known that many like grievances exist, and that the Court itself has come to be regarded by many of the most intelligent Natives with strong suspicion and dislike. The visible results of the system are naturally imputed to the Court itself, and are bitterly felt as a disappointment and a wrong by intelligent men who have hitherto trusted our law and conformed to it. If we allow these men to be alienated, we shall have small chance of winning over the Native people at large to an acceptance of our law.

The two chief grievances complained of relate to Certificates and Crown Grants issued under the above Acts.

1. They complain that these instruments are so framed as to put it in the power of a few persons named in the instrument, to sacrifice the rights of other persons equally interested in the land but not named in the instrument. They assert that in many cases that power has been actually exercised, to the great loss of persons who had no means of protecting themselves. This complaint is just and well founded. By the Native Lands Act of 1865, section 23, it is enacted that "The Court shall ascertain the right, title, estate, or interest of the applicant, and of all other claimants; and the Court shall order a Certificate of title to be made and issued, which Certificate shall specify the names of the persons or of the tribe who, according to Native custom, own or are interested in the land, describing the nature of such estate or interest." By the same Act, the Governor is empowered to cause a grant from the Crown to be issued to the persons named in the Certificate.

The original enactment was so framed as to secure the object of the Act as stated in the preamble, "the ascertainment of the owners" meaning, doubtless, all the owners. But upon that enactment a proviso was grafted, out of which these troubles have arisen, namely, "That no certificate shall be ordered to more than ten persons." This was added, no doubt, for the purpose of avoiding the inconvenience which would, in many cases, lie in the way of a person desiring to rent or buy land, if it were necessary for him to deal directly with all the owners. It was therefore provided that such intending lessee or purchaser should have a limited number of persons to deal with, and that the names of these persons should appear on the face of the document. That was a very reasonable object, and capable of being attained, as we shall see presently, without any unjust or injurious consequences. It could not be intended that the convenience of the purchaser was to be secured by ignoring or sacrificing the rights of any of the owners.

The grievance of which we now hear is this: that the proviso and the original enactment have not been reconciled, but that the proviso has been allowed to overrule and defeat the substantive enactment to which it is appended; that, although the land comprised in the Certificate may belong to more than ten persons, a Certificate is granted which names only ten of the owners, and gives no indication of the existence of other owners; that the ten persons named in the Certificate or the Grant have not, on the face of the Certificate or the Grant, been made to appear as only joint owners with others unnamed and trustees or agents for those others, but have appeared on the face of those instruments as the sole and absolute owners; that, as such, they have, either of their own motion, or being induced by other parties, conveyed the land to purchasers; and that in this way many persons have been deprived of their rights.

To the sufferers hereby the loss appears to be a direct consequence of an act of the Court itself. They ask why the Certificate and the Grant were not so framed as to show the true state of facts? Why all the owners were not protected by the law?

As to the future, this mischief is to some extent guarded against by a valuable enactment introduced into the Native Lands Act of 1867, section 17; but the remedy is not completely effective. Under that section, the names of all the persons interested in the land are to be, not indeed shown on the face of the Certificate or indorsed thereon, but registered in the Court; and the Certificate is to contain merely a reference to this section of the Act, but not any distinct form of words to show that the persons named as owners are at the same time trustees for other owners. This section further provides that no portion of the land is to be alienated except for twenty-one years, until it be actually subdivided among the owners.

As to Certificates issued before this Act of 1867, there appears to be no check as yet provided against the evils above mentioned.

2. Another serious grievance arises from the fact that in the Crown Grant so made to ten persons, under the earlier Native Lands Acts, the interests, even of the several grantees themselves, however diverse and unequal, are not defined.

By the Native Lands Act of 1869, section 14, it is enacted that for the future "every Grant shall contain the definition of the estate or interest of each of the grantees which is required to be set forth in the Certificate under the Act of 1867; and also that the estate or interest of each of the several grantees, whether theretofore granted or thereafter to be granted, shall not be deemed to be equal

unless it shall be so stated in the Grant: Provided that the shares or interests already purchased are, for the purpose of that transaction, to be deemed equal." This provision naturally opens many questions. If the purchaser distinctly knew the quantity of the interest which he was purchasing to be not an equal share, but less or greater, is he to take more or less (as the case may be) than he actually contracted for?

3. The same Act of 1869, section 15, makes it not lawful for less than a majority in value of the Grantees of any land under the said Acts to make any contract, lease, mortgage, or conveyance of their estate or interest in such land: Provided that, if any dispute shall arise as to such value, it shall be lawful for either of such parties to apply to the Court.

Here, in this question of value, we have an opening for unnecessary litigation. Why not allow each owner to claim a partition (as in the enactment above mentioned), and prohibit the mortgaging or selling of undivided shares?

As long as the present system is allowed to continue, it will breed more and more of bitterness of spirit and disaffection. When any one of the owners of such undivided property has mortgaged his undefined interest, the other owners become subject to constant pressure from those who have gained a hold on the land and desire to get possession of the whole block. Having secured the interest of some, they begin to work upon the rest, that they may be induced to yield up their interests too. These now find themselves entangled, and that by no act of their own, in a new sort of communism worse to them than their old one; because it is not fenced about by rules and customs known to themselves, but by others of an entirely strange and unknown sort.

Sensible and well-disposed men find themselves harassed by claims which they regard as unjust and oppressive, and these claims often backed up by skilfully written letters, sometimes coaxing, sometimes intimidating. Harassed in this way, the unfortunate man seeks to extricate himself. He has accepted the law, and theoretically and in general is protected by the law; but if in any particular case he seeks to bring that protection into a practical form, he must first obtain advice and guidance from men acquainted with the law. He goes to the nearest town and asks advice, but practitioners may be few, and those few may be already engaged on the opposite side. Such things as these are even now going on under the name of law and of justice. Is it likely that men possessing good common sense, and keen and shrewd in respect of their own interests, will be easily reconciled to these things? Do we expect them to become good subjects, to obey the law readily, and support it staunchly?

It is true the Legislature has now taken measures to remedy and to check frauds and abuses such as are here referred to, by the Statute of last Session, No. 75: but it is obvious that here, as in other cases, prevention is better than cure, even if cure be possible; and there can be no prevention except by a thorough reform of the system.

There are among the Natives, of course, men who are dishonest and reckless enough to abuse, to the detriment of their fellows, the facilities which the present system furnishes. Let such men bear all the consequences of their evil deeds. I am not speaking for men of that sort, but on behalf of quiet, sober men, who have willingly received our law and accepted the Lands Court, believing what they were told, that under its operation they would be placed in safe and quiet possession of their lands, free to sell them or deal with them as they might think best, without disturbance or interference from their neighbours. This was held out to them as the substantial benefit the new system was to bring with it; this was promised and was honestly intended by the promoters of the measure. Believing this, the Natives came into the plan readily. Now the result is the reverse of what was promised. There is no lack of disposition on the part of the Natives to sell land. This is an obvious fact. It is desirable for their sakes as well as ours that their superflous lands should be alienated. The evil is this, that we are making the transfer of the land a cause of disaffection. The people are not only disturbed and unsettled, but exasperated by the present system.

4. Formerly the majority could protect itself, and no action was taken until a considerable amount of agreement had taken place. Now the owners feel that they have no rest. Any single Native may give notice in writing that he claims to be interested in a piece of Native land, and thereupon the Court shall ascertain the interest of the applicant and of all other claimants in the land, and order a Certificate to be issued. (Native Lands Court Act, 1865, Nos. 21–23.) Capitalists who desire investments can have no difficulty in finding the single man needed, and the majority are forced to submit to the burthen or risk the loss of their property.

