1875.

NEW ZEALAND.

THE CASE OF MRS. MEURANT,

(PAPERS RELATING TO).

Presented to both Houses of the General Assembly by Command of His Excellency.

Extract from the Journals of the House of Representatives.

WEDNESDAY, THE 1ST DAY OF OCTOBER, 1873.

Resolved, That in the opinion of this House, it is desirable that effect be given to the Report of the Public Petitions Committee in the case of Eliza Meurant. (*Mr. Swanson.*)

No. 1.

REPORT OF THE PUBLIC PETITIONS COMMITTEE ON PETITION OF ELIZA MEURANT.

THE petitioner is an aboriginal native, and states that in 1844 her tribal relatives gave her a block of land at the junction of the Epsom and Tamaki Roads, near Auckland; that a Crown grant for a portion of the land has been issued to petitioner's husband in the year 1848, but that no Crown grant has been issued to petitioner for the remaining portion of the land.

The petitioner prays that the matter be inquired into and relief afforded to her.

I am directed to report that the petitioner appears to have an equitable claim for compensation against the Government in respect of land of which she has been wrongfully deprived, but the Committee, from want of time and evidence, are not able to ascertain with certainty the quantity of land of which the petitioner has been deprived, or the amount of compensation to which she is entitled.

They recommend that the matter be inquired into and considered by the Government, with a view to its adjustment, without unnecessary delay.

THOMAS KELLY,
Chairman, Public Petitions Committee.

29th September, 1873.

No. 2.

Judge FENTON to the LAND CLAIMS COMMISSIONER.

SIR,— Native Land Court Office, Auckland, 3rd November, 1874.

I have the honor to state that, in pursuance of Mr. O'Rorke's notice, an application has been made on behalf of the representatives of Mrs. Meurant to have her claim heard, and beg to request that you will be good enough to cause the papers in your office in connection with this case to be forwarded to me.

I have, &c.,
F. D. FENTON,
Chief Judge.

The Land Claims Commissioner, Wellington.

No. 3.

The LAND CLAIMS COMMISSIONER to Mr. O'RORKE, M.H.R.

(Telegram.) Wellington, 25th November, 1874.

RE Meurant papers. Will you please have these papers handed over to Judge Fenton, who is about to investigate the case?

H. A. ATKINSON.

No. 4.

Mr. O'RORKE to the SECRETARY of CROWN LANDS.

(Telegram.) Auckland, 26th November, 1874.

MEURANT papers forwarded to Judge Fenton to-day as you desired.

G. MAURICE O'RORKE.

No. 5.

Judge FENTON to the Hon. Major ATKINSON.

(Telegram.) Auckland, 4th December, 1874.

I THINK section 109 "Native Land Act, 1873," contemplates a reference by the Commmissioner to a specific Judge. Please send such *re* Meurant. Am ready to go on.

F. D. FENTON,
Chief Judge.

No. 6.

The Hon. Major ATKINSON to Judge FENTON.

Office of the Court of Land Claims, Wellington,
7th December, 1874.

SIR,—

In pursuance of the provisions of "The Native Land Act, 1873," regarding the investigation of old land claims, I have the honor to request that you will be good enough to investigate and settle the claim (No. 1323) of Mrs. Meurant to certain land at Remuera, and, upon the conclusion of the inquiry, to return the records in the case with your report thereon.

I have, &c.,
H. A. ATKINSON,
Land Claims Commissioner.

The Chief Judge, Native Land Court, Auckland.

No. 7.

MR. MACCORMICK to the Hon. the COLONIAL SECRETARY.

SIR,— Wyndham Chambers, Auckland, 6th January, 1875.

I have the honor to state that, in pursuance of your instructions, I appeared at the Native Land Court held here on the 4th instant, to investigate this claim, which had been referred to that Court by the Land Claims Commissioner. Mr. Hesketh appeared as counsel for the claimants, who he stated were the widow and children of E. Meurant, deceased, but he did not know the particulars of the claim; and in fact there is not to be found amongst the papers before the Native Land Court any claim, or any application or statement by Meurant in the nature of a claim, under the Lands Claims Settlements Acts. After much inquiry and discussion it was finally agreed that the claim to be investigated was to be taken to be a claim by the widow and children of Meurant, deceased, for compensation for the alleged wrongful taking, by the Government of New Zealand, of a portion of certain land, about 30 acres, which had been given by certain Natives, when under Native title, to Mrs. Meurant, herself a Native, upon or after her marriage with the deceased Meurant.

I thought it proper then to point out to the Court that it appeared to me that such a claim was not one which came within the powers of the Native Land Court to investigate and settle under the provisions of "The Native Land Act, 1873," sections 109, 110, 111 of that Act, those sections, according to my construction of them, providing only for claims to land arising out of dealings between Europeans and Natives, where in fact the title to the land was in dispute, and the claim now preferred not being in any sense a claim to land arising out of dealings between Europeans and Natives. Mr. Hesketh appeared to concur in my view, and the Chief Judge also expressed doubts as to his jurisdiction in the matter; and Mr. Hesketh applied for leave to amend his claim if necessary, and make it a specific claim for land; and the case was adjourned till the 18th instant.

I take the opportunity of the adjournment to address you in the matter, and request you to be good enough to instruct me if I am to waive any objections to the powers of the Native Land Court to investigate the claim as it is now preferred, or otherwise, as to any particular course I am to take. I beg further to state that I have not yet been able fully to inquire into the matter, but I am informed upon very good authority that there is really no ground for any claim for compensation, as any such claim, if it existed, was satisfied many years ago. I have ascertained that a grant of a portion of the land alleged to have been given to Mrs. Meurant, and of other land in the immediate vicinity, in all about 25 acres, was made on the 26th September, 1848, to Edward Meurant, deceased, which recites that the land granted had been given by the Native owners thereof to Kenehuru, now the wife of Meurant, for the support of herself and her children, and grants and confirms the land to Meurant for his life, and after his death to his said wife for her life, and after the death of the survivor to the children of Kenehuru by Meurant or any other husband; and this grant is in force, and the Meurants have alienated portions of the land to various persons. I am credibly informed that Meurant accepted this grant in full satisfaction of any claim he might have to the land given or alleged to have been given to his wife; and that if no other witness can be obtained to prove this, Sir George Grey can prove it. I believe also that the fact of this grant having been made was not brought under the notice of any of the Land Claims Commissioners who have had anything to do with investigating Meurant's claim. I mention this because, if it is the case, it will perhaps account for the opinion expressed by the Commissioners Bell and Domett favourable to Meurant's case.

I shall be glad therefore, if I am not troubling you too much, if you would instruct me whether or not, in appearing for the Government, I am to admit that the Meurants are entitled to compensation, on the ground that the land has been wrongfully taken without compensation, and confine myself to the question of amount of compensation now to be awarded, or if I am to oppose the case generally on its merits, in which latter case I beg to recommend that the evidence of Sir George Grey be obtained.

I have, &c.,
J. C. MACCORMICK.

The Hon. the Colonial Secretary, Wellington.

No. 8.

The Hon. Major Atkinson to Mr. MacCormick.

(Telegram.) Wellington, 15th January, 1875.

Have been away, and only just received yours of 6th instant. It appearing from your letter the Court has no jurisdiction, I have requested Chief Judge of Native Land Court to make inquiry into facts, take evidence, and report. Government wish you to represent them, and no doubt claimants also would be represented. If thought desirable, Court might decide it has no jurisdiction in present case; inquiry could then proceed. It is desired all facts should be fully brought out, and while Government do not wish technical objections to be taken, they do not desire you to admit claim to compensation. Government aware of grant of 25 acres; 30 acres given to Mrs. Meurant by Natives; Meurant made alleged purchase of 14 acres; Governor Grey granted 11 acres of Mrs. Meurant's land and the 14 claimed by Meurant. If purchase of 14 acres by Meurant illegal (which ascertain, no pre-emption certificate issued); and Court are of opinion that any land was wrongfully taken, compensation would then be for difference of grant and gift, 5 or 6 acres, not for 19. Do what you think necessary with regard to evidence of Sir George Grey.

