

THIS is the printed copy, judgment, marked "B," referred to in our report hereto annexed:—

W. B. EDWARDS, }
JOHN ORMSBY, } Commissioners.

"B" OF EXHIBIT A.

NATIVE LAND COMMISSION, GISBORNE.—WHATATUTU No. 1.—APPLICATION OF A. C. ARTHUR.

JUDGMENT OF HIS HONOUR MR. JUSTICE EDWARDS.—THURSDAY, 8TH JANUARY, 1891.

THIS block of land is held under memorial of ownership issued by the Native Land Court, under the provisions of "The Native Land Act, 1873," to Hone Kewa and other Natives.

The applicant claims to have acquired by purchase from certain of the Natives named in the memorial of ownership, or their successors duly appointed by the Native Land Court, their interests in the block.

The applicant has applied to the Commissioners, under the provisions of "The Native Land Court Acts Amendment Act, 1889," to inquire into the circumstances attending the alleged alienations of the interests claimed by him in the block; and he asks the Commissioners, as the result of such inquiry, to grant to him a certificate under section 27 of the same Act, with a view to validate the instruments under which he claims. These instruments are two in number, the first bearing date the 1st April, 1878, purporting to be a conveyance from Hone Kewa and others to John Gibson Kinross and Andrew Graham, under whom the applicant claims title, and the second, dated the 27th November, 1882, purporting to be a conveyance from Pere Moreti and others to the applicant.

It is necessary to examine the form and the present condition of these instruments. The first of these, in its present condition, runs thus: "The deed made the 1st day of April, 1878, between Hone Kewa, Tiopira Tawhiao, Epiniha Tipuna, &c. [enumerating the names of thirty Natives], all of the district of Poverty Bay, in the Colony of New Zealand, aboriginal natives, of the first part, Wirihana Tupeka, husband of the said Mere Aira Tupeka, &c. [enumerating the names of five Natives], of the second part, and John Gibson Kinross and Andrew Graham, hereinafter called 'the said purchasers,' of the third part, whereas the said parties hereto of the first part are legally or equitably seised of or otherwise entitled to the hereditaments hereinafter expressed to be hereby granted, and have contracted and agreed with the said purchasers for the absolute sale thereof to them for the considerations hereinafter appearing. Now, this deed witnesseth that in pursuance of the said agreement, and in consideration of the several sums set opposite to their respective names in the schedule hereto annexed, which said several sums, amounting in the aggregate to the sum of £148 10s. the receipt, &c. They, the said parties hereto of the first part (such as them as are married women having obtained thereto the concurrence and consent of their respective husbands, testified by their said husbands becoming parties hereto), do each and every of them doth hereby grant, convey, assure, and release, and the said parties hereto of the second part, and each and every of them, doth hereby grant, convey, confirm, and release unto the said purchasers and their heirs and assigns all that piece or parcel of land, &c."

It is admitted on the part of the applicant that, at the time when this document was signed by the Natives whose signatures are attached to it, the names now written in as the names of the parties of the first and second parts, and the sum now written in as the aggregate amount of the purchase-money, were not written in, but that the document then contained blank spaces where these particulars now appear, having been filled in after the execution of the deed by the Natives. It also appears on the face of the document, and is not contested by the applicant, that the statement in Maori indorsed upon the deed in supposed pursuance of section 85 of "The Native Land Act, 1873," was not so indorsed until after the execution of the deed. It also appears upon the face of the deed that the name of Marara Tahuipare is written in the body of the deed as one of the conveying parties, but that she was then dead, and that the document was executed by Paora Haupa as her successor; and also that the signature of Tiopira Tawhiao, who signs the deed as the husband of Apihaka Tawhiao, one of the conveying parties, was attested by one witness only.

The second of the two deeds upon which the applicant relies is in the same form as the first, it contained at the time of its execution the same blanks, and these have since its execution been similarly filled in.

None of the Natives whose shares are claimed by the applicant appeared on the inquiry to oppose the application, and the Commissioners are satisfied upon the evidence adduced that the transactions purporting to be evidenced by the documents under which the applicant claims were entered into in good faith, and were not in any way contrary to equity and good conscience, and that the agreed purchase-money has been properly paid. The Commissioners are also satisfied (in the wording of the 27th section, under which the applicant claims a certificate) that the intended alienations purporting to be evidenced by the documents under which the applicant claims are liable to be impeached, because such alienations, being of land held under memorial of ownership, did not include the whole of the signatures of the Natives owning under such memorial of ownership.

The applicant therefore has so far brought himself within the provisions of section 27; but it appeared to me at the hearing that the documents under which the applicant claims are liable to be impeached upon other grounds than those mentioned in section 27—namely, upon the grounds that the documents in question had been altered in material parts since their execution, and that, inasmuch as the Maori translations were not indorsed upon the documents until after their execution, the provisions of section 85 of "The Native Land Act, 1873," had not been complied with. It also appeared to me that, while the Commissioners have power under section 27 to validate documents which are invalid for the special reasons therein mentioned, they have not power to validate documents which are also invalid for other reasons.