

1940.
NEW ZEALAND

THE NATIVE PURPOSES ACT, 1937.

REPORT AND RECOMMENDATION ON PETITION No. 204 OF 1936, OF HIRINI WHAANGA CHRISTY AND OTHERS, RELATIVE TO THE SALE OF PORTION OF THE NUHAKA No. 1 BLOCK.

Presented to Parliament in pursuance of the Provisions of Section 16 of the Native Purposes Act, 1937

Native Land Court (Chief Judge's Office),
Wellington, C. I., 25th June, 1940.

Memorandum for the Hon. the NATIVE MINISTER, Wellington.

NUHAKA No. 1 BLOCK.

I TRANSMIT to you the report made by the Court pursuant to section 16 of the Native Purposes Act, 1937, upon the claims and allegations contained in Petition No. 204 of 1936, of Hirini Whaanga Christy and others, concerning the sale of the Nuhaka No. 1 Block to the Crown.

In view of the Court's report, I have no recommendation to make.

CHAS. E. MACCORMICK, Chief Judge.

THE NATIVE LAND ACT, 1931, SECTION 16 OF THE NATIVE PURPOSES ACT, 1937

In the Native Land Court of New Zealand, Tairāwhiti District.— In the matter of the land formerly known as the Nuhaka (No. 1) Block; and in the matter of a sale thereof to the Crown, and in the matter of a petition No. 204 of 1936, by Hirini Whaanga Christy and others, referred to the Court for inquiry and report.

At a sitting of the Court held at Nuhaka on the 30th June, 1938, and the following days before Harold Carr, Esquire, Judge.

The Court begs to report that—

The Crown and the petitioners were represented and were heard at length.

The land known as the Nuhaka (No. 1) Block was conveyed to the Crown by the leading chiefs of the day by deed dated the 16th March, 1865. As usual where the title had not been investigated or the land surveyed, the boundaries of the area sold and purchased were defined by reference in the deed to natural features. Most of these points are also referred to in the plan attached to the deed, and the area affected thereby was presumed to be approximately 120,000 acres.

The petitioners allege that an area of 28,267 acres and being the northern part of the land comprised in the deed of sale was not intended to be sold by their elders, and that the sale was of an area of approximately 10,000 acres only lying to the south of the 39th parallel. They state that their elders had no knowledge, memory, or tradition of any sale of a greater area than the 10,000 acres referred to, and in support of their claims they point out that:—

In May, 1865, a notice in the *Gazette* certified to the extinguishment of the Native title to 10,000 acres and that it was not until ten years later that a similar notice appeared in the *Gazette* affecting the area to the north of the 29th parallel.

No survey was made of this northern area of 28,267 acres.

The land is not named in the deed and that no area is mentioned therein except on the plan annexed thereto and which erroneously gives an area of 120,000 acres.

No reserves were provided by the deed, although it was customary (according to petitioners) to set aside for the Native owners 10 per cent. of the area purchased.

The purchase price of 1s. 9d. per acre (for the area of 38,267 acres) was an inadequate figure at the time of sale.

The deed is suspect, inasmuch as it contains alleged signatures of people who were children in 1865.

Two witnesses were called and gave evidence in support of the above claims.

The correctness of all these allegations was denied on behalf of the Crown, and the submissions in rebuttal shortly were that

The separate *Gazette* notices regarding the extinguishment of the Native title have not the significance imputed—the 39th parallel being the boundary between the Provincial Districts of Auckland and Hawke's Bay—and that each province had its own system of administration of land and each worked independently of the other.

The area affected by the deed was governed by the boundaries set out therein, and this area was afterwards found to be 38,267 acres instead of 120,000 acres as thought.

It was not customary for the Crown to set aside as reserves 10 per cent. of the area purchased in the Hawke's Bay and Auckland Districts.

The price paid, £3,300, was a reasonable sum and compares with other Crown purchases made about that time.

It was not unusual to append the names of children to deeds of sale.

The main point at issue is whether or not the land to the north of the 39th parallel was knowingly sold to the Crown by the Native chiefs in 1865.

To get the atmosphere or a better understanding of the transactions that were in progress at the time for the purchase of land by the Crown at the north end of the Hawke's Bay it is necessary to again refer (see report on Petition 82/1936 *re* Mahia sale) to the narrative written for the *Hawke's Bay Herald* by Mr. Grindell, who accompanied Mr. McLean to those parts in 1864. The following is extracted as being pertinent to the issues now raised:—

“ We started in the early part of this day (24th October 1864) for Nuhaka and the Wairoa, on our return towards Napier. Ihaka and Tamihana Taruke, his father-in-law, with several other men of influence, accompanied us. Ihaka himself was greatly elated at the idea of escorting officers of the Queen to the Wairoa to purchase land in opposition to the policy of the King party. He seemed to look upon himself somewhat in the light of a victorious general marching at the head of his army to take possession of surrendered territory. About 1 o'clock p.m. we arrived at Nuhaka (about 12 miles from Te Mahia) and encamped there that night, so as to afford the Natives inclined to sell land at that place an opportunity of discussing the question. Matenga Tukareