

September, 1855, of the purchase of land on the eastern side of the lake shows one boundary as running through the lake to the sea.

Advice is requested: (1.) As to the value of the deed dated September, 1855, against the certificate of title issued by the Native Land Court in November, 1883, in as far as the boundaries in the former encroach on those in the latter. (2.) Assuming that the Crown has proved a title to the portion of the lower lake included in the said deed, has the Government any right to let off the waters of the lake when above ordinary level and flooding the other lands, which the deed purports to convey? (3.) Assuming that the Crown has not proved a title, would the whole of the circumstances herein related justify the Government in opening the lake when above, but without reducing it below, ordinary level, by applying the provisions of "The Counties Act, 1886," and "The Public Works Act, 1882?"

A tracing is attached showing the position of the lakes and the land adjoining, which is laid waste from time to time by the overflow.

31st May, 1888.

E. MITCHELSON.

(1) This so-called deed of September, 1855, is not a deed but a receipt from certain persons for a final payment of purchase-money of land included in another deed of September, 1853, and which cannot at present be found. This receipt sets out boundaries of land presumably the same as those in the deed of purchase, and so far as material this shows the line as following "the Wairarapa down to the great sea." The value therefore of the deed of 1853 depends on the meaning to be given to those words, *i.e.*, whether they mean to include any part of the lake or only follow its boundaries? It will be seen they clearly do not, as stated, in express terms show a boundary running through the lake to the sea. (See further general memorandum thereon.)

(2) If the Crown had a clear title to the lower lake it could of course exercise any acts of ownership over the lake which an ordinary proprietor would have. But see my general memorandum.

(3) The Crown has only such rights and powers as are given to it by law, and if authorised to drain the lake could of course exercise its powers, subject to the terms of "The Public Works Act, 1882," including the need of giving compensation to all interests injuriously affected by such work. But the Crown can only undertake such works when Parliament has authorised them to be done, and to let in the compensation clauses of the Public Works Act would probably have a wider operation than is desired. I do not see what "The Counties Act, 1886," has to do with the question as far as Government is concerned.

14th September, 1888.

W. S. REID.

No. 57.

REFERRING to the questions stated within touching the position of the Crown with respect to the Wairarapa Lakes, I have perused the deeds and papers sent me herein, and now beg to state my opinion. The real point at issue is the right of the Crown to the lower part of the lake, which allows the lake waters to escape to the sea, with such aid as may be necessary when it is desired to give such waters outlet. It appears certain land was purchased in September, 1853, and the boundaries of this land are alleged to cover the part of the lower lake above mentioned. This deed is not now to be found, but a receipt for the final payment of purchase-money given by certain Maoris in 1855 repeats these boundaries in general terms, winding up with a general statement that the line "follows the Wairarapa down to the great sea." It will be seen these words are ambiguous, and they are the only words relating to the point at issue. They may mean that the line was produced through the lake to the sea, or only that the line followed the margin of the lake. It would further appear that the Crown has acted as if it did not deem its title very sound. Acts of ownership on the part of the Natives have at all times been allowed over the lake and the spit near the sea. In 1876 the Crown bought out the fishing-rights and all other rights in the land or in the water of certain Maoris who, or some of whom, appear to have signed the receipt above-mentioned in 1855; and in 1882 the Crown applied to the Native Land Court and obtained a declaration of title in respect of the interests bought in 1876. I am aware that such transactions, and especially early transactions, must not be judged as in cases between Europeans, and that the subsequent acts of the Government in respect to these lakes may be consistent with the existence of a prior purchase of the whole interests therein, or partially so, from those then considered competent to deal with the Crown. I can therefore only advise that careful search should be made for the deed of 1853, and for any records bearing on the purchase, and which would tend to show what the Crown actually got for its money. At present, it seems to me, the evidence to show that the Crown bought part of the lake in 1853, or 1855, is not at all sufficient. I may add that if the Crown can clearly establish its original purchase, the subsequent inconsistent acts before-mentioned would not affect its position, nor would the granting of a certificate by the Native Land Court in 1883, as regards this part of the lake, have any effect as against the Crown.

But the Crown has other interests as to which there is no question. It has a declaration of title as to seventeen shares, and has purchased others. It is practically tenant in common with the Maori owners, so that, assuming the Crown cannot show any good title prior to 1876, it has a title in respect of these shares since the 14th February in that year. In my opinion the Crown is entitled to exercise acts of ownership in respect of its shares in the lake, and if it thought fit could reduce the level of the lake to avoid flooding of land higher up, or any other lawful purpose. Such rights is, however, subject to the rights of the co-owners, and if they could show that their fishing-rights would be injured or destroyed by the exercise of such rights on the part of the Crown, the Supreme Court would, by injunction, restrain such injury or destruction. A great deal would depend on the strength of the case the Crown could make, and whether that of the Natives was stronger in equity and good conscience.

The following courses therefore seem open: (1) In reliance on the original purchase as alleged to act as the sole owner of this part of the lake, leaving any one aggrieved to his remedy at law; (2) take such action in respect of the part ownership of the Crown, again leaving aggrieved parties to their legal remedy; and (3) obtain, through the medium of the Native Land Court, a partition of the respective interests of the Maoris and the Crown, the latter endeavouring to secure that portion of the lake which will enable it to carry out such drainage-works as may be necessary in the interests of all concerned, and care being taken that such partition should be so