Without doubt, all lands in New Zealand were held tribally. The certificates of title should have been issued to the tribes and hapus by name, and some simple method of public dealing with the land provided, analogous to that which had always been recognised and acted upon in the early days, and which, in the ownership of land and dealings of all corporate bodies, had been practised from time immemorial by civilised nations. Had this been done the difficulties, the frauds, and the sufferings, with their attendant loss and litigation, which have brought about a state of confusion regarding the titles to land, would never have occurred.

In only two or three instances were lands certified as belonging to tribes; but even in these cases no method of corporate or tribal dealings with such lands was instituted.

There then arose a strange course of procedure. The law provided that no more than ten individual names should be placed in a certificate of title. Instead of issuing certificates of title in favour of the tribe, the Native Land Court adopted the habit of issuing certificates to individuals by name, causing the Native owners to choose ten, or a lesser number, from among themselves for the purpose.

It thus happened that the lands of tribes composed of numerous hapus and hundreds of individuals, became vested by the certificate of the Court, and afterwards by grant from the Crown, in ten or some lesser number of the vast body of owners. It was believed that these ten were trustees for the whole body. It was so stated in many cases to the Maoris by the Judges of the Native Land Court. There can be but little doubt that it was intended that they should hold that fiduciary position. The certificate, however, erroneously alleged that they were the absolute owners of the land according to Native custom, and the Crown grants, which were issued to them by name, vested an absolute estate of freehold in possession, unencumbered by any trusts or conditions whatever. Thus, in Hawke's Bay 569,220 acres of the finest land in New Zealand, partly surrounding and running inland from the Town of Napier, which belonged to nearly four thousand Natives, who were living upon and cultivating small homesteads, were vested in about two hundred and fifty grantees, without any trust being declared in favour of the vast majority of the persons ascertained by the Native Land Court to be its owners according to Native custom. The history of this land, as it appears in the report of the Hawke's Bay Commission of 1873, illustrates the practice with remarkable force. The property of the people other than the grantees was in all such cases taken from them, under this misinterpretation of the statute, in direct violation of the Treaty of Waitangi, and by evasion of the provisions of the statute itself.

It is a fact worthy of remark that this proceeding of the Native Land Court has never been made a distinct subject of litigation. It is difficult to believe that the Colonial Courts or the Privy Council would have permitted the Treaty of Waitangi and "The Native Land Act, 1865," to be so summarily overruled. In view of possible disputes upon this point, we would respectfully suggest that the question should be settled by legislation.

So soon as the title became vested in these individuals, Europeans commenced to deal with them by purchases, leases, and mortgages. Vast areas of land were thus acquired by Europeans in many districts; and thousands of Native people saw the lands which in reality belonged to them passing, in many cases without their concurrence and against their will, into the hands of strangers. Moreover, oftentimes the moneys received by the ten were appropriated and spent by them without reference to the people for whom they should have been made trustees. This state of things gave rise to many serious complaints.

"The Native Land Act, 1867."

To afford a remedy Parliament passed "The Native Land Act, 1867."

By the 17th section of this Act certificates could still be issued to ten of the owners, but the names of all other owners were to be registered in the Court and indorsed upon the back of the certificate. Under this 17th clause, also, the land comprised in any such certificate could be neither sold nor mortgaged until the land had been subdivided; but it could be leased for a term not exceeding twenty-one years by the ten whose names appeared upon the face of the certificate.

Large areas of land were dealt with under the Act of 1867, and leased by the ten certificated owners; but in most instances the ten received the rent, and appropriated it as the ten owners under the Act of 1865 had done with the purchase-money arising from their sales. This Act was, however, useful by preventing the absolute alienation of these estates from their real owners.