5. If we are obliged to confess that the protection of the law which we promised these men is in these cases practically null; if we cannot after all supply guidance and legal help to those who need it; we can at any rate meet the evil in another way, and that the way most desirable and effectual. We need not retain those parts of the present system which tend to create troubles. We may make the system so plain as to preclude them to a great extent, and we may make the Natives acquainted with it. Let the healing enactments above referred to be made to apply not only to Certificates and Crown Grants of a date subsequent to the date of these enactments, but to all future dealings or dealings now incomplete under any Certificates or Crown Grants, issued under any Native Lands Court Act, whether of earlier or later date. Let all dealings with undivided interests, whether by way of sale or mortgage, be prohibited, as provided in "Native Lands Act, 1867," section 17, any one of the persons interested being at liberty to require a partition. Let the Certificate do what it was intended to do, that is, show *all* the owners of the land by their names, if possible, or by some sufficient description or reference. Let it also name a certain number of those owners as Trustees or Agents for the whole body of owners.

To prevent such complaints as are now sometimes made, let a certain time, say twenty-four hours, be given by the persons interested for the nomination of these Trustees. If, at the end of that time, no nomination be made, then let the Court select fit persons out of the owners to act as Trustees or Agents, with the powers and subject to the restrictions in "Native Lands Act, 1867," section 17.

Let these trustees or agents receive the rents and be chargeable with the due division and distribution thereof among the owners, their receipts being valid discharges to the lessees.

6. As to the costliness of the Court, which is now bitterly complained of, this grievance may be met by a scale of fees, accompanied by a proper taxation of costs.

7. As to the jurisdiction in cases of succession to hereditaments. The present vague rule (Native Lands Act, 1865, section 30), "according to law, as nearly as it can be reconciled with Native custom,"

makes an opening for litigation in every case. The just rule of succession furnished by the Statute of Distributions is likely to be accepted by all without dispute. If now and then a dispute should arise, the question may be well left to a single Judge, or the less costly and more accessible tribunal of the Resident Magistrate.

Assuming that rule, let the Natives interested according to that rule have a certain time allowed after the decease of the person last entitled within which to make a division among themselves. If no division be made within that time, then let a surveyor make the division under the direction and control of the Court.

8. There is too much reason to apprehend that we are now preparing for the future a store of troubles such as grew out of the proceedings of the Courts of the Commissioners of Native Land Claims. Two safeguards appear to be essential: first, that the Court should always be holden near the land of which the title is to be inquired into; secondly, that a previous survey of the land be in no case dispensed with.

9. As a check upon unnecessary or vexatious litigation, let the title of a party in possession for a certain number of years be not called in question except by a party who shall have deposited £ to be applied, in case of failure, towards payment of the costs of the successful parties.

10. Is not the main business simply the collecting and estimating of evidence, requiring not so much legal knowledge as a certain degree of skill or acuteness in the officer collecting it, and honesty in estimating it? Might not much of this business be done by a Judge travelling from spot to spot, taking the evidence directly in Maori, and adjudging in Maori, resorting to the costly intervention of interpreters only when it may be specially called for?

The chief business of the Court is in fact the business either of a Commission or of a Jury. Let then a certain number of the Judges and Assessors be a Jury; if unanimous, let there be no rehearing, except on the ground of evidence since discovered, and which, by full diligence, could not have been discovered before. Why keep up the resort to English counsel in a Court which is not constituted for the administration of English law, but only for the ascertainment of Native custom, and of the facts of occupation and ownership? English counsel will need interpreters.

Let agents speaking both languages be the practitioners of the Court, under proper regulations.

Auckland, 18th January, 1871.

MEMORANDUM by Dr. EDWARD SHORTLAND.

The work of a Lands Court is to discover all Native owners of any given piece of land, and to insure to a European purchaser a title with quiet possession. The political importance of this cannot be over-estimated. What greater boon to both races than an inexpensive and safe means of exchanging surplus lands for cash, or other property, with mutual satisfaction?

The machinery to effect this ought therefore to be simple, inexpensive, and well adapted to its work. The following points I believe to be the more important:—

Judges.

Each Judge should have assigned to him a district, as large as convenient, within which it should be his duty to make himself master of the history of its Native inhabitants, affecting the titles of their lands. All such information should be recorded in convenient forms, and copies furnished at the office of the Court. This would facilitate after-investigations, particularly if made by another Judge.

By confining the work of each Judge to one district, he would become more efficient within that district. I do not doubt that he might soon acquire influence among the Natives of his district of great political as well as social value. He might, ere long, possess more knowledge on Native land matters in his district than any even of themselves, and so become a recognized authority as well as a Judge.

Assessors.

Assessors should not have family ties in the district where they are employed, in order to be as much as possible impartial.

Survey.

The surveyors to be employed should be paid officers of the Government, and form part of the staff of the Court. Natives interested should do all the work of cutting lines, and otherwise assist as required, of course without receiving any pay. Where competent, a Native should be employed as surveyor, and always some Native, while being educated as a surveyor, might act as an assistant. All surveys should be made on a uniform scale, and, whenever practicable, connected with previously determined fixed lines. Several important advantages would result from employing surveyors paid by Government. They would have *esprit de corps* and interest in doing their work well. There would be no temptation for fraud in deviating from a boundary line. I lately heard of a case where deviation was made in a boundary line, after those interested in the adjoining land had left the ground, so as to include land of those parties. A Crown Grant was obtained before the error was discovered.

Application for Investigation of Title.

The application should specify boundaries of land by Native names, also names of every *hapu* interested, and should be signed by at least one influential person of each *hapu*.

Investigation of Title.

After the application a preliminary inquiry should be made by the Judge on the spot, not in a formal manner, but by his visiting every neighbouring settlement. At this preliminary inquiry he should make an abstract of the title of parties interested. He should also record names of tribe or tribes and of hapus, and the names of as many as possible of the persons of each hapu, including heads of families interested. This would form the basis of a register of all the Natives of the district which he might obtain, in due time, as a natural consequence of his land investigations.

He would thus do all the work which is now being done by agents paid by Natives, and he would do it much better; for, instead of fomenting jealousies of opponents as is now done by different agents,

backed by the money of speculators, he might facilitate friendly compromise, at the same time that a great saving of expense would be effected.

If, after preliminary inquiry, the Court thought fit to proceed, a survey of the land should be made, after which a day should be named for more formal trial at a place the most convenient for all parties interested; and printed notices, naming the boundaries of the land, &c., and time and place of formal trial, should be posted on the land and at the neighbouring settlements, and otherwise freely circulated.

At the second inquiry the Judge and Assessors should go into the case thoroughly themselves, no counsel or agent being allowed to take any part in the proceedings. English counsel are useless in a Court not constituted for the administration of English law.

Certificate of Title.

This appears to me an unnecessary complication, which it would be better to avoid.

Crown Grants.

When only one person is interested, the grant might be made free of any restrictions. When several are interested, the names of every tribe and hapu, and of the principal persons of each hapu, should be stated in the Crown Grant; the persons named to have power to lease for periods not over twenty-one years, and to receive rents and divide them among the parties interested; but to have no power to sell or mortgage, being in truth merely Trustees.

When all parties interested are desirous to sell, the land should be advertised for sale by auction, under the direction of the Court, either in one or more lots as most for the interest of the parties concerned, a reserve price being always fixed.

It is recommended that one-half of the proceeds of the sale, after paying expenses, should be invested in Government security for the benefit of all parties interested, and not be paid off under twenty-one years: the other half only being paid in cash at the time of sale.