J. C. MacCormick, Esq., Auckland. H. A. Atkinson.

No. 9.

The Hon. Major Atkinson to Judge Fenton.

(Telegram.) Wellington, 15th January, 1875.

As it would seem proceedings now pending cannot be satisfactorily prosecuted in Native Land Court Government would be glad if you would make inquiry into the facts, take such evidence as you think relevant, and report so as to enable them to give effect to wishes of House of Representatives. Government wish to have matter fully investigated, and ascertain what the rights and equities are. They have every confidence in your doing this fully, and, if your report is in favour of claim, probably legislative action will be necessary to give effect to it. Perhaps it would be well if Court decided as to its jurisdiction before you act on this. A formal authority to act as stated herein will be sent if you wish. Do what you think necessary with regard to Sir George Grey's evidence.

Chief Judge, Native Land Office, Auckland. H. A. Atkinson.

No. 10.

Judge Fenton to the Hon. Major Atkinson.

Sir,— Supreme Court Buildings, 30th June, 1875.

I have the honor to send herewith my report in the matter of the claim of Kenehuru. The matter has been considerably obscured by controversy and feeling, but when the effects of these are removed, the case seems clear enough, that is, as between equals. Whether the conduct of a Government may be regulated by the application of the same principles in retrospective judgment it is not for me to determine.

I also send two files of papers: one, the property I believe of Mr. Carleton; and the other, the administration papers in the matter belonging to this office. I have taken this unusual course for the following reason:—Sir George Grey called at this office yesterday, with his solicitor, for the purpose of inspecting the papers. He observed Mr. Carleton's bundle of papers, and desired me to send it to Wellington with my report. I replied that the papers were private property, and must be returned to their owner. He said that I ought to impound them, as there were papers in them signed "Metoikos," which were absolutely necessary for contemplated proceedings by him for libel. With respect to my own official papers, Sir George observed some letters from Mr. Carleton among them, addressed to me as Chief Judge of the Native Land Court, and observed that it was improper that any person should address a Judge who was his private friend, and that these letters should not have been received by me. On hearing these remarks, I told Sir George that I would depart from the usual course, and send the papers to you.

I also send the papers in the matter belonging to the offices at Wellington.

I also send the tracing used in evidence. Mr. MacCormick called no witnesses. Both sides being represented by counsel, I did not exercise any discretion as to calling Sir George Grey. If I had been called upon to determine that question for myself, I should not have thought it right to request his attendance, though, of course, I should have taken his evidence if he had signified any desire to give any.

The notice of my sitting was published in the Provincial *Gazette*, the Maori *Gazette* (*Kahiti*), and was sent to the district offices of the Native Land Court, Commissioner of Crown Lands, Inspector of Surveys, Native Reserves Commissioner, Ann Meurant, children of Mrs. Meurant, Land Claims Commissioner, Mr. Sheehan, Mr. Alexander, Mr. Carleton, Colonial Secretary, Attorney-General, Mr. Kelly, M.H.R., Mr. MacCormick; and was notified in the Auckland newspapers.

9th July.

The foregoing part of this letter was written on the 30th June. I thought it proper to secure accuracy in my detail of my conversation with Sir George Grey, and wrote to his solicitor a letter, copy whereof, with his reply, is annexed. I also wrote to him with reference to an expressed desire of Sir George Grey to give evidence. Copy of this letter, and other correspondence ensuing thereon, is attached.

As I have not much confidence in my skill in calculation, &c., founded on valuation, I engaged the services of a professional accountant and valuer. I hope that you will be good enough to sanction the payment of a fee (say two guineas) to him.

I have, &c.,

The Hon. H. A. Atkinson, Wellington. F. D. Fenton.

REPORT on the Case of Kenehuru (ELIZA MEURANT), an Aboriginal Native, respecting Land at Newmarket alleged to have been illegally taken from her by the Government. By F. D. FENTON, Esq., Barrister-at-Law, Chief Judge of Native Land Court.

IN pursuance of the request of the Land Claims Commissioner made under clause 109 of "The Native Lands Act, 1873," I fixed a Court to hear the claim of Mrs. Meurant. The Court sat, and, after two adjournments for the convenience of counsel, had to decide that the clauses failed to give the Court any jurisdiction.

On communicating with the Land Claims Commissioner, he desired me to sit as a Commissioner, and ascertain the rights and equities of the case, and report the result.

I must admit that I arrived at the above conclusion not without satisfaction to myself. I felt at the commencement that a Court was a very bad tribunal to which to refer a question of this sort, and I undertook the task with great reluctance. A Court is bound by rules of law, either of tradition or enactment, and its sole duty is to apply these rules to certain conditions of events. But this case is one in which, in effect, the conduct of a previous Government is to be examined. I know of no Court that was ever held to be competent to discharge a duty of this sort. It seems to me to be a function peculiarly belonging to, and most fitly discharged by, Parliament through its Committees. Moreover the technical training of a lawyer, and the habits of thought of a person who has arrived at the office of a Judge of a Court, have necessarily exercised an injurious effect on his powers of original thinking, *i.e.* when he has to find a course for himself without the assistance of the rules on which he has been taught to rely. The stringent effects of a legal education must necessarily render a person less capable of taking those broad views based on equity and good conscience which generally characterize the decisions of Parliamentary Committees, and to elucidate which they are peculiarly fitted.

It was with great relief, therefore, that I found my position changed into that of a Commissioner. I see no unfitness in my reporting the facts of the case, and my deductions therefrom. These deductions Parliament will accept or reject, as in its wisdom it sees fit.

I have had several sittings, at which Mr. MacCormick appeared for the Crown, and Mr. Hesketh for the claimant; such witnessess were examined as these gentlemen thought fit to call. Most of the proceedings, however, consisted of arguments, the official papers being admitted and relied upon on both sides.

Preface.

There are two pieces of land concerned in the inquiry. The history and legal character of these two pieces of land are distinct, and the matter would be quite simple if we were at liberty to deal with each separately. But that cannot be, for the reason that when the grant of the whole of one piece and part of the other was made and taken up in 1848, it might not unfairly be inferred that Meurant concurred in the arrangement, and abandoned his claim to the remainder of the land in consideration of having a good title to part.

Both learned counsel concurred that there was no expressed compromise. Indeed it is quite clear that if anything like a compromise or compact had been made in 1848, it would have been the duty of Government to preserve some evidence of it. There is no such evidence, nor in point of fact is any such thing even alleged in the official papers up to the time of the making of the grant in 1848; on the other hand, Meurant's objections are certain.

I have not allowed my mind to be influenced by the fact that statements made by Meurant or the Government were erroneous (such as Meurant's letter of 1846), unless such statements were followed by something done in consequence of them. Thus, for example, the Protector's minute of 1844 was followed by and caused a departure from the usual course pursued with other people who purchased lands from Natives under the Proclamation hereinafter mentioned. On the other hand, Mr. Meurant's error of 1846 produced no result, but furnished the occasion of just rebuke by the Government; it did not alter fact. And I cannot agree that a misstatement made by Meurant in 1846, or an erroneous paragraph in a memorial in 1848, can in any way be used by the Government for the justification of its neglect or mistake in 1844. As Meurant's rights were in 1844, they were in 1848.

Retrospect.

In 1835, on the 19th January, at Kawhia, Edward Meurant married Kenehuru, an aboriginal woman of the Waikato tribe, called Ngatimahuta. When, or after, New Zealand became a colony, Mr. Meurant obtained the office of Interpreter to Government, and resided at Auckland.

About 1844 the principal tribe, resident near Auckland, and the owners of the site of that town (called Te Taou, a branch of the Ngatiwhatua), gave to Kenehuru, their relative, a piece of land containing about 30 acres, situated to the north of the Tamaki Road, near its junction with the Auckland Road. These Natives were the owners of the soil, and were competent to transfer the land according to Maori custom, and they did so transfer the land to Kenehuru.* The transaction was further evidenced by a formal English conveyance, dated 6th April, 1847, mentioned hereafter. Kenehuru was the true and sole owner of the 30 acres from 1844.

