

required to be so indorsed and certified prior to the execution of the deed. This is in my opinion the grammatical construction of the words, and reason requires that this construction shall be given to them.

The plain reason for requiring the Maori statement was to insure that the Natives executing the deed might have reasonable means of acquainting themselves with its contents, and that some check might be put upon the interpreters.

The instrument must owe such effect as it had to the execution by the Natives, of which, in my opinion, it is clear that the interpretation and the Maori statement formed part, and it could not depend upon the writing by a licensed interpreter upon the deed of a statement in Maori years after the signature by the Natives.

Any other construction of the section would, with regard to freeholds, for the conveyance of which the assent of the Native Land Court was not necessary, involve the absurdity that the estate must pass by the interpretation, and not by the execution.

The construction which I have put upon this part of section 85 is strictly in accordance with the reasoning of the judgment of Mr. Justice Richmond in *Kawatini v. Kinross*, 3 jur., N.S., S.C., 149.

Further, it is plain that the words "such interpreter," in section 85, refer to the interpreter explaining the deed to the executing Maoris.

For these reasons I am of opinion that a memorandum of transfer complying in all respects with the provisions of section 85 was a condition precedent to the exercise by the Native Land Court of the provisions of sections 59, 60, 61, and 75; and I am further of opinion that the documents on which the applicant relies do not comply with the provisions of section 85.

Apart, therefore, from the fact that the instruments under which the applicant claims were not executed by all the Natives named in the memorial of ownership, they could not have formed a valid basis for an application to the Native Land Court for an inquiry, certificate, and order under sections 59, 60, 61, and 75 of the Act of 1873.

It was contended by Mr. De Lautour, however, that if the Commissioners find the facts necessary to bring the application within section 27 of the Act of 1889, they may, under that section, validate the instruments under which the applicant claims, notwithstanding that they find other facts which would in themselves have precluded the Native Land Court from giving any effect to such instruments, even if the same had been executed by every Native named in the memorial of ownership; and it is urged that this has already been decided by the Chief Justice in *Piripi v. Arthur*.

This is a startling contention, and, if it be correct, an applicant who claims under a state of facts which shows that three essentials are wanting to complete his title may be better off than an applicant who wants one only of such essentials.

Thus, if in the present case the applicant had procured the signatures of all the Natives named in the memorial to an instrument not executed in accordance with the 85th section of the Act of 1873, and which therefore could form no valid basis to give the Native Land Court jurisdiction to make an inquiry, certificate, and order under the provisions of sections 59, 60, 61, and 75 of the Act of 1873, and the Native Land Court had nevertheless made such inquiry, certificate, and order, it is plain that the Commissioners could give him no relief under section 27, because his conveyance could not be impeached for any of the reasons therein mentioned, nor could it be said that the completion of the intended alienations was prevented by a subsequent alteration of the law.

Yet it is said that in the present case the Commissioners can give him relief under section 27 because, in addition to the fact that the conveyances under which he claims are not executed in accordance with the 85th section of the Act of 1873, his title is further defective because they are not executed by all the Natives owning under the memorial of ownership, and because the transactions which they purport to evidence have not received the approval of the Native Land Court.

This would be a strange state of the law, and I am unable to find anything in the judgment in *Piripi v. Arthur* which justifies that contention.

On the contrary, I find in the judgment of the Chief Justice the following passage, which appears to me to be entirely at variance with such a construction of the section in question: "In substance the inquiries to be made by the Commissioners under the 27th section as to the alienations, whether by the whole or less than the whole of the owners, are those which would have had to be made by the Native Land Court under the Act of 1873 had the alienation been by the whole or by a majority, with one exception—that exception is that it is not provided that the Commissioners are to ascertain whether the Native owner still assents to the sale."

I am clearly of opinion that the construction contended for by Mr. De Lautour is not the true construction of section 27, and that, in cases in which it appears to the Commissioners that the instruments under which the applicant claims are void for reasons other than those mentioned in the section in question, they ought not to grant a certificate under that section.

If it had simply been provided that the effect of such certificate was to remove the difficulties occasioned by the defects mentioned in the section in question, I should have thought that the certificate might be granted for the purpose of removing the defects curable under section 27, leaving the instruments otherwise to such operation as they might have; but this is not the case.

Section 27 provides that, after the signature by the Commissioners of a certificate thereunder, "such intended alienation shall be deemed to be valid and effectual from the date of the instrument purporting to effect such alienation, or from such other date as the Commissioners may determine, and such instrument may thereupon be registered under 'The Land Transfer Act, 1885.'"

In the present case, the land in question has been under the provisions of "The Native Land Transfer Act, 1885," and the certificate of title is in the possession of the applicant, having been issued to him by the District Land Registrar under an erroneous view of the law.

To grant certificates under section 27 to the instruments under which the applicant claims would therefore be to enable him at once to procure himself to be registered as proprietor under