The benefits anticipated by this arrangement are great. It would obviate the necessity of defining individual claims by survey before sale, a work of much trouble. The investing moiety of purchase-money would provide means of doing justice to minors, to a coming generation, and to any who might have suffered from unfair division of first moiety, and also form a bond of union between Natives and Europeans.

When a part only desire to sell their interests, an arrangement might be made for an equitable division of the land; one part to represent the interests of those who desired to sell, and the remainder to represent the interests of those who desired to retain their landed interests. Then the first might be sold under direction of the Court, by auction, in the manner and with the same provisions as before suggested; and a Crown Grant of the remainder might be given to the representatives of the hapus of those interested therein, with power to lease for terms not over twenty-one years, if so desired.

Irresponsible Agents.

The Government has in its power to keep under its own control a powerful political engine, but has handed over the active working of an important part of the machinery to irresponsible agents, whose chief interest is naturally their own private emolument.

The present system of allowing agents and counsel, paid by the Natives, to fight the title of opponents in Court, before a Judge who has only the evidence thus brought before him to judge from, is parent of much mischief. These agents set to work to get up, to the best of their ability, the case of their clients. The land thus becomes a subject of contention in a new arena into which the Natives enter with a zest, regardless of the cost, which they never stop to estimate. Old land disputes, which have slept for years, are again stirred up, to be fought out in the Land Court. Each party is eager to support their own claims, and damage their opponents. Each party is backed, behind the scenes, by some capitalist, who liberally advances cash, having in view the promised security of a mortgage at a large rate of interest. The interest is not likely to be paid, nor is it expected to be paid; but a favourable time for foreclosing will be awaited. This, I have heard on good authority, is what is being done and contemplated. The future of the successful parties is not pleasant to look forward to; the unsuccessful parties are of course dissatisfied.

What if they do not respect the decision of the Court? Is the Executive prepared to enforce its decisions? We believe there will often occur cases where amicable compromise would be a fairer and safer method than a contest as now conducted in the Land Court. But how much more difficult to bring about this after angry feelings have been stimulated by such contests. Perhaps a new trial is demanded and granted: more litigation, more expense. What with fees to the Court, and fees to counsel, agents, and surveyors, the action of the Court is rendered burthensome to an extent which never could have been contemplated by the Legislature. Mr. Weld predicted that the Court would prove the straw thrown out to save a drowning Race. It is feared, it may prove the feather which will break the camel's back.

To obtain a Crown Grant for a piece of land containing less than a certain number of acres is now impracticable by reason of the expense.

Payment of Officers and Fees.

Let Judges, Assessors, and Surveyors be all paid from funds appropriated by the Government for Native purposes, for it concerns equally both races to facilitate the dealings with Native lands.

Let fees be demanded only—1. For survey, at a fixed rate per acre: 2. For a Crown Grant, at a moderate percentage on value of property.

Such appear to me the more necessary provisions to insure satisfactory results from the working of the Lands Court.

In framing a new Act, would it not be wise to make it as short and simple as possible, embodying only such provisions as are more certainly requisite, leaving it to subsequent legislation to enlarge and develop further provisions as future experience may demand?

The Act should be translated into intelligible Maori: never representing technical terms by words having a Maori form but no meaning in Maori, but by a form of words which a Maori reader will comprehend.

FURTHER PAPERS ON OPERATION OF NATIVE LANDS COURT AND NATIVE RESERVES

No. 1.

Sir W. MARTIN to the Hon. D. MCLEAN.

SIR,— Auckland, 29th July, 1871.

In reference to the subject of a Memorandum submitted by me to the Government in January last, I have the honor to lay before you a draft Bill for consolidating and amending the laws respecting the Native Land Court.

The history of this draft is as follows:—It being expected that a Bill for consolidating the Native Land Acts would be introduced by the Government, I was requested a few months ago to frame some clauses, to be submitted to the Assembly whenever the Bill should come before it. When I consented to do so, the only object in view was to meet certain defects in the existing system. I had no thought of taking upon me the heavy and, as it may seem, the presumptuous task of framing a new Bill. But it soon became obvious that other points must be provided for, and the mutual dependence of the several parts of the subject at last made it necessary to carry the corrections, in a greater or less degree, over the whole field. The labour, which has been considerable, I shall not regret, if the result shall be found serviceable to the Colony. In this hope I now respectfully request you to bring this draft under the consideration of the Government.

In framing this Bill, I have benefited by the results of further inquiry and of conference with various persons conversant with the subject, including the Chief Judge and another of the Judges of the Court, and have been furnished with the views of persons interested in the subject and regarding it from different points of view. In particular, I have received valuable aid throughout from Dr. Shortland, with whose knowledge and practical experience in these matters you, Sir, are well acquainted. Some explanatory notes are appended, which, though unnecessary for yourself, may be useful to others.

You are aware, Sir, of the dissatisfaction on the part of the Natives with the Native Land Court, as dealing with their interests in a manner which they have no means of understanding, seeing that the law which prescribes the jurisdiction and powers of the Court is not accessible to them in any intelligible translation. The remedy for this will be found, not in an attempt to render into Maori, word for word, the Act which the Assembly may pass, but to frame first an intelligible statement in ordinary language (such as any intelligent man amongst us readily makes to his neighbour) of the substance of each clause, and then to put forth by authority a faithful and idiomatic version of such statement. That this mode may be fully successful, it is desirable that the structure of the Act itself be as simple and clear as possible.

On the subject of the Native Land Court different theories are current. Some think that the object of the Court should be to create a body of wealthy Native proprietors, through whom the Government may influence the mass of the people. Others think the sooner all alike are brought to the condition of day-labourers the better. The Bill now submitted has not been framed upon any theory whatever, but solely upon a mature consideration, with all attainable aids, of the means most likely to render the action of the Court just, intelligible, and cheap, so that it may command the confidence of both races, and be (what it ought to be) the means of securing peaceful relations between the two races throughout this Island.

I have, &c.,

The Hon. the Native Minister. WM. MARTIN.

P.S.—The draft Bill now sent excludes the subject of the Native reserves and leaves it for a distinct Bill, which I will send as soon as possible. It seems to me that the administration of the Native reserves, and of the income to be derived therefrom, should be closely connected with the Native Department and not at all with the Native Land Court.

[Draft of Native Land Court Bill attached.]

No. 2.

The Hon. D. MCLEAN to Sir W. MARTIN.

SIR,— Native Office, Wellington, 4th August, 1871.

I have the honor to acknowledge the receipt of your letter of the 29th July, enclosing the draft of a Bill for the consolidation and amendment of the laws affecting the Native Lands Court.

It will be with the greatest pleasure that I shall submit your draft to the consideration of my colleagues, and I beg you will accept my best thanks for the arduous labour you have taken. There was no doubt that whenever any work was on hand calculated to secure peaceful relations between the two races, your zealous co-operation might be depended on; and in this instance it has taken the form of most valuable suggestions.

I entirely concur with you in the necessity for rendering easily intelligible a Bill affecting the interests of a race emerging from barbarism, and in eliminating from it all ideas of theory; and I have no doubt that the draft you forward will be found to answer all necessary requirements.

Immediately on receipt the Bill was transmitted to the printer, and it will be shortly in the hands of Ministers for consideration.

I have, &c.,

Sir W. Martin, Auckland. DONALD MCLEAN.

No. 3.

Sir WILLIAM MARTIN to the Hon. the NATIVE MINISTER.

SIR,— Auckland, 16th August, 1871.

I have the honor to forward by this mail the Draft Bill for consolidating the laws relating to the Native Reserves, to which I referred in my letter of the 29th July last, and which I respectfully request you to bring under the consideration of the Government.

I have, &c.,

The Hon. the Native Minister. WM. MARTIN.