The Governor made a Proclamation declaring the waiver of the Crown's right of pre-emption over Native lands, excepting, however, Native land north of the Tamaki Road. The 30-acre piece, therefore, could never become the subject of a private purchase. The Proclamation contained conditions and stipulations, only one of which concerns the case, viz. that the Government would consult the Protector of Aborigines, a public office that existed in those days.

Mr. Meurant bought, for valuable consideration, a piece of land on the south side of the said Tamaki Road, abutting on the Auckland Road, opposite to the 30-acre piece above mentioned. This contained about 14 acres, and belonged to a different set of Natives, viz. the tribe of Wetere and Epiha (Maungaunga). It formed part of a considerable piece of land given to them by the first-named Natives in former times. The transaction was evidenced by an ordinary conveyance of

* There are several authentic Maori letters affirming the gift. See particularly the letter addressed to the Governor in 1849 (quoted *post*).

ERRATA.

Page 4, opposite 1st paragraph in Retrospect, *read* "1835."
„ 4, „ 3rd „ „ „ "1844, May 26."
„ 4, „ 4th „ „ „ "1844, May 27."
„ 5, „ 5th „ „ „ "1844, May 28."
„ 5, „ 7th „ „ „ "1846, June 11."
„ 5, „ 8th „ „ „ "1846, December 11."
„ 5, „ "*Deed of Conveyance and Confirmation, &c.*," *read* "1847, April 6."
„ 5, in 6th line, in "Deeds of Conveyance, &c.," instead of "engrossment" *read* "enfeoffment."
„ 5, opposite 3rd paragraph in "Deeds of Conveyance, &c.," *read* "1848, June 20."
„ 6, „ 3rd „ on page, *read* "1848, September."
„ 6, „ 4th „ „ „ „ "1848, October 20."

13 acres 3 roods and 10 perches for £13 13s., being £1 per acre, the same price as was paid by the adjoining purchasers under the Proclamation. The deed is signed by Epiha, Te Hana, and Wetere; they were the true owners, and the purchase was complete as a Native transfer. It should be remarked that the deed contains a declaration against dower. The two deeds, although of no legal validity, I accept and use as evidence of the intention of the parties to them.

Mr. Meurant made application to the Colonial Secretary, in pursuance of the Proclamation, for waiver of the Crown's right of pre-emption over the 14-acre piece. This application was referred to the Protector of Aborigines, who writes, "I had been given to understand that this piece of land was a gift from the chiefs Wetere and Wata to Mr. Meurant's wife and children; if so, should it not be secured to them?" The Governor writes, "Certainly;" and adds, "Dr. Sinclair, inform the applicant that the land in question, being held in right of his wife, who is a Native, requires no purchase or deed of grant from the Crown.—R. F., 31st May, 1844." And on the 3rd June, Dr. Sinclair answers Mr. Meurant's application thus: "I am directed to acquaint you, in reply to your application of the 28th ultimo, that the right of pre-emption may be ceded over a piece of land situate at the junction of the Auckland and Tamaki Roads; that, the land in question being held in right of your wife, no purchase or deed of grant from the Crown will be required."

It does not appear how Mr. Clarke was "given to understand" such a singular mistake, nor does Dr. Sinclair state by whom the land was held in right of Meurant's wife; but I think he meant by Mr. Meurant, which is as remarkable a mistake as Mr. Clarke's. Let it be remembered that the Government made no objection on the ground that the contract of purchase was made before the Proclamation or the application for waiver, nor is that alleged. The point of divergence is clear and undoubted. From this time everything went wrong. The adjoining purchasers got their waivers and their purchase deeds, and resold at large profits. Mr. Meurant alone appears to have remained in an uncertain state, living with his family upon the land, with a title acknowledged by every one except the Government.

At length Mr. Meurant applied again for a title to the 14-acre piece. He apparently thought that, by adopting the Protector's suggestion of the land being the property of his wife, he would have a better chance of getting a grant, and he now states that the 14 acres was given to his wife. The fact of the purchase was now lost sight of by every one, and all minutes on this letter were written by official persons, based on the idea that the land (the 14-acre piece) was the wife's property.

No answer was given to this letter. Meurant writes again, asking for an answer, and was informed, in reply, "that the whole subject required a lengthened consideration, and a reference to the Home authorities."

Deed of Conveyance and Confirmation of the 30 *Acres.*

The grantees are Te Tawa, Te Hira, and Te Keene, the first two being the principal man of the tribe, and his son. The last-named had no right in the land whatever, but the two first were perfectly competent to give a good title, and did give a good Maori title. This question of title was so stated by Te Keene himself in the Orakei trial. Both learned counsel and myself concurred on this point.

The deed "grants and confirms" (referring to the gift in 1844,* which I regard as the true engrossment of Kenehuru). The deed merely recognizes and sanctions the genuine Maori transfer by parol gift in Maori fashion, followed by letters in English manner.

Mr. Meurant wrote to the Colonial Secretary, enclosing copies of the deed of gift (30 acres), and of the deed of purchase, 1844 (14 acres), speaking of them as conveyances to me in trust for "my wife and children," and asks that deeds of grant may issue to me for the same. Upon this letter the Governor (Sir George Grey) writes, "Mr. Swainson (the Attorney-General), do you think the Governor has power to convey the land to Meurant in trust for his wife and children? I think this is one of those cases in which it would be desirable, if possible, to secure the rights of half-caste children."

Attorney-General replies: "I think that at present, and under existing circumstances, the Government has not the power to make a valid grant of this land. To meet cases of a like nature it would be very desirable that a special authority should be granted to the Governor by Royal instructions."

The Governor then writes (July 31, 1848): "Dr. Sinclair, the land can be at once granted to Meurant in trust for his wife and her children, in such form as the Attorney-General may suggest; I will then refer Home for a confirmation of these grants, and for a general authority on the subject." Whereupon Dr. Sinclair refers to the Attorney-General for a form of grant to be used. Mr. Swainson prepares one, and the official minutes end, "Deed prepared and forwarded. J. Baber, clerk, Survey Office, 28th September, 1848."

This grant was issued whilst copies of the two deeds were before the Government officers. It recites, "Whereas the Native owners of the allotment or parcel of lands hereinafter described have alienated the same for and towards the support and maintenance of Eliza Meurant, a Native woman, formerly Kenehuru, and for and towards the maintenance and support of the children of the said Eliza Meurant." This recital does not accord with the facts. The piece of 14 acres was alienated by the proper owners to E. Meurant in fee for a valuable consideration, of payment of which there is abundant proof; and the deed of conveyance, upon the authority and genuineness of which there is no doubt, was before the Attorney-General when he framed the recital. So far from being an alienation for the maintenance and support of Kenehuru and her children, the 14-acre deed contained a declaration against dower. And there is another remarkable circumstance. The two conveyances, enclosed in the letter of Meurant upon which the Governor made his fiat, comprised 44 acres; in fact, the whole of the land claimed. When the grant was issued, it contained only

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* Translation of Letter.

Friend the Governor,— Orakei, 15th September, 1849.

Salutations. This is a word of mine to you: do you attend to it. That which Meurant has said is very true as to the land that we gave to his children, and also for our sister Raiha (Kenehuru). It is quite true. Now, friend, listen to the month in which the gift of that land was made to the children of Raiha. It was the 20th day of February, in the year 1844. This is all.—Te Tawa (Opihai Te Kawau), Te Keene, Te Hira, Wiremu Reweti Paraone, Te Reweti.

14 acres and 10 acres; 20 acres out of the 30-acre piece having been dropped. There is nothing in the official papers to account for this apparent departure from the Governor's orders.

I cannot find any authority for the Government to make this grant, and it has not been shown that it was ever validated. Meurant received it, but did nothing with it. Indeed he could not have done anything with it, for his estate was cut down to a life estate.

Thus Meurant lost in quality, and his wife in quantity; and the Governor issued a grant which he was not competent to issue. I cannot suppose that any voluntary arrangement could be based on such conditions. The idea of a compact, or voluntary compromise, has no support from facts or records. Immediately after this Meurant went to Sydney, whence he returned in 1849.

The Government put up the omitted portions of land for sale. A protest was made on behalf of Meurant. At this time the Native title had not been acquired by the Government. There were no bidders.

