

(2.) That the 42nd section of the Act of 1871 did not help the case, as "The Native Land Act, 1873," impliedly repealed it. (3.) That the deed tendered as a conveyance of the lakes passed nothing to the Government but the fishery-rights. (4.) That extrinsic evidence to extend or qualify the effect of the deed was inadmissible. (5.) That a right to fish was not an interest in land, and therefore not within the jurisdiction of the Court.

After long argument and citation of authorities, with which I need not trouble you, the Court adjourned till next day to consider their decision.

The following morning I learnt that the judgment of the Court would be against the Government on all the questions raised; and I was informed by Mr. Booth that the effect of such a decision upon the Natives would be to place serious difficulties in the way of the completion of other negotiations for the purchase of land not brought under the Act. Upon the sitting of the Court, therefore, I stated that in view of the importance of the questions raised I desired that their determination should be referred to the Supreme Court under the powers conferred by the 103rd section of the Act of 1873.

This application being granted, I applied to have the evidence of Hiko Piata taken *de bene esse* with a view to the powers given the Court by the 100th section of the Act of 1873 and the 58th section of the Act of 1880, as from the age and infirmity of the witness he might be producible on a subsequent occasion. This course being strongly opposed by the counter-claimants, the Court declined to take the evidence; but intimated, on my asking the question, that as the counter-claimants had been offered, and had declined the opportunity of cross-examining, the Court would, in the case of Hiko's death before the hearing of the claims, accept such evidence by declaration or otherwise as might be producible under the wide powers given them by section 23 of the Act of 1880.

The courses left open to the Government are therefore either to state a case upon the questions raised for the opinion of the Supreme Court, or to withdraw the claim for the present.

With regard to the better course to adopt, and generally as to the steps that must be taken to cure the difficulties now raised, I have nothing to do, but I will venture to suggest that Hiko's evidence should, if possible, be embodied in the form of a declaration or affidavit, as his death before the hearing of the case, not an improbable contingency, would considerably weaken the Government claim.

I have, &c.,

The Assistant Law Officer, Wellington.

WILLIAM FITZGERALD.

No. 26.—MINUTES.

Mr. Maunsell to see Hiko, and have prepared application for investigation. Title to the lakes see memorandum.—RICHARD J. GILL, 4th July, 1881.

Mr. Sheridan: Prepare for *Gazette* notification of intention to purchase the Upper and Lower Lake.—RICHARD J. GILL, 4th July, 1881.

Hon. Native Minister: Should this matter come before the Supreme Court or rest till next sitting of Native Land Court at Greytown. Hiko Piata is an old man. I propose that Mr. Maunsell should take him before Mr. Wardell, Resident Magistrate of the district, and obtain from him a declared statement of his sale of the lakes to Her Majesty, to be used in case of death.—RICHARD J. GILL. 4th July, 1881.

No. 27.

Mr. Gill.

Was Hiko's statement taken before his death, or any action taken on this? It was arranged, as I understand, that the Law Officers would give their opinion on Mr. Fitzgerald's report, and that opinion would be that the land should be proclaimed as under purchase. The matter has been sleeping, and Hiko is dead. The Solicitor-General should be asked at once to advise as the course to be taken.

20th July, 1881.

W. ROLLESTON.

No. 28.

The Solicitor-General.

Action has been taken that a fresh application will be made from certain Natives claiming the lake for the Native Land Court to investigate the title; also that the lakes will be notified in *Gazette* as being under purchase in terms of "The Government Native Land Purchase Act, 1879." Will you please advise further action necessary as requested by Hon. Native Minister.

11th July 1881.

RICHARD J. GILL.

No. 29.

The Assistant Law Officer.

PLEASE look into this at once.

11th July, 1881.

Wm. R.

No. 30.

Mr. Gill.

I UNDERSTOOD that what was arranged at the interview between Mr. Rolleston, Mr. Whitaker, Mr. Reid, and myself when Mr. Fitzgerald returned was as follows: (1.) Government would not risk an appeal to the Supreme Court. (2.) For what it was worth a confirmation deed was to be prepared and executed by any Natives who could be got to do so showing that the land under the lakes was intended to be conveyed by the former deed. (3.) The Natives who are prepared to confirm the sale to the Government should be got to make a fresh application to get the title to the land