[Draft of Native Reserves Bill attached.]

Enclosure in No. 1.

DRAFT PROPOSED BILL BY SIR WM. MARTIN.

The Native Land Court Act.

AN ACT to amend and consolidate the Laws relating to the Native Land Court.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows:—

1. The Short Title of this Act shall be "The Native Land Court Act 1871."

2. In construing this Act the words and phrases following shall have the meaning hereby attached to them respectively unless there be something in the context or the subject-matter repugnant to or inconsistent with such meanings.

"Native" shall mean an aboriginal native of the Colony of New Zealand and shall include all half-castes and their descendants by Natives.

"Native land" shall mean lands in the Colony which are owned by Natives under their customs and usages.

3. This Act shall come into operation on the day of one thousand eight hundred and seventy-one.

4. "The Native Lands Act 1865" "The Native Lands Act 1866" "The Native Lands Act 1867" "The Native Lands Act Amendment Act 1868" "The Native Lands Act 1869" and "The Native Lands Act 1870" and the seventy-third section of the Constitution Act are hereby repealed except so far as the continuance of the same or any of them is necessary to the support of any act matter or thing done or completed thereunder respectively and except also as to any penalty or forfeiture incurred under them or anv of them.

5. Provided always that all judgments orders certificates and other proceedings under the said Acts or any of them shall be valid and remain in force as if the said Acts had not been repealed and all proceedings heretofore commenced and now in progress under any of the said Acts may be continued and perfected under and in manner provided by this Act so far as the circumstances of each case are compatible with the objects and provisions of this Act.

Constitution of Court.

6. The Native Land Court of New Zealand (hereinafter called "the Court") shall be a Court of Record for the investigation of the titles of persons to Native land and for purposes hereinafter set forth.

7. The Court shall consist of one Judge to be from time to time appointed by the Governor by letters patent under the Public Seal of the Colony who shall be called the Chief Judge and of such other Judges as shall in like manner be from time to time appointed who shall hold their office during good behaviour together

with such Assessors being aboriginal natives of New Zealand as the Governor shall from time to time appoint by warrant under his hand who shall hold their office during pleasure: Provided always that it shall be competent for the Governor in Council to reduce the number of Judges at any time upon a recommendation to that effect by both Houses of the General Assembly.

8. Salaries shall be paid to the Chief Judge at the rate of eight hundred pounds per annum and to other Judges at the rate of not more than six hundred pounds per annum as the Governor shall in each case and from time to time determine: Provided always that if any of them do or shall hold any other office under the Crown to which emolument is or shall be attached the Governor may at his discretion cause the salaries payable to them respectively under this Act to be diminished by the amount of other emolument so received or he may partially reduce such salaries respectively to such amount as he shall think fit.

9. The salaries to be paid to Assessors may be variable and shall be determined by the Governor at his discretion.

10. Allowances shall be paid to the Chief Judge Judges and Assessors when travelling in the performance of their duties under this Act at such rates as the Governor shall from time to time determine.

11. It shall be lawful for the Governor from time to time to appoint such Clerks and other officers as may be required for the conduct of the business of the Court at such salaries as he shall think fit who shall severally hold office during the Governor's pleasure.

12. The Court shall have in the custody of each Judge a Seal of the Court for the sealing of all documents issued by the Court and required to be sealed.

13. One Assessor or more Assessors shall sit at a Court when required by the presiding Judge and assist in the proceedings but not otherwise and his or their concurrence shall not be necessary to the validity of any judgment or order.

14. All administrative business of the Court shall be carried on by the Chief Judge subject to the provisions of this Act.

15. It shall be lawful for the Governor in Council from time to time to divide the Northern Island of New Zealand into judicial districts for the purposes of this Act and the limits of such districts from time to time to alter as occasion may require.

16. The Governor in Council shall assign every such district to a Judge of the Court who shall have within such district all the powers and jurisdiction hereby given to the Court.

17. Each Judge of the Court may in his own district make such rules as he may think fit respecting the sittings of the Court and the order of business provided such rule shall not be inconsistent with any thing contained in this Act.

18. To every Judge there shall be attached a competent Interpreter who shall act as Clerk or Secretary and who shall interpret all instruments and documents issued by such Judge.

19. To every grant instrument or document in the English language which shall be issued by the Court or by any Judge thereof there shall be indorsed thereon or annexed thereto a Maori translation certified by such Clerk or Secretary and signed by the Judge who shall have issued the same.

20. There shall belong to the Court a Chief Surveyor and such Assistant Surveyors as shall be required to be appointed by the Governor Salaries shall be paid to the Chief Surveyor at the rate of £ per annum and to each Assistant Surveyor at the rate of not more than £ per annum as the Governor shall in each case from time to time determine.

21. Every application for investigation of title to land shall be made to the Judge of the district within which the land is situate. Such application shall specify boundaries of said land by Native names and also the names of every tribe and hapu interested therein and shall be signed by at least one claimant out of each hapu.

22. Upon receipt of such application the Judge shall send notice thereof in writing to each of the hapu named in the application or otherwise believed by him to be interested and shall also give notice of such application in such other manner as shall give publicity thereto.

23. Within a reasonable time thereafter the Judge shall make a preliminary inquiry in person by visiting the Natives residing on and in the neighbourhood of the land in question as well as any other Natives whom he may have reason to believe to be interested therein and if he shall upon that inquiry be satisfied that the application is *bonâ fide* and one which may be entertained without danger to the public peace he shall send a Surveyor of the Court to mark out the boundaries of said land.

24. On completion of the survey the Judge shall give public notice of the day and place when and where he will sit for the investigation of the title of said land and the place of sitting shall be at or as near as conveniently may be to the land the title to which is under inquiry.

25. The examination of witnesses and the investigation of title shall be carried on by the Judge without the intervention of any counsel or other agent: Provided that it shall be competent for the claimants to select one of themselves to act as their spokesman to conduct the case in their behalf.

26. The Judge shall then proceed to ascertain from the best evidence attainable the names of all the owners of the land.

27. It shall also be the duty of the Judge to require the attendance of any witnesses whose evidence may appear to him to be necessary and for that purpose he may adjourn the inquiry.

28. The inquiry being duly completed the Judge shall cause to be recorded the names of all persons found to be owners of the land and of their respective hapu and shall order a Crown grant or a certificate of title to be made to the persons entitled thereto subject to the provisions following.

29. Whenever it shall be found that one individual Native is the sole owner of any piece of land the Judge shall order a Crown grant to be issued to him absolutely and subject to no restriction.

30. Whenever it shall be found that any number of Natives not exceeding ten are the owners of any piece of land the Judge shall order a certificate of title to be issued to them. This certificate shall give power to the persons named therein (all of them being consenting parties) to lease said land for any term not exceeding twenty-one years in possession and not in reversion without fine or premium and without agreement or covenant for renewal. The certificate shall state the names of all the owners and the proportionate share of each and shall also specify in the words of this Act the power of leasing so given.

31. If all persons named in a certificate of title together with the person or persons to whom the interest of any deceased owner named therein shall have passed shall agree to sell the land comprised therein by private contract the purchaser shall pay the whole purchase money without any deduction or abatement whatever into Court whereupon the Court shall issue a Crown grant to the purchaser and shall pay to each of the sellers his proportionate share of the purchase money subject to deductions hereinafter provided. Or it shall be competent to such persons to have the land sold by auction through the Court

subject to the provisions hereinafter contained touching sales by auction.