The Government purport to have extinguished the Native title by means of a conveyance from Te Keene to Her Majesty, for £15, of (amongst other lands) the piece omitted from the grant.

Te Keene was, however, not an owner. He had no claim whatever over the land (see his own evidence in the Orakei case); and if he had any, he had already transferred his interest by deed to Kenehuru, as he acknowledges himself, in letter *ante*. This was admitted by the learned counsel on both sides, who fortunately were in the Orakei case.

I am not aware that the Government have anything to rely upon for the extinguishment of the Native title over the 20 acres, balance of the 30 acres, except this deed, for which purpose (or for any other) it is quite valueless. The Native title is still in Kenehuru.

Subsequently, the omitted land was all sold by the Government, and the proceeds retained by it.

From the time of Meurant's return from Sydney* he has objected to the grant, and has endeavoured for his wife to obtain compensation for the loss of land, and he has not succeeded.

He is now dead, leaving Kenehuru surviving him (now a lunatic), and several children.

In my opinion the following points are established:—

1. Meurant ought to have got his grant for the 14 acres in 1844 upon the terms of the Proclamation, and Government can take no credit for issuing it in 1848.

2. The grant of the 14 acres, when issued, was of less value than it should have been, for it was in strict settlement, instead of in fee, as he was entitled to claim, and did claim in 1844.

3. The 30 acres was effectually given to Kenehuru by the Native owners, and, except as to sales made by her, is, or equitably should be, hers now, with a perfect title according to the Native custom.

4. The Governor was not at all bound to give Kenehuru a Crown grant for the 30 acres, nor had he any lawful authority to do so, except through a circuitous process under the Native Reserves Acts (which did not pass until 1856), and under these Acts it was entirely optional with the Governor.

5. Kenehuru had a right to a grant when the Native Land Act, 1865, was passed. From that time she would have a right to change her Maori title into a legal one under Crown grant.

The result, therefore, is that Meurant had a right to a grant in fee of the 14 acres in 1844, and Kenehuru to a grant of 30 acres in 1865, with the deduction from the 14 acres of the one-tenth stipulated for by the Proclamation, and less 10 per cent. on the value of the 30 acres under the Land Act.

The amount, therefore, will stand thus (the valuations are from the evidence):—

Due by Meurant's Estate.	£	s.	d.	*Due to the Meurant's Estate.*	£	s.	d.
10 per cent. on the 13 acres 3 roods 10 perches, which should have been deducted in terms of the Proclamation of 1844, 1 acre 1 rood 21 perches, @ £258 6s. per acre	356	15	6	The value of the balance of the 30 acres, viz. 19 acres 2 roods, @ £150 per acre, £2,925	2,925	0	0
Further charge of 10s. an acre on 12 acres 1 rood 29 perches	6	4	3	Less 10 per cent. under Native Land Act, £292 10s., and say £10 cost of survey	302	10	0
10 per cent. which would have been due under "The Native Lands Act, 1865," on £1,657 10s., the value of the 11 acres 8 perches (part of the 30 acres) granted to Meurant, and Court fees	170	15	0				
	£533	14	9		£2,622	10	0

Amount that should be paid, £2,088 15s. 3d.

In conclusion, I only desire to state that many points in the case that have been controverted in the papers before me I have not noticed, thinking that they in no way affect the question; such as Meurant's misrepresentation to the Executive Council, his charge against a Government officer of suppressing a letter, the marriage of Kenehuru with a European, as to its effect on her land, and many others.

I also desire to add that Mr. MacCormick's main argument was directed to proving that it was a serious mistake to entertain the question of redressing wrongs done by a Government (if any) at all; and that to compensate private persons for the consequences of errors (if any) made by former Governments was a principle full of danger. I did not think it my duty to consider this question, believing it to be one peculiarly and solely for the discretion of Parliament.

F. D. Fenton.

* "The Colonial Treasurer, Auckland.—I hereby protest against your selling the allotments numbered 28 and 35 in the list of allotments for sale this day, as proclaimed in the Government *Gazette* of the 31st October, 1849, the same not being the property of the Crown, but part of an allotment of 30 acres 2 roods 8 perches, conveyed to my wife, Eliza Meurant, by deed, bearing date 6th April, 1847, by the parties therein named, the then owners thereof, and the same allotments being ow her property.—Dated this 3rd day of December, 1849.—E. Meurant."

Enclosure 1 in No. 10.

Judge FENTON to Mr. MACCORMICK.

SIR,— Native Land Court Office, Auckland, 1st July, 1875.

I understood Sir George Grey, on his visit to my office in company with yourself, to say that he and Mr. Swainson should have been examined as witnesses in the Meurant case. I should not have thought it becoming to call Sir George Grey, even if there had been no counsel, and I had to exercise the discretion myself. But as he has, as I understood him, expressed a wish to give evidence, I will sit on Saturday next at 10 o'clock, for the purpose of hearing him and Mr. Swainson, if that time will suit you. I beg that you will reply as soon as possible, in order that I may inform Mr. Hesketh.

I have, &c.,

J. C. MacCormick, Esq., Solicitor, Auckland. F. D. FENTON.

Enclosure 2 in No. 10.

Judge FENTON to Mr. HESKETH.

SIR,— Native Land Court Office, Auckland, 2nd July, 1875.

Sir George Grey having intimated that he and Mr. Swainson should be examined in the matter of the claim of Mrs. Meurant, I have the honor to inform you that I have fixed Saturday, the 3rd instant, at 10 o'clock, at my chambers, for the purpose.

I have, &c.,

E. Hesketh, Esq. F. D. FENTON.

Enclosure 3 in No. 10.

Mr. MACCORMICK to Judge FENTON.

SIR,— Wyndham Chambers, Auckland, 2nd July, 1875.

In reply to your letter of the 1st instant, which I received in the evening of yesterday, I have the honor to state that I consider the inquiry with the Meurants' case before you was closed in February last, when Mr. Hesketh, as counsel for the claimants, and I, as counsel for the General Government, addressed you upon the case, and that I cannot now ask for the attendance of Sir George Grey or Mr. Swainson. Sir George Grey has not expressed to me any wish to be examined in the matter, but I did understand him to say, after he had referred to Mr. Carleton's letters, that he thought he ought to have been examined.

I have, &c.,

His Honor the Chief Judge, Native Land Court. J. C. MACCORMICK.

Enclosure 4 in No. 10.

Messrs. HESKETH and RICHMOND to Judge FENTON.

SIR,— Auckand, 2nd July, 1875.

We have the honor to acknowledge the receipt of your letter of this day's date, intimating that Sir George Grey and Mr. Swainson will, in all probability, be examined in this matter to-morrow morning, at 10 o'clock.

We have to request that we may be informed why these gentlemen are now to be examined, and upon whose application and upon whose behalf this course is being taken.

On behalf of the claimants we must strongly object to such a course being adopted at this stage of the proceedings, and for the following reasons:—The claimants and the Government were each represented by counsel at the inquiry held before you, each having the right of calling such persons as could testify to the matters involved in the inquiry.

The counsel for the Government did not choose to exercise this right, although the claimants' counsel did so.

The inquiry was adjourned from time to time for the convenience of the parties, and to obtain evidence.

The gentleman in question have always been at hand, and could have been readily obtained.

The whole of the evidence has been closed by the counsel engaged, and they have each addressed you upon that evidence and the case generally, and the matter has been left with you to decide and report upon.

Your report is, as we are informed, now made and completed, and we must object that, after all this has taken place, our clients, who are not able to bear any further expense, should have to appear again to reopen the matter.

Our Mr. Hesketh will attend to-morrow morning, but only to object to the matter being re-opened.

We have, &c.,

His Honor the Chief Judge, Native Land Court. HESKETH AND RICHMOND.

Enclosure 5 in No. 10.

Judge FENTON to Mr. MACCORMICK.

SIR,— Native Land Court Office, 30th June, 1875.

I enclose extract from a letter written by me to the Hon. Mr. Atkinson, Land Claims Commissioner, relating to the conversation I had the honor of holding with Sir George Grey yesterday, and I beg that you will inform me whether my statement of the conversation is correct.

