

from being left comparatively landless, and debarred of their former advantages in a country formerly their own.

The following particulars will show what has been done for the Ngaitahu Tribe by way of fulfilling the original engagement with them that they should have ample reserves for their present and future wants, and that the Governor would set apart additional lands for them on the country being surveyed: The average acreage per individual set apart in Kemp's Purchase in 1848 was under ten acres; but the census taken at the time did not include the whole of the people for whom provision ought to have been made. This was caused by the stupidity and obstinacy of the Natives to furnish the necessary information. This kind of stupidity even prevails at the present time in some localities, great difficulty being experienced in collecting particulars of this kind, through the supposition that it is needed for some ulterior purpose. The awards made by the Native Land Court in 1868, together with the additional area set apart by the Government for Native purposes, brought up the average to nearly twenty acres per individual for the residents at the settlements within the block. Since the Court sat in 1868, 3,024 acres have been set aside for the Kaiapoi Natives as compensation for land appropriated to others, inclusive also of 200 acres given as compensation for the inferior character of some of the former awards. Notwithstanding the increase made at Kaiapoi, the general average adapted to the last census is still under twenty acres per individual. A general average is not, however, reliable as an indication of the sufficiency or non-sufficiency of the quantity needed to provide every one with a fair quantity of land; as, for instance, the acreage at the several settlements apportioned over the resident population ranges from five acres and a half per individual in some places to thirty-seven acres in others. At places also where the average is high per individual there are many persons who are without land.

The actual position of the matter cannot be finally determined as regards the individual acreage until the whole of the Court-work is completed, and the records of acreage allotted individually are made up for each settlement. A very large proportion of the additional land awarded in 1868 and subsequently is of very inferior character, being very far below the original reserves in the quality of the soil; and this is one of the chief difficulties to be contended with in selecting land for any of the objects under contemplation.

In the report submitted by the Commissioners appointed in 1879 to deal with the Middle Island question, allusion is made to the system of tenths in connection with Kemp's Block as having been intended as the proportion to be set apart for the Natives within the aforesaid block. This view of the matter, I beg to submit, is a misconception, caused probably by the fact that one of the contracting parties named in the deed of June, 1848, is the agent of the New Zealand Company, the inference being that it was a purchase effected by the Company, whereas, as a matter of fact, no authority existed to enter into a contract of the kind until the Crown's right of pre-emption had been waived; but even then a legal title would not have been obtained without such purchase had been confirmed by a Crown grant, as the Governor had no authority to grant a waiver of pre-emption. The agreement, therefore, between the Native vendors and Colonel Wakefield, the Company's agent, did not create any title in the purchaser, and had no force to operate as a conveyance of the land therein to the person and in the manner therein expressed.

At the time of the execution of the Ngaitahu deed "The Native Land Claims Ordinance, 1841," and the 13th chapter of the Royal Instructions of 1846 were in full operation. The Ordinance of 1841 enacted, *inter alia*, that the sale and absolute right of pre-emption from the aboriginal inhabitants of New Zealand vested in, and could only be exercised by, "Her Majesty, her heirs and successors." All titles to land, however, obtained either mediately or immediately from chiefs or individuals of the aboriginal tribes, unless allowed by the Crown, were declared absolutely null and void. Under another clause the Governor was authorised to appoint Commissioners to hear, examine, and report on claims to grants of land in virtue of titles acquired from the Natives.

The 13th chapter of the Royal Instructions of 1846 contains the following provision relative to the acquisition of land by private individuals from the Natives: "The conveyance or agreement for the conveyance of any of the lands of or belonging to any of the aboriginal natives in common as tribes or communities, whether in perpetuity or for any definite period, whether absolutely or conditionally, whether in property or by way of lease or occupancy, which may be henceforth made, shall not be of any validity or effect unless the same be so made to, or entered into with, us, our heirs and successors."

It will be seen that the principle of the then existing law was that private individuals could not acquire land from the Natives, and if any attempt was made, as was done in the case of the purchase of Kemp's Block, it would operate as an extinguishment of the Native title, and vest the estate in the Crown. Any informality that formerly existed in connection with the Ngaitahu deed has been cured by clause 2 of "The Ngaitahu Reference Validation Act, 1868."

By another Act of Parliament, passed in the tenth and eleventh year of Her Majesty's reign, it was enacted, *inter alia*, that the several provisions contained in the 13th chapter of the Instructions of 1846 should be suspended within the Province of New Munster (the Middle Island) until the 5th day of July, 1850, and for such further period as should be directed by Parliament, and that during the suspension of the said Instructions all the demesne land of the Crown in the said province, and all the estate and right of Her Majesty therein, shall be absolutely vested in the New Zealand Company, in trust, to sell and otherwise dispose of the same. It was under this Act that the New Zealand Company obtained the necessary authority to carry on colonising operations in the Middle Island within the Ngaitahu territory, and not under Kemp's deed; consequently this block did not come within what was then known as the Company's scheme of settlement, or within the scope or meaning of the 13th clause of the agreement of 1840 between the Imperial Government and the Company. If the position of the question is correctly stated, it follows that the stipulation in regard to reserves in Kemp's block was between the Government and the Natives, an arrangement with which the Company had no concern.