32. If the owners of a piece of land shall be more than ten and shall agree to have their land subdivided for the purpose of obtaining certificates of title the Judge of the District shall order the land to be subdivided in such manner as shall be most satisfactory to the parties concerned: Provided that no subdivision contain more than ten owners. Thereupon a separate certificate of title shall be issued to the owners of each subdivision.

33. Whenever a part only of the persons named in a certificate of title desire to lease or sell their interest therein the Judge may with the consent of all parties interested order the land designated in such certificate to be subdivided so that one subdivision shall represent the interests of those who wish to lease or sell and the other subdivision shall represent the interests of those who do not so wish to lease or sell. Whereupon the former certificate granted shall be cancelled and two new certificates be issued in respect of the two subdivisions.

34. Whenever it shall be found that all the owners of a block of land are desirous to sell the same without previous subdivision among themselves the Judge shall put on record the names of all the owners distinguishing the tribe and hapu to which they respectively belong and the fact of their all agreeing to the sale of said block of land and shall then order the same to be laid out by the Chief Surveyor of the Court for sale by auction.

35. All such auctions shall take place at fixed intervals of six months at the chief town of the Province in which the land is situate. A reserved price to be agreed to by the owners shall always be fixed. Any land offered for sale at such auction but not sold thereat shall be open to selection at the reserved price at any time intermediate to such public auctions. All the purchase money derived from such sale of land shall be paid into Court.

36. In every case where purchase money of land shall pass through the Court a deduction at the rate of per cent. therefrom shall be made for defraying the cost of surveys and the laying out and mapping the land and the expenses attending the auction.

37. If the net proceeds of any such sale shall exceed £500 a deduction therefrom at the rate of per cent. shall be made and reserved for investment by the Court in Government security for the benefit of the sellers or their successors and shall remain so invested for a period of not less than twenty-one years the interest thereon being paid through the Court to the parties entitled to receive the same.

38. Every certificate under this Act shall be in the form prescribed in the Schedule hereto and shall have drawn thereon or annexed thereto a plan of the land comprised therein and shall be sealed with the Seal of the Court.

39. The interest of any Native under any Crown grant shall in case of death of such Native intestate pass to such person or persons as would by Native custom be entitled thereto. If thereafter such person or persons shall agree to sell such interest to a person not of the Native race it shall be competent to the intending purchaser to apply to the Judge of the District to ascertain the title of the intending sellers. On such application the Judge shall make inquiry and certify under his hand the names of the persons so entitled to sell.

40. The interest of any Native under a certificate of title shall in case of death of such Native intestate pass to such person or persons as would by Native custom be entitled thereto. It shall be competent for any lessee under such certificate to apply to the Judge of the District to ascertain the names of the persons entitled to the

interest of the Native deceased and the Judge shall inquire and certify accordingly.

41. At any time before the conclusion of an inquiry it shall be be competent for the Judge with the consent of the parties to make such arrangement as to the land under inquiry as shall appear to him to be just and reasonable and calculated to secure the contentment of all parties and the peace of the country: Whereupon the Judge may order Crown grants or certificates of title to be made and issued to the several parties entitled under such arrangement to such grants and certificates. Or the land may be sold by auction subject in every case to the provisions herein contained respecting such case.

DUTIES AND FEES.

42. On all moneys which shall be paid into Court upon the sale of any land as aforesaid there shall be due to Her Majesty a duty or sum at the rate of per cent.

FEES.

	£	s.	d
Application for Inquiry into Title	0	10	0
Crown Grant	1	0	0
Certificate of Title	1	0	0
Copy	0	10	0
Certificates under sections 39 and 40 of this Act ...	1	0	0
Interpretation under section 48 of this Act	2	0	0

It shall be in the discretion of every Judge to refuse to consider any application or to issue any instrument or document until the fee chargeable in respect to the same shall have been paid.

43. The duties and fees payable under this Act shall be applied to the payment of salaries of Judges Surveyors and other officers of the Court and to defray the other expenses of the Court lawfully incurred in its working. If in any year such duties and fees shall be found to be more than sufficient for such expenses they shall be reduced in such manner as the Governor in Council shall approve.

MISCELLANEOUS.

44. No survey made after shall be received in evidence or recognized in any proceeding under this Act unless made by one of the Surveyors belonging to the Court and certified as correct by the Stamp of the Native Survey Office. Every survey thus stamped shall be received in evidence without further proof.

45. It shall be lawful for the Governor from time to time by Proclamation before the commencement of or at any stage of any case or proceedings specified in such Proclamation to declare that such case or proceeding shall not be tried or proceeded with and from the time of the publication of such Proclamation in the *Government Gazette* the jurisdiction of the Court in such matter shall cease and determine but shall revive with the revocation of such Proclamation.

46. The Governor in Council may order a rehearing of any matter heard and decided under the provisions of this Act within such a period of time as may be limited in such order and upon such order being made all proceedings theretofore taken by the Court in such matter shall be annulled and the case shall commence *de novo* and shall proceed in manner provided by this Act: Provided that no such order for a rehearing shall be made after months shall have elapsed from the date of such decision.

47. If any question of English law or any question respecting the interpretation of any Act of Parliament or of the General Assembly of New Zealand shall arise in the course of any proceedings under this Act a case stating the facts and the question of law arising

thereout shall be drawn up by the Judge before whom such question shall have arisen and submitted to the Supreme Court for its decision which decision shall be final.

48. No lease or conveyance by any Native to any person not of the Native race shall be valid unless properly explained to such Native before the execution thereof by the Interpreter attached to the Judge of the District in which the land is situate and unless a clear statement of the contents thereof written in Maori and certified by the signature of such Interpreter shall be indorsed on such lease or conveyance respectively. It shall be the duty of such Interpreter to record a certified copy of every such written statement.

49. And whereas contracts have at various times been made by officers duly authorized for the cession of Native land to Her Majesty and in some cases money has been paid on such contracts but the purchase of said land has never been completed: Be it enacted that it shall be lawful for the Judge of the District on application of the Governor or any Native claiming interest in such land to investigate the Native title to such land in the manner herein provided and to certify the boundaries of such land the names of the Native owners thereof the terms of the contract and the amount of money paid thereon.

50. And whereas agreements for the purchase of timber flax and other natural productions growing upon Native lands were at various times before the passing of "The Native Lands Act 1865" entered into by Europeans and Natives which though having no legal force were made and have been carried out in good faith by the parties thereto: Be it therefore enacted that it shall be competent for the Court in its discretion to annex to any Crown grant or certificate of title issued in respect of such land such condition as shall prevent the land so granted being dealt with in a manner inconsistent with such contract.

51. Except as hereinbefore mentioned every conveyance gift contract or promise relating to Native land in respect of which a Crown grant or certificate of title has not been issued by the Court shall be null and void.

52. It shall not be necessary for any married woman of the Native race on executing any deed required by law to be acknowledged before Commissioners to make such acknowledgment and such deed shall be as valid and effectual as if signed by a *femme sole*.

53. No Native land shall be subject to or affected by any laws made or to be made by any Provincial Legislature nor shall any land granted under this Act or under any of the Acts hereby repealed be subject to or affected by any such laws as long as Natives alone are the owners thereof.

SCHEDULE.

CERTIFICATE OF TITLE UNDER "NATIVE LAND COURT ACT 1871."

TO ALL TO WHOM THESE PRESENTS SHALL COME—

IT is hereby certified that the Natives whose names are arranged according to their hapus and tribes in the table hereinafter contained are the sole owners of all that piece of land at in the District of in the Province of known by the name of containing by admeasurement be the same more or less bounded on the as the same is delineated on the plan drawn hereon or hereunto annexed together with all the rights and appurtenances thereunto belonging. And it is hereby further certified that the proportionate shares of the said owners in the said piece of land are as set forth in the said table. And it is hereby further certified that the above-named owners may under this certificate exercise the power hereinafter defined and none other—that is to say they may "lease the said land for any term not exceeding twenty-one years in possession and not in reversion without fine or premium and without agreement or covenant for renewal."