I have, &c.,

J. C. MacCormick, Esq., Solicitor. F. D. FENTON.

"I also send two files of papers, one the property, I believe, of Mr. Carleton, and the other, the administration papers in the matter belonging to this office. I have taken this unusual course for the following reasons:—Sir George Grey called at this office yesterday, with his solicitor, for the purpose of inspecting the papers. He observed Mr. Carleton's bundle of papers, and desired me to send it to Wellington with my report. I replied that the papers were private property and must be returned to their owner. He said I ought to impound them, as there were papers in them signed "Metoikos," which were absolutely necessary for contemplated proceedings by him for libel. With respect to my own official papers, Sir George observed some addressed to me as Chief Judge of the Native Land Court, and observed that it was improper that any person should address a Judge who was his private friend, and that those letters should not have been received by me.

"On hearing these remarks, I told Sir George that I would depart from the usual course, and send the papers to you."

Enclosure 6 in No. 10.

Mr. MacCormick to Judge Fenton.

Sir,— Wyndham Chambers, Auckland, 2nd July, 1875.

I have the honor to acknowledge the receipt of your letter of the 30th June last, enclosing an extract from your letter to the Hon. H. Atkinson, Land Claims Commissioner, relating to a conversation with Sir George Grey which took place in my presence, and I beg to ask you to excuse me from writing any official letter in answer to your request. I am quite prepared to state what I heard on this occasion if necessity calls upon me to make such statement, but I must ask you to excuse me from writing on the matter at present.

I have, &c.,

His Honor the Chief Judge, Native Land Court. J. C. MacCormick.

No. 11.

Mr. MacCormick to the Hon. Major Atkinson.

Sir,— Auckland, 19th July, 1875.

I have the honor to report that, after making the objection to the jurisdiction of the Native Land Court, in pursuance of your instructions, I appeared on behalf of the Government to watch the inquiry in this matter before the Chief Judge of the Native Land Court. Mr. Hesketh, who appeared for the claimant, admitted my objection that the Native Land Court had no jurisdiction in the matter, as the case did not come within the provisions of section 109 of "The Native Lands Act, 1873," and the Chief Judge decided accordingly, and proceeded, in compliance with your request, to make inquiry into facts and take such evidence as was offered.

Mr. Hesketh stated that the claim he submitted was a claim for compensation for the wrongful taking by the Government of New Zealand of 20 acres of land belonging to the wife of Meurant, now deceased, held by her under Native title; that a Crown grant had been issued for a portion of the land which belonged to Mrs. Meurant, but instead of comprising 30 acres 2 roods 8 perches—the area of the land belonging to Mrs. Meurant—it comprised only 10 acres 2 roods 8 perches of this land, the residue having been taken by the Government for their own purposes; and it was agreed that the papers comprising the "Official Correspondence" should be taken to be in evidence, and should be accepted, so far as concerned the letters and written statements of the persons immediately connected with the transactions which resulted in the issue of the Crown grant, dated the 20th day of September, 1840, to E. Meurant, deceased, his wife, and her children lawfully begotten. In the course of the case four witnesses were called by the claimant. Mr. G. Graham, a well-known old settler, was the first, and he spoke as to his remembering in 1843 a piece of land at the junction of the Epsom (or Great South) Road with the Remuera (or Tamaki) Road, on the south side of the Tamaki Road, being pointed out to him by the Natives as Mrs. Meurant's land, and he said that the land adjoining it belonged to the chiefs Jabez Bunting, Te Wetere, and Te Hana—chiefs of a Waikato tribe, he understood; that he bought some of the land adjoining this land of the Meurants; that he obtained in 1844 a certificate of waiver of pre-emption, and bought about 80 acres from these chiefs; that the Governor took from him about 20 acres, and threatened him that if he complained the Governor would take the whole (the witness used a much stronger term than "took"). He also stated that Meurant took possession of this land, which was pointed out to witness as Mrs. Meurant's land in 1844, after Governor Fitzroy's Proclamation of 26th March, 1844; and that witness knew that the land on the north side of the Tamaki Road belonged to Te Kawau and chiefs of the Ngatiwhatua tribe living at Orakei; also that the land was exempted from the Proclamation of 26th March, 1844, and the land which he understood to be Meurant's was on the south side of the Tamaki Road, and he did not know at that time of any land claimed by Meurant or his wife on the north side of this road, and did not know why one tribe claimed the land on the south side of the Tamaki Road, and another tribe claimed the land on the north side.

The next witness was Mrs. Crippen, daughter of the claimant. She stated that her father died on the 1st November, 1851. That her mother belonged to the Ngatimahuta tribe (as well as she recollected the name), a Waikato tribe; not to people of Orakei. Remembered living on the land comprised in the grant. She said, "At one time we lived on Lot No. 1 (so described in the grant), the piece on the south side of the Tamaki Road; and, at another time, "We lived on Lot No. 27," the piece to the north of the road.

The other two witnesses were land agents, who appeared to have been employed in making sales of portions of the land comprised in the grant. One stated that portion of No. 1 had been taken for

the railway, at the price of £1,550, and the remainder, about 12 acres, sold for £2,100, and the purchaser had to pay £300 for immediate possession, making the value of this piece, in his estimation, over £200 per acre; and that he valued Lot No. 27 at £200 per acre, on account of its proximity to the railway station. The other land agent valued No. 1 at £400 per acre, and No. 27 at £150 per acre.

I think I have stated correctly in substance the evidence given by these witnesses. These were all the witnesses called, although the inquiry was adjourned for a considerable period to enable evidence to be procured, if possible, to show that the piece of land on the south side of the Tamaki Road had been a gift by Jabez Bunting and Te Hana, or some chiefs of the tribe to which they belonged, to the Maori woman Kenehuru, Meurant's wife.

I called no witnesses, and I may say at once that, with the view I took of the case, after having carefully perused and considered the papers which were placed before me to peruse before the inquiry began, and which included some papers I was afterwards informed were Mr. Carleton's private papers, I thought I should be required only to bring evidence as to the value of this land, but after hearing the evidence for the claimant, I considered this unnecessary, and called no evidence.

The view of the case I have impressed upon His Honor the Chief Judge of the Native Land Court, and which I submit to your consideration, is that, if this is a case in which any claim for compensation can properly be made, the claimant, and those represented by her in this claim, have obtained, by the Crown grant issued to them, land to which no one of the grantees was entitled, at least of equal value with the land which the claimant charges to have been improperly taken from her. The piece of land, containing 13 acres 3 roods and 10 perches, situate on the south side of the Tamaki Road, was, I believe, and as I contended in my address to the Chief Judge of the Native Land Court, comprised in the Crown grant by mistake on the part of the Government, a mistake fostered and confirmed by the deceased Meurant, who must be considered the agent of the grantees named in the grant in obtaining that grant, for he was the only mover in the transactions that resulted in the issue of that grant; and I beg to remind you that the claimant, and no person on her behalf, not even her deceased husband, has ever repudiated the grant.

I have had much difficulty to contend with in ascertaining the facts of this case, because I have not had the advantage of being instructed by any person, and I have relied upon the information I have gathered from a perusal of the papers in the case, and of the Government *Gazettes* of the years from 1844 to 1848, and my knowledge of the history of the colony.

I understood from the Chief Judge of the Native Land Court that he would acquaint Mr. Hesketh and myself with the purport of his report on the case before he transmitted it to you, but he has considered it right not to do this; and I think myself, therefore, bound to state to you more fully than I should have done the impression in my mind made by the inquiry.

I am certain that you will not think that I intend to reflect upon any person by saying that this inquiry is very unsatisfactory as to its result. I considered it would be improper in me to call as witnesses Sir George Grey, the Governor of the colony, and Mr. Swainson, the Attorney-General of the colony, when these transactions took place, as I saw it would be calling them to explain their official conduct; and after the great length of time which has elapsed, and, by deaths and other causes, witnesses cannot be procured to explain and prove many so-called facts, which can only be inferred now, and which, during the inquiry, were treated by all engaged in it as inferences of fact. Yet I beg to submit to you that, upon a fair consideration of the letters and papers, which I am informed have been transmitted to you by the Chief Judge of the Native Land Court, with his report, I am supported in my view that there is no case for compensation.

