The Olden Style of Purchase.

In the early days of settlement, both before and after the Treaty of Waitangi, land was purchased from the Natives by private individuals or by the Crown in a manner at once simple and public. The proposal to purchase was made to the head chief in the presence of at least some of the lesser chiefs; the boundaries of the lands to be dealt with were described; the price to be paid was agreed to; a day was fixed upon which, in the presence of the tribe, the bargain was to be completed. The purchaser then counted the purchase-money in the presence of the chiefs and people, and placed it in a bag or bags before the principal chief, who would then distribute the money among the other chiefs, leaving them to share their portions among their own hapus and families. Frequently, great chiefs thus disposing of extensive territories would give all the purchase-money to their people, leaving nothing for themselves, and, when the gold was thus bestowed, would shake the empty bag which had held it, upside down, to show that nothing remained. "Those were the days," said Chief Judge Fenton, in describing such a scene, "when the Maori chief was a gentleman."

No such sales were ever disputed. Disputes as to the correct boundaries might arise, but the contract itself, thus made in public with the tribe, was held irrevocable. One danger, however, always existed prior to the institution of the Native Land Court—the same land might be claimed by two tribes, or two hapus of the same tribe. No purchase from one of such contending parties was held binding by the other. On the contrary, the assumption of title by one of several claimants, emphasized by such a sale, made the other claimants more fierce and determined in the assertion of their rights. Thus the early settlers were continually embroiled with different tribes in every part of the colony. All the wars in New Zealand were, either directly or indirectly, caused by contentions arising from the disputed ownership of land. The Wairau massacre, Hone Heke's war in the north, the Waitara and Waikato wars, dying out after a long intermittent history comprised in the ten years from 1860 to 1870—all had their origin either in particular instances of disputed title, or, as in the case of Hone Heke's attack upon Kororareka (Russell, Bay of Islands) and the repeated cutting-down of the flagstaff, in the fear of a general claim being made to the lands of the Maoris.

Land-purchases of a very extended character took place in this open and public manner prior to 1865. Nearly the whole of the South Island and large districts of the North were purchased by the Government. Only a few of these purchases were ever questioned, and then only on the ground of disputed Native ownership.

Necessity for Determination of Tribal Ownership before Sale.

After the commencement of the Waitara war in 1859 it became evident that if lands were to be peacefully acquired from the Natives some competent tribunal must be set up which should, in cases of disputed titles, decide the question of Native ownership prior to the sale or leasing of the lands themselves.

The first Act was passed in 1862. By this statute the Crown waived the right of pre-emption which had been secured by the Treaty of Waitangi and "The Constitution Act, 1852." Henceforth all subjects of the Crown were authorised by law to deal under certain restrictions with the Natives for their lands after the titles had been ascertained by the Native Land Court. "The Native Land Act, 1862," was, however, practically a dead-letter. The first operative law was "The Native Land Act, 1865."

Act of 1865.

For the purposes of ascertaining the ownership of Native land, there was constituted a Court called the Native Land Court. The first three Judges of that Court are still alive, and the Commission has had the great advantage of receiving their testimony at length. To F. D. Fenton, Esq., first Chief Judge, and to Messrs. John Rogan and James Mackay, the first two puisne Judges of the Court, the Commission has to express its gratitude for the very valuable historical evidence and practical suggestions given by them.

Under this Act, after all inquiries had been made regarding a block of Native land, and a decision had been arrived at, a certificate of title was to be issued by the Court, which could be converted into a Crown grant by a specified process.

Lands the titles to which were thus investigated and determined could be declared to be the property of a tribe by its tribal name, or, if the owners did not exceed ten in number, their individual names could be placed in the certificate without the name of the tribe to which they belonged.