Name of Native Owners.	Hapus.	Tribes.	Proportionate Shares.

Given under the hand of Chief Judge of the said Court and issued under the seal thereof day of 187 .

Entered in book No. page .

L.S.,
Registering Clerk.

Issued at .

Chief Clerk.

EXPLANATORY NOTES.

Section 15. There are the same reasons for having Judges of this Court resident in their several districts as in the case of the Supreme Court. There is an additional reason in this case, where the Court has no written rule of law to guide it. Uniformity of decision in the same district will be better secured.

Section 20. The practice of obliging Natives to employ licensed surveyors has been found inconvenient, and often unnecessarily expensive. Different surveyors have been employed by opposing claimants to survey the same block of land. The insecurity of payment on completion of his work is unsatisfactory to the surveyor, and he naturally makes an extra charge for such insecurity. Hardship has arisen from nonfulfilment of promises made by Europeans to take a lease of the land and pay expenses of survey out of rent,—such promises being the inducement to the Natives to have their land surveyed.

A case of this sort became the subject of litigation at Auckland, and the original cost of survey with law expenses, amounting together to upwards of £700, was made a charge upon the land. The intending lessee having failed to make good his promises, and the land remaining unlet, the interest of mortgage money has not been paid. Should the mortgagee resolve to sell in order to repay the principal and interest in arrear, the Native owners may see the land slip away from them by a process the justice of which they are not likely to acknowledge.

The name of the principal Native owner in the case referred to is Ngakapa, of the tribe Ngati-Whanaunga. The land is situate on the western shore of the Frith of the Thames.

The obvious remedy is to let all surveys be made by officers of the Court. Nothing would do more to strengthen the influence of the Government than its direct intervention to introduce and to superintend a better system.

Section 25. Natives are generally so intelligent and apt, that it is believed they would be found quite capable to conduct their own case after having had a little practice, aided by the intelligent direction of a Judge.

If Natives are found to be competent to fill the office of Assessor, there is no reason why they should not be equally competent to act as advocates in the Court. They at least would be likely to know more of Maori law and custom than an English lawyer.

It is believed that such a plan would work well, and render the Court popular among the Natives.

Section 28. A register of names of all Native owners of land in the district, with name of his tribe and hapu, could without difficulty be compiled from information obtained and recorded by the Judge in the regular course of his work.

Section 30. The number ten has been retained on account of its having been sanctioned in other Acts. But there appears no objection to a wider limit. Indeed there is a practical advantage in a wider limit, as tending to diminish cost of subdivision, and in other respects it might sometimes be convenient.

There is no time so proper for ascertaining once for all the quantum of interest of the several owners as the time of the original inquiry. The Natives are then assembled, are anxious to get their Crown grants or certificates of title, and are then willing to give information or to come to terms among themselves as to anything which may be necessary for that end. The sooner this point is settled the better, for the settlement of this point involves the settlement of all disputes as to the distribution of rent or the proceeds of a sale.

Section 31. This provision is to prevent the very general practice with storekeepers, sellers of spirits, and others, of encouraging Natives to run into debt and then of making the debt a set-off on purchase of land. It would never do for the Court to be mixed up in such transactions.

Section 33. The consent of all the owners to the subdivision of their land has been required because without such consent any order of the Court directing such

partition would in many cases be inoperative, and in its effect damage the authority of the Court.

Section 35. Many advantages would be secured by sales by auction. It is true that objections have been made to such sales by persons well acquainted with Native matters. Formerly there were grounds for this objection. When land was sold by the Maori to the Pakeha, it was in most cases sold to some individual who had acquired personal influence among them; the purchaser was in some sort adopted into the tribe. But now land has become to the Maori, as to us, an article of commerce. Land is sold mostly to raise money in order to pay debts, or to provide the means of meeting expenses rendered necessary by new wants. The difference is this: Formerly the purchaser was more thought of than the purchase money; now the money is more thought of than the purchaser.

Purchases are still effected by individuals possessing personal influence, but oftener as agents for others than on their own account. As soon as the transaction is completed, the land is transferred to the principal, who again transfers it according to his own interest, from time to time.

It is believed that the advantage of sales by auction will readily be recognized by Natives. The land would be laid out by the Surveyor in the most advantageous manner. If it contained a good site for a village or town, it would be laid out in allotments, as well as the rural lands, with the requisite roads. The sales by auction, taking place at stated periodical times, would be convenient for persons living at a distance, and would command better attendance. The fixing a reserved price would prevent land being sacrificed at an unfavourabletime. The liberty to purchase unsold lots at any time intermediate to auction sales would be convenient to all, and to immigrants especially.

By selling Native land by auction the Government would be able to prevent such transactions as are condemnen by "The Native Lands Fraud Prevention Act," sec. 4.

It is far better to prevent mischief altogether, as may be done thus, than to apply a remedy afterwards.

By this method also the Government can secure a just distribution of the proceeds of sale among the persons entitled to share therein, while at the same time it can secure payment to itself of the cost of survey and other charges.

There cannot be any practical objection to such sales by auction. In former days the Government purchased blocks of land from Natives, surveyed them, and resold them on their own account. Let similar work be done on account of the Native owners.

Section 37. The half-yearly payment of interest, and the prospect of future payment of reserved fund would be a guarantee for peaceable relations. The growing generation, too young to interfere, would naturally feel aggrieved hereafter if no provision out of lands sold were made for them, and serious inconvenience might result to future Governments therefrom.

Section 39. There is a Native rule of succession to land. Most of the claimants whose titles are affirmed by the Native Lands Court rest their claims upon that rule. There is no good reason for interfering with it so long as the land remains in the hands of Natives; local customs of succession have been and are still respected by the law of England. But when the land passes to an English purchaser, then the Court may well intervene to secure a good title to the purchaser.

Section 43. This clause limits the amount of duties and fees leviable to an amount necessary for the working expenses of the Court. At the same time it seems worthy of consideration of the Legislature whether it is a wise economy to throw the whole of the expenses of the Court on funds so to be obtained, seeing that the action of the Court on principles herein set forth is a power capable of greatly benefiting both Colonists and Natives, and, indirectly, of diminishing the cost of Native and Defence Departments.

Section 44. This section has reference to the practice which has prevailed of requiring the surveyor to attend on the Court from day to day until the case was called on, in order to swear to his plan. This is complained of by the surveyors, who thus lose their time, and by the Natives concerned, who lose their money.

The hardship of this practice is evident from the following bill of charges:—

	£	s.	d.
Surveyor's bill	10	10	0
Surveyor's bill for attendance at the Court at Coromandel, and at adjourned Court at Shortland, 18 days at £1 1s.	18	18	0
Agent and Interpreter's fee	4	4	0
Court fees	4	5	0
	£37	17	0

Total extent of piece of land in question, 11½ acres; name of block, Kaur, No. 3.

Enclosure in No. 3.

DRAFT PROPOSED BILL BY SIR WM. MARTIN.

The Native Reserves Act.

AN ACT to amend and consolidate the Laws relating to Native Reserves.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows:—

1. The Short Title of this Act shall be "The Native Reserves Act 1871."

INTERPRETATION.

2. For the purposes of this Act the term "Native Reserves" shall include—

(1.) Lands which have been reserved for the benefit of Aboriginal Natives upon the sale to the Crown of any lands including all lands which by virtue of the provisions of the fourteenth section of "The New Zealand Native Reserves Act 1856" or the seventh section of "The Native Reserves Amendment Act 1862" may have been subject to the provisions of "The New Zealand Native Reserves Act 1856."