I consider it my duty to place before you as shortly as possible a review of the principal facts of the case, and my arguments in support of my contention; and I venture to say that this case may prove a dangerous precedent, for success will most assuredly bring forth other claims of the like kind.

Firstly: I submit there was no authority to issue this Crown grant. Assuming that Kenehuru was entitled, according to Native custom, to these thirty acres of land (though I think there are some suspicious circumstances about the gift which is the sole foundation of the title), there is nothing to show that that fact entitled her, or any one of the grantees, to a grant of that land. Amongst the papers, there is an opinion of the Attorney-General of the time that there was no authority to issue such a grant, and I do not suppose that opinion can be controverted; and there is the doubt at least in the mind of Governor Grey as to his authority to issue the grant, expressed in his own minute of 31st July, 1848, directing the land to be granted, in which he says, "I will then refer Home for a confirmation of these grants, and for a general authority on the subject." Lord Grey, in his despatch of 5th April, 1851, to Governor Grey, expresses his opinion that the grant to the Meurants was a fair adjustment, and I do not think that any person can deny that the claimant and her children obtained a great benefit by this grant, and that the interest of all concerned has been advanced by the issue of the grant much more than if matters had been left *in statu quo ante*. Without discussing the legal rights of persons other than Natives claiming land in New Zealand in those times, it is not an exaggeration to say that nearly all the grants issued in those times, except to purchasers of waste lands from the Crown, were issued on "adjustments;" for I apprehend that the Proclamations by Governor Fitzroy, waiving the Crown's right of pre-emption, were, strictly speaking, without authority, and may be said to have been made to "adjust" matters. Now, Mr. Meurant in his lifetime, and after his death, some person or persons, in the name of his widow, a lunatic in an asylum, claim compensation, because, in fact, this grant did not comprise the whole land alleged to have been a gift to the Native woman, and deny the grant to be an "adjustment" or an "arrangement," and seek to go behind it. If so, then, I submit to the Government, let the parties be placed *in statu quo ante*, and then consider their rights according to the principles of a Court of equity.

On the inquiry I could not deny that there was some evidence of this gift of the 30 acres, and certainly the Government seem to have recognized it as vesting the wife of Meurant with at least a status deserving the consideration by the Government;—a right the claimant's counsel says;—I say confidently no right, as a matter of law, to a Crown grant at any rate. But the Governor of the colony, for the time being, claimed to exercise a power to do what I must suppose he considered right and proper, to make provision for such a case as that of Meurant's wife; and thus the adjustment was

made by which this grant was issued, and, as part of the policy of the day, 20 acres were held back. I can point to evidence to be found amongst the papers, that before the issue of the grant Meurant must have known that there was to be this "adjustment;" and that if he should obtain the grant which he so strongly pressed for, it would not be a grant of the whole of the pieces of land he asked to be granted, on the ground that they had been given by the original Native owners to his wife for the support of herself and her children. That the grant was purposely issued for less than the number of acres, I presume cannot be disputed. Meurant himself has thus stated the matter, and attributed it directly to Sir George Grey, who, it may be observed, did not issue the grant, the grant being issued under the hand of Lieut.-Governor Pitt. I refer to the papers as showing plainly that at the time this grant was issued every person connected with the administration of the Government was impressed with the idea that both pieces of land (two pieces of land being mentioned for the first time in Meurant's letter of 20th July, 1848,) had been given by Natives for the benefit of Meurant's wife and children; whereas one of these pieces, the 14-acre piece I may call it, Meurant himself in his lifetime admitted was not a gift but a purchase. He also declared that he made a mistake in speaking of it as a gift; and attempted to explain his error, as he termed it, by saying that he thought that when he applied in May, 1844, for the waiver of pre-emption, it was in respect of the land given to his wife. This is not altogether a satisfactory explanation, for Meurant must surely have known that is was useless to apply for the waiver of the right of pre-emption of a piece of land on the north side of the Tamaki Road, which would be directly in the face of Governor Fitzroy's Proclamation of 26th March, 1844. I refer also to the papers and the Proclamations of Governor Fitzroy, relating to the waiver of the Crown's right of pre-emption, and subsequent notices in the Government *Gazette*, as all showing that Meurant had no right to the 14-acre piece. Not only did he never obtain a certificate of the waiver of the Crown's right of pre-emption, but also he had disentitled himself to such a certificate, because he had, in the terms of the Proclamation of the 26th March, 1844, contravened the regulations thereby prescribed; and I say his conduct warrants at least a strong inference that he knew he could not obtain a waiver of the Crown's right of pre-emptiom over this piece of land; and, therefore, he adopted and carried out the suggestion by the Protector of Aborigines made in error. I have already taken up much of your time, but I ask you to be good enough to suppose that I take all this trouble because I think it my duty to submit my view of the case to the Government.

I beg your attention to the first fact in the case, E. Meurant's letter of the 28th May, 1844, to the Colonial Secretary, requesting that the Crown's right of pre-emption be waived over a piece of land situate at the junction of the Auckland and Tamaki Roads, containing 13 acres 3 roods 10 perches, purchased by him from the Native chiefs, Jabez Bunting and William Waters, and to the minutes on the back of it. The first is, "Referred to Protector." The next is by the Protector: "I had been given to understand that this piece of land was a gift from the chief Wetere Wata to Mr. Meurant's wife and children; if so, should it not be secured to them?—G. C." Then follows minutes by Governor Fitzroy, "Certainly.—R. F." "Dr. Sinclair informed the applicant that the land in question being held in right of his wife requires no purchase or deed of grant from the Crown." In reply to Meurant's letter of the 28th May, 1844, the Colonial Secretary wrote, 3rd June, 1844, stating he was directed to acquaint Meurant, in reply to his application for the waiver of pre-emption right over his land, that the land in question being held in right of his wife, no purchase or deed of grant from the Crown would be required.

Before the date of this letter—only the day before—it is true, but nevertheless before the application for the waiver of pre-emption, Meurant had purchased the land and obtained a conveyance of it from the Native owners, which, as I shall show presently, debarred him from obtaining the waiver of the pre-emption right. No answer was given by Meurant to this letter, and no evidence was produced during the inquiry to show that the land was a gift and not a purchase; but, on the contrary, it was shown that Meurant had distinctly admitted, after the Crown grant had been issued, that this land was a purchase and not a gift. The deed conveying the land was an ordinary purchase-deed, but without relying altogether on that, although it is the only evidence of the manner of acquiring this land which has been given, Meurant, nor any person on his behalf, has ever attempted to explain; Meurant, adopting this mistake of the Protector of Aborigines, and afterwards actually himself directly stating that this land had been given to his wife. If the fact had been that the conveyance in the shape of an ordinary purchase-deed had been obtained from and a sum of money paid to the Natives, conveying as a mere precaution and for better security, it is not probable that Meurant would not have advanced this as an explanation; but, as I have stated, no explanation ever has been offered, and there is a clear admission that the representation that this land was a gift was false. There is no other letter from Meurant referring to this land until the 11th June, 1846, in which he proceeds to represent this land as having been a gift to his wife, and then asks for a grant of the land to trustees for the benefit of his wife and children. I beg to refer you to the minutes on the back of this letter. It was forwarded for the opinion of the Attorney-General, and the Attorney-General suggests that a confirmatory grant from the Crown at least would be necessary, and that the Native owners should execute a conveyance to the husband for life, then to the wife for life, with the remainder to the children in fee, and proceeds to say, "In such case the Crown would exercise its discretion as to the quantity." On 11th December, 1846, Meurant wrote another letter referring to this letter of 10th June, 1846, reminding the Government that he had received no answer. On the back of this letter of 11th December, 1846, there is a minute by Governor Grey: "The whole subject requires a lengthened consideration, and a reference to the Home authorities;" and a minute by the Colonial Secretary, "Mr. Meurant informed accordingly."

I apprehend there can be no doubt that Meurant was informed fully as to the views of the Government, and even saw the minutes referred to, because he was an interpreter constantly employed about the Governor, and I think it clear that, very soon after this, steps were taken to carry out another of those "adjustments" so common at this time, by making a grant for the benefit of Meurant's wife and children. Amongst the papers there is a memorial to the Governor from a man of the name of Sharp, stating that he had leased from Meurant a piece of land at Remuera for seven years, and had

made improvements upon it, and that he had been recently informed that the Governor had taken the land for Government purposes, and he prayed therefore for compensation. This memorial was evidently presented towards the end of 1847, and I beg your attention to the minutes upon it, as plainly showing that some portion of the land claimed as belonging to Meurant's wife had been taken by the Government, and that Meurant was fully cognizant of it and assenting. The minutes are by the Colonial Secretary, in these words: "Mr. Meurant to be sent for." "Mr. M. promises to arrange the matter with the memorialist." "The memorialist informed that the matter being a private arrangement, His Excellency regrets he cannot interfere in it, and the memorialist is referred to Mr. Meurant on the subject.—A. S., December 6th, 1847." Apparently, Mr. Meurant did arrange the matter with the memorialist, for he does not appear again; neither is anything said by Meurant about land having been wrongfully taken by the Government (this is not advanced in any shape until 28th August, 1849, when Meurant made his petition to the Governor and Legislative Council of the colony, nearly a year after the issue of the grant). The next document I beg to refer you to is the letter of 29th July, 1848, by Meurant to the Colonial Secretary, enclosing, "for the information of His Excellency the Governor-in-Chief, copies of the Native deeds conveying two pieces of land on the north side and on the south side of the Tamaki Road to me in trust for my wife and children, so that His Excellency will be pleased to direct the deeds of grant may issue to me for the same," to use his own words. One deed is dated 27th May, 1844, and is a conveyance from Te Rangia Tahua (known as Jabez Bunting), and Te Hara (known as William Walker), chief of the Ngatetimaho, a tribe resident at Waikato, to Meurant and his heirs, in consideration of the price of £13 13s. of the land containing 13 acres 3 roods 10 perches on the south side of the Tamaki Road (being the same land mentioned in Meurant's letter of 28th May, 1844, and instead of their being any provision in it for the benefit of his wife, the Native woman, Kenehuru, there is an express declaration against dower).

The other deed is dated 6th April, 1847, and is a conveyance by Te Tawa (better known as Apehai Te Kawau), Te Hira (Apehai's son), and Te Keene, described as aboriginal native chiefs, of the tribe Ngatewhatua, residing near Auckland, to Kenehuru, an aboriginal native woman, now Eliza Meurant, for good consideration only, and the land to be held "by the said Kenehuru and her heirs to her and their only proper use and behoof." It will be observed that this is the first time Meurant mentions two pieces of land, and that neither of these deeds conveys any land to Meurant in trust for his wife and children, as he states in his letter accompanying them. This fact could hardly have escaped the notice of the Government, but I think it is a matter beyond doubt that neither the Governor, nor the Attorney-General, nor any officer of the Government, considered the form of these deeds as having any bearing on the question whether the grant applied for could be made, but all relied solely on Meurant's statement that these lands had been given to his wife. No reference apparently to Meurant's first letter, dated 28th May, 1844. I beg particularly to ask your attention to the minutes upon and documents attached to this letter of the 20th July, 1848. The first minute is by Governor Grey, 22nd July, 1848, in which he asks "Mr. Swainson,—Do you think that the Governor has the power to convey the land to Meurant in trust for his wife and children. I think this is one of those cases in which it would be desirable, if possible, to secure the rights of half-caste children." Then follows a minute of the opinion of the Attorney-General, dated 25th July, 1848:—"I think that at present, and under the existing instructions, the Governor has not the power to make a valid grant of this land to meet cases of a like nature; it would be very desirable that a special authority should be granted to the Governor by Royal instructions." Then there is a minute, dated 31st July, 1848, by Governor Grey: "Dr. Sinclair,—The land can at once be granted to Meurant in trust for his wife and children, in such form as the Attorney-General may suggest. I will then refer Home for a confirmation of these grants, and for a general authority on the subject." Then it is referred to the Attorney-General to prepare the form of grant, and attached is the draft of the Crown grant which was afterwards issued in Mr. Swainson's handwriting, and signed by him, and dated 8th August, 1848; and then minutes showing that this draft was sent to the Surveyor-General with instructions for the preparation of the necessary plan of the piece of land which was to be granted, which it was then admitted by counsel engaged in the inquiry, was then defined to be the piece of land mentioned in Meurant's letter of the 28th May, 1844, on the south side of the Tamaki Road, which, upon survey, was found to contain 14 acres 1 rood 10 perches, instead of 13 acres 3 roods 10 perches, as stated by Meurant, and a piece of 10 acres 2 roods 8 perches on the north side of the Tamaki Road, being part only of the piece containing 30 acres 2 roods 8 perches, said to be a gift to Kenehuru, Meurant's wife.

It was then proposed to give evidence to show that the Government after this claimed the remaining portion of this land as Government land, and subsequently dealt with it as such, and that there was no authority from Kenehuru so to deal with the land. I contended it was clear that Meurant was a consenting party to the whole arrangement, and his acts would bind his wife in the circumstances of the case—that she had accepted the grant, neither she nor any person on her behalf had ever repudiated it in any way, and that she and all represented by her had the full benefit of the grant, and still claimed to retain it, and as they obtained this benefit through the agency of Meurant, neither the widow nor the children could be heard to say that they were not bound by any arrangement made by him on their behalf. After this I did not consider it necessary to call as a witness a person formerly in the Survey Office of the colony, who actually prepared the Crown grant which was subsequently issued, and who could have proved that only 10 acres 2 roods 8 perches, as before mentioned, were by directions of the Government to be included in the grant. In order to show the reason of Meurant's conduct in representing a portion of this land to have been a gift, when it was not a gift but an illegal purchase, in respect of which he could not have obtained a certificate of the waiver of pre-emption, which was necessary to obtain a grant of the land, I beg to refer you to the Proclamation of Governor Fitzroy of 26th March, 1844, published in the Government *Gazette* of that date, and again in the *Gazette* of 24th June, 1844, particularly regulations 1, 7, and 12, and the construction put upon this Proclamation by the promulgator himself in the recital of the Proclamation by Governor Fitzroy of 10th October, 1844, published in the *Gazette* of that date, where he says the conditions of that Proclamation have been disregarded "by persons making purchases of land from the Natives without first applying for and obtaining the Governor's consent to waive the right of pre-emption."

I beg also to refer you to the notices appearing in the *Gazette* of 16th June, 1846, particularly the notice that all persons claiming to have made purchases under certificates waiving the Crown's right of pre-emption, issued in terms of Governor Fitzroy's Proclamation of 26th March, 1844, should send in all papers, &c., for examination before Commissioners before the 15th September then next, after which time no claim would be received or entertained. In fact, Meurant never obtained and never applied for any such certificate, but on the 11th June, 1846, five days before this notice in the *Gazette* appears, he writes for the first time after the 28th May, 1844, his letter, in which he says, "The land in question was in point of fact a deed of gift from my wife's relatives to her." This statement, as I have already intimated, he knew to be false. And this leads me to the copy to be found amongst the papers of Meurant's memorial to the Governor and Legislative Council of New Zealand, in which he states that in May, 1844, this land, containing 30 acres 2 roods 8 perches, on the north side of the Tamaki Road at its junction with the Epsom Road, was transferred by the chiefs Te Kawau, Te Hira, and Te Keene to their blood relation Kenehuru as a marriage portion, and for the support of her children, and proceeds to state, "That your petitioner, being desirous that this land should be held by Crown title as well as by Maori right, applied to the Government on 28th May, 1844, for waiver of pre-emption, and was informed, in answer, that the land in question being held in right of your petitioner's wife, no purchase or deed of grant from the Crown would be required." This, of course, is an incorrect statement, and there are many other statements in the memorial which, together with this, he afterwards admitted could not be substantiated; and in a letter of his in October, 1849, he describes the 14-acre piece of land on the southern side of the Tamaki Road as the land purchased by him, and the piece of 30 acres on the northern side as the piece given to his wife. He also distinguishes between the two pieces of land in this way in his letter forwarded to Lord Grey, and his Lordship, in his despatch of the 5th April, 1851, to Governor Grey, refers to the "confusion" occasioned by Meurant not accurately distinguishing between his claims for land alleged to have been granted to his native wife by Native chiefs, and other land which it now appears he purchased from Native chiefs. I beg also to enclose for your information a copy of the Crown grant of 20th September, 1848, which recites both pieces of land granted as having been gifts to Kenehuru, wife of Meurant. On the consideration of the whole case I submit that this gift by the Governor to Meurant, his wife and children, should not in any manner be impeached; but if any of the grantees insists upon going behind it by making any claims in respect of matters which were compromised so to speak, then the whole matter must be gone into, and it will appear that these grantees have wrongfully acquired land of greater value than the land which they complain has been taken from them. I rely upon the evidence taken in the course of the inquiry as showing that the 14 acres on the southern side of the Tamaki Road are of greater value than the 20 acres on the northern side omitted from the grant.