(2.) Lands comprised in blocks guaranteed to or set apart for the benefit of Aboriginal Natives by Colonel McCleverty or according to the directions of any Commissioner appointed to investigate purchases of land made from Aboriginal Natives by the New Zealand Company.

(3.) Lands reserved for the benefit of Aboriginal Natives by the New Zealand Land Company or the New Zealand Company.

(4.) Land appropriated by any Governor for the use or benefit of any Aboriginal Natives.

(5.) Lands to be vested in any Native Reserves Trustee under this Act.

REPEAL OF FORMER ACTS.

3. "The New Zealand Reserves Act 1856" "The New Zealand Native Reserves Amendment Act 1858" and "The Native Reserves Act 1862" are hereby repealed.

4. Provided always that this Act shall not render valid or invalid or in any way affect any rights acquired or proceedings completed under any of the said repealed Acts nor shall this Act destroy the liability of any person who has acted as Governor or any other officer appointed by or under any of the repealed Acts to answer in any Court for any Act or thing by him done or omitted to be done as Trustee or in any other capacity under any of such repealed Acts for which he would have been liable to answer if this Act had not been passed. But for the purpose of preserving such liability and the rights of parties who may now have any remedies or rights thereunder or under any of them the said repealed Acts shall remain in force.

5. Provided also that proceedings heretofore commenced and now in progress under any of the said repealed Acts may be continued and perfected under this Act so far as the circumstances of each case are compatible with the objects and provisions of this Act.

NATIVE RESERVES TRUSTEES.

6. It shall be lawful for the Governor in Council from time to time to divide the Colony of New Zealand into districts for the purposes of this Act and the limits of such districts from time to time to alter as occasion may require.

7. The Governor in Council shall appoint for every such district an officer which officer and his successors to be appointed in like manner shall be a corporation sole with perpetual succession under the name of "The Native Reserves Trustee of the District of ." Every such Trustee shall hold his office during good behaviour.

8. All lands and personal estate now vested in the Governor under the said repealed Acts or any of them shall from the date of this Act coming into operation vest in the Native Reserves Trustee of the district to which such lands and personal estate respectively shall belong.

9. Every contract heretofore lawfully made under any of the said repealed Acts by the Governor or by any Commissioner or Delegate heretofore appointed under or by virtue of any of the said Acts shall be deemed to have been made by and with the Native Reserves Trustee for the district in which the land affected by such contracts is situate and shall be carried out by him and his successors according to the intent and meaning thereof.

10. All such Commissioners and Delegates shall within months from this Act coming into operation furnish a full and true statement and account of all moneys and lands in their hands or under their management and control to the Native Reserves Trustee of the district to which such moneys or lands shall belong who shall examine the same and take such proceedings in reference thereto as shall be necessary.

11. Before the month of in each year every Native Reserves Trustee shall make in writing a full statement of all accounts relating to every Native Reserve under his management up to the day of with such remarks appended thereto as he may think fit and forward the same such accounts being first duly audited by an Auditor to be named by the Governor to the Minister for Native Affairs who shall place the same before each House of the General Assembly as soon as may be thereafter.

DUTIES AND POWERS OF TRUSTEES.

12. In every case where the beneficial purposes or objects for which any Native Reserve is to be used or for which the rents and proceeds of any Native Reserve are to be applied have been already fixed and defined. The Native Reserves Trustee shall cause such Native Reserve to be used and such rents and proceeds to be applied for and towards the purposes or objects so fixed and defined and none other.

13. Whereas from time to time on the purchase of land from the Native owners thereof certain lands have been reserved for the benefit of all the sellers but the beneficial purposes or objects for which such lands should be used or the rents and proceeds thereof should be applied have not been defined and it is necessary for the guidance of the Trustee of any such Native Reserve that such objects and purposes be defined: Be it therefore declared and enacted by the authority aforesaid that the income and yearly proceeds of such lands after deducting thereout all such expenses as may be necessary for maintaining the trust property in good condition and repair and all such expenses as may be necessarily incurred in travelling for the purposes of the trust shall be applied by the Native Reserves Trustee for the benefit of the sellers for whom such reserve was made and their successors in manner following that is to say for or towards all or any

one or more of the purposes hereinafter enumerated in such proportions and in such manner as shall be approved by the Governor in Council.

(1.) The erection and maintenance of any school house or other building for general use.
(2.) The purchase and repair of implements of husbandry.
(3.) The restoration of houses and property destroyed by fire.
(4.) The supply of food on occasions of public meeting.
(5.) Salaries of schoolmasters.
(6.) The purchase of books and writing materials.
(7.) Other educational purposes.

14. In cases where the yearly income is derived from any land is applicable to more than one specified object it shall be the duty of the Native Reserves Trustee of the district to call together the persons interested in the Trust Fund for the purpose of ascertaining their wishes as to the special application of the fund and to report the same together with his own recommendation thereon to the Governor for his approval.

15. Whereas it is a matter of public concern that the Aboriginal Natives shall not so far divest themselves of their land as to retain insufficient land for their support and maintenance: Be it further enacted that it shall be the duty of every Native Reserves Trustee to select with the concurrence of the Natives interested such blocks of land as shall appear to him and them to be well suited and sufficient for occupation and cultivation by such Natives. Whereupon the boundaries thereof shall be marked out by a surveyor to be appointed by the Governor for that purpose. The land comprised within such boundaries shall be exempt from the operation of "The Native Land Court Act 1871" and of any other Native Land Court Act which may be in force hereafter and shall be inalienable except by authority of an Act of the General Assembly: Provided that nothing herein contained shall be taken to prejudice or affect the rights of any Native owners thereof among themselves.

16. Every Native Reserves Trustee may from time to time lease any portion of the property vested in him as such Trustee in respect of which no trust shall have been created inconsistent with the exercise of this power to any person or persons for any term not exceeding twenty-one years in possession and not in reversion at such rent and subject to such covenants and provisions as he shall think reasonable but without fine or premium and without any covenant or agreement for renewal: Provided always that it shall be lawful for every such Trustee to lease any of such land for building purposes for any term not exceeding sixty years on such conditions and subject to such covenants as the Governor in Council shall approve.

17. The receipt in writing of any Native Reserves Trustee for any rents or money payable to him as such Trustee shall be a suffiient discharge for the rents and money therein expressed to be received and shall effectually exonerate the person paying such rents and money from seeing to the application thereof or from being answerable for any loss or misapplication thereof.

18. Every Native Reserves Trustee shall be chargeable for such rents and moneys as he shall actually have received and shall not be answerable for any loss which may arise by reason of any trust moneys being deposited in the hands of any banker nor for any loss in the execution of the trust unless the same shall happen through his own wilful neglect or default.

19. The remuneration to every Native Reserves Trustee for discharging the duties of his office under this Act shall be a commission on the gross annual proceeds of the trust property under his management according to the following scale that is to say fifteen

pounds per centum upon the gross annual proceeds of such trust property up to one thousand pounds and then ten pounds per centum on any excess of such annual proceeds above one thousand pounds.

20. This Act shall come into operation on the day of one thousand eight hundred and seventy-one.

EXPLANATORY NOTES ON "THE NATIVE RESERVES ACT, 1871."

1. It may be well to begin by noticing that the term "Native Reserves" is sometimes applied to lands which have been exempted out of sales of land by Natives, and retained by such of the owners as were unwilling to join the sale. Those lands stand on an entirely different footing from Native Reserves properly so called. They remain after such exemption just what they were before—namely, Native land subject to the jurisdiction of the Native Land Court, and capable of being used or alienated for the private benefit of the owners at their pleasure. They are subject to no trust for the general benefit of any body of Natives. With those lands we have here no concern.