I may state that I have ascertained since this inquiry has been terminated that there are two or three persons residing in Auckland who knew Meurant when alive, who can depose to his having often expressed himself, immediately after the issue of the grant, as being perfectly satisfied with the arrangement thereby made.

I have, &c.,
J. C. MacCormick.

The Hon. H. A. Atkinson,
Land Claims Commmissioner, Wellington.

Enclosure in No. 11.
(30685.)

Edward Meurant,
10a. 2r. 8p., and 14a. 1r. 10p.

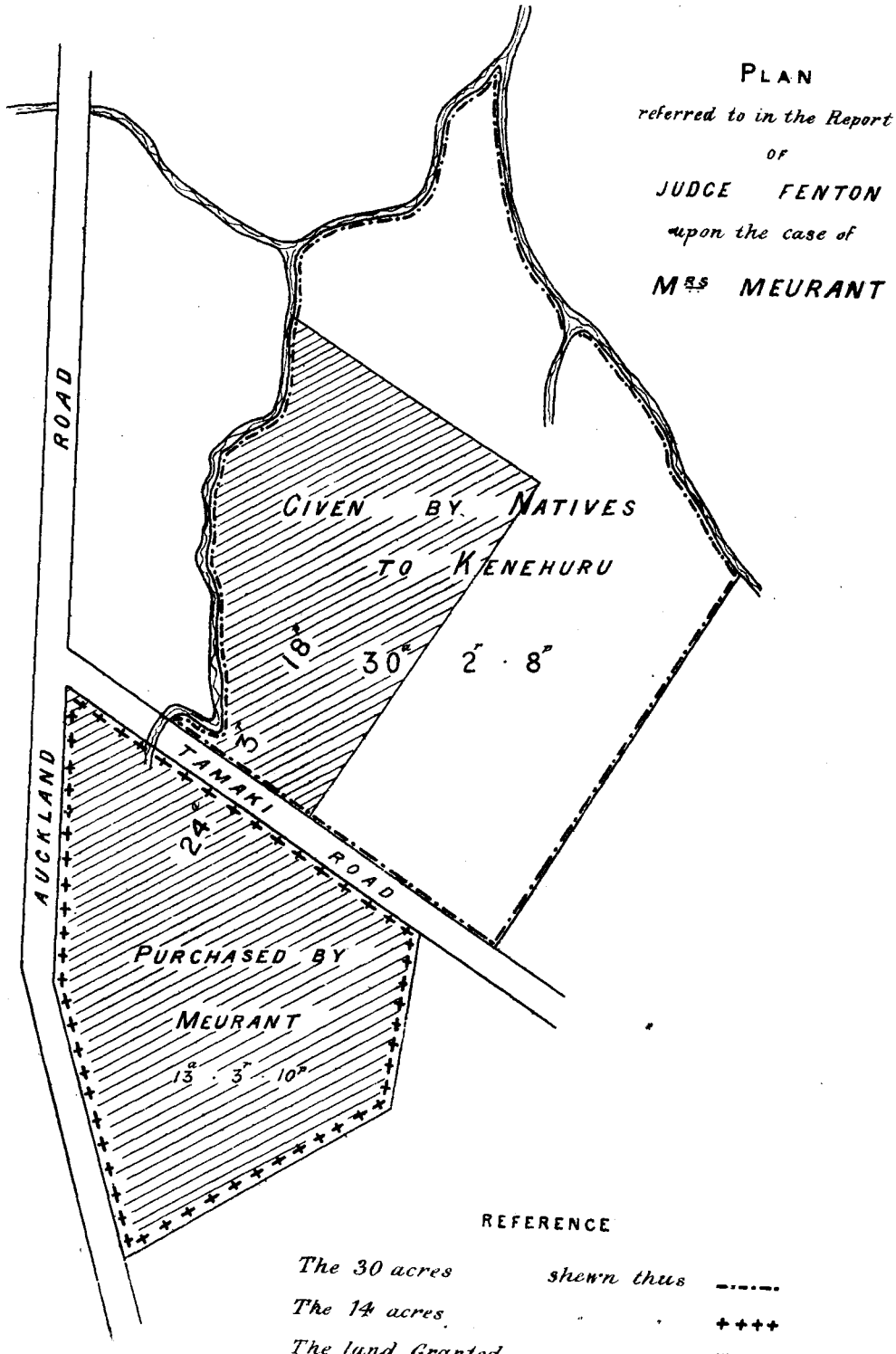
Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith and so forth: To all to whom these Presents shall come, Greeting. Whereas the Native owners of the allotments or parcels of land hereinafter described have alienated the same for and towards the maintenance and support of Eliza Meurant, a Native woman, formerly called Kenehuru, now the wife of Edward Meurant, of Auckland, and for and towards the maintenance and support of the children of the said Eliza Meurant: Now know ye, that we being desirous of securing the said allotments or parcels of land for the purposes aforesaid, of our especial grace and mere motion for us our heirs and successors, do hereby grant and confirm all those two allotments or parcels of land situated in the Suburbs of Auckland, and Parish of Waitemata, in the County of Eden, being Lot 27 of Section 14, containing ten acres two roods eight perches, more or less; bounded on the North-east by Lot 25, one thousand and fifteen links; on the South-east by a road, one thousand three hundred and eighty-two links; on the South-west by the road to the Tamaki, five hundred and sixty-five links; and on the West by a stream and Lot 1 of Section 11, containing fourteen acres one rood and ten perches, more or less; bounded on the North-east by the road to the Tamaki, one thousand four hundred and twenty-one and fifty links; on the West by the road to Onehunga, nine hundred and twenty-two and one thousand and five links; on the South-east and East by Lot 2, one thousand and fourteen and five hundred and eighty-six links; with all the rights and appurtenances thereto belonging, unto the said Edward Meurant during his life; and from and immediately after the decease of the said Edward Meurant to the said Eliza Meurant during her life; and from and after the decease of the survivor of them the said Edward Meurant and Eliza Meurant to such of the children of the said Eliza Meurant by her present or any future husband as shall attain the age of twenty-one years, or shall die under that age leaving lawful issue living at his her or their decease, and his her or their assigns for ever, if more than one as tenants in common.

In testimony whereof we have caused this our grant to to be sealed with the Seal of our Province of New Ulster. Witness our trusty and well-beloved George Dean Pitt, Esquire, Lieutenant-Governor of our said province and its dependencies, at Government House, Auckland, in New Ulster aforesaid, this twentieth day of September, in the twelfth year of our reign, and in the year of our Lord one thousand eight hundred and forty-eight.

Geo. D. Pitt,
Lieut.-Governor.

By Authority: George Didsbury, Government Printer, Wellington.—1875.

Price 9d.]


PLAN
referred to in the Report
of
JUDGE FENTON
upon the case of
Mrs MEURANT
AUCKLAND ROAD
GIVEN BY NATIVES
TO KENEHURU
18a 30r 2r · 8p
TAMAKI ROAD
24a 0r 0p
PURCHASED BY
MEURANT
13a · 3r · 10p
REFERENCE
The 30 acres shewn thus
The 14 acres
The land Granted
The remainder = 19 · 2 · 0
F. D. Fenton.