2. If the Native people are to be quiet and contented subjects, they must have assured possession of settled homes, and of a sufficient quantity of land for cultivation. For this purpose provision is made in section 15 of the foregoing Act.

3. If the Natives are to advance in civilization, or even to maintain their present position, there must be some provision made for those general purposes which cannot be fully attained by private efforts and resources, and for which we commonly have recourse to endowments or grants from public funds. To these purposes the existing Native Reserves are applicable.

In one point only are these reserves all alike, namely, that they are Reserves made for the benefit of certain designated bodies of Natives,—sometimes designated by their relationship, as hapus, &c.,—sometimes by reference to the district within which such bodies of Natives reside. In all cases the persons to be benefited can be ascertained.

But in respect of the other main point, they differ widely—namely, as to the nature and form of the benefit to be received, and as to the special object to which the property or the yearly income of it is to be applied.

In some cases this is specified, but in many cases not so. Thus, for instance, in the case of the New Zealand Company, the reserves were selected by an officer of the Company out of the land sold to the Company, and were treated as part of the consideration paid to the sellers—that is, as part of a benefit to accrue to the whole body of sellers. But as to the particular mode or form of the benefit, nothing was settled. Many similar transactions have taken place in other parts of the Colony.

The result is, that there is at present a considerable property available, which, if administered on a good system, would greatly advance the education and civilization of the Natives, and relieve the General Revenue of the Colony.

The first thing needed is, that the Legislature should determine, wherever necessary, the specific purposes to which the income of this property shall be applied, so that the duties to be performed by the Trustee may be defined. A provision for this purpose is proposed in section 13 of the foregoing Act.

The course of proceeding proposed in section 14 would tend to satisfy the Natives interested, by giving them a voice in the application of the income of the reserves. At the same time, it would give a valuable means of influence to the Government, and would provide, in the direct responsibility of the Government, a security for the careful administration of the fund.

4. Whatever be the especial object to which the incomes of the various properties may be applied, the business of raising an income out of the properties is the same, and the necessary powers and regulations under which the property is to be managed are the same, in all cases. They are stated in sections 12 to 16.

5. If there be no general enactment requiring security to be given by all Government officers who are receivers of public or trust money, it may be right to insert clause requiring security to be given by every Native Reserves Trustee.

No. 4.

Sir WILLIAM MARTIN to the Hon. D. McLEAN.

SIR,— Auckland, 15th September, 1871.

When I had the honor of forwarding to you the draft Bill for consolidating and amending the laws relating to Native Reserves, I appended thereto a few notes, which were intended to serve as an explanation of the principle and the objects of the proposed enactment. The leading considerations in favour of the measure were in that way laid before the Government. Part of the subject was left untouched—namely, the objections which lie against the proposals contained in the latter part of Mr. Fenton's draft Bill. These objections are now stated in the enclosed remarks, which I respectfully submit to the consideration of the Government.

I have, &c.,

The Hon. the Native Minister, Wellington. WM. MARTIN.

Enclosure in No. 4.

Native Reserves.

WITH Mr. Fenton's draft Bill for consolidating the laws relating to the Native Land Court, is incorporated a series of provisions for consolidating the laws relating to the Native Reserves. Hitherto the enactments relating to these subjects have been kept distinct, and it does not appear that any advantage will arise from uniting them, but rather the contrary. The enactments referred to are open to weighty objection.

1. Whilst this draft Bill proposes to repeal wholly all former enactments relating to Native reserves, it makes no provision at all for the reserves in the Southern Island. This defect is a consequence of the proposal to tie the administration of the Native reserves to the Native Land Court, which has no officers in that Island.

2. There is no distinction made in section 143 between two classes of lands which are clearly distinct in their nature, and in respect of the rights which attach to them; namely, lands excepted out of sales, and remaining still in the hands of the Native owners subject to no trust, and lands which have passed out of the hands of the Native owners and have become subject to a public trust. This is not a mere error of classification having no practical consequence; for it is distinctly proposed (in section 148) to give to the Native Reserves Trustee power in respect of any estates which shall have been by operation of the proposed Act divested out of the Commissioners of Native Reserves or delegates of the Governor and vested in the Native Reserves Trustee, to bring, at his discretion, any such estate into the Native Land Court, to be dealt with under the provisions of the proposed Act—that is to say, to be dealt with as if such estates were still Native land; and the proposed jurisdiction is to be subject to this limitation only, that before any final order of the Court is made, the consent of the persons interested shall be proved to the satisfaction of the Court. This amounts to a power given to the Native Reserves Trustee, through the action of the Court, to abolish the trust which it is his business to carry out, and to distribute the trust property amongst the persons interested for the time being, as so much private property of their own.

Also in section 157, it is proposed to give the Native Land Court a power of awarding the Trust property, or any proceeds of it, to any claimant in a summary way; thus conferring on the Native Land Court a summary jurisdiction in respect of trust property which the Supreme Court does not possess.

3. The need of setting apart sufficient lands for occupation and cultivation by the Natives is recognized in section 150 of the draft. It is there proposed to attain that object by a series of operations recurring on every occasion of a new piece of Native land being brought before the Court for inquiry into the title. The Native Reserves Trustee, or some agent of his, is to attend at every such sitting of the Court. This can hardly fail to be very inconvenient to the Native Reserves Trustee; whilst the substitution of an agent for the Trustee would sacrifice one of the essentials of a sound system, namely, the direct and personal responsibility of a public officer.

Moreover, as an application to the Court for inquiry into title is, in the greater number of cases, not made until some arrangement has been entered into for sale of the land to which the application relates, the intervention of the Native Reserves Trustee would generally come at the most inconvenient time.

4. There is no proper definition of the powers of the Native Reserves Trustee. The clauses in section 153, which are copied from "The Maori Real Estate Management Act, 1867," are for the most part applicable to trusts of a very different description—namely, to private property held on trust for the benefit of individuals under some temporary disability.

5. There is no definition of the objects or purposes to which the income of the reserves is to be applied.

6. By section 159 it is proposed to empower the Court, on the application of the Native Reserves Trustee, to direct in what manner the money to arise by sale or mortgage of any land comprised in any Native reserve shall be invested or applied. Now, seeing that the funds so to be dealt with are public funds, and that there is nothing in the proposed Act to prescribe the objects for which the money is to be applied, this is a vast discretion, and far too large to be conceded to any Court or Judge. It is the very function of a Court to enforce a rule on others, not to dispense with all rule for itself. The first thing needed is that the objects to which the moneys are to be applied should be defined by law; and then, that the actual distribution of the funds should be made by an officer directly accountable to the Government.

7. By section 159 it is proposed to give to the Native Land Court a power of undoing all that has been hitherto done, even by the Court itself, and all that may hereafter be done under the proposed

Act, in the way of restricting the alienation of Native land. No reason is stated why the limitations and restrictions imposed by the Governor in Council under former Acts, for the benefit (as we must presume) of the Natives concerned, should be set aside by the Court; nor are there any words to define or guide the discretion of the Court. It is true the consent of the persons interested is required; but it is quite possible that the persons having present interests would consent to the abolition of limitations inserted probably for the very purpose of securing against their acts the future interests of children or other persons unable to protect themselves.

Taking all these proposed enactments together, it is not too much to say that, if adopted, they would amount to a legislative provision, not for administering and utilizing the trust lands, but, on the contrary, for abolishing the trusts and handing over the lands to private persons who have ceased to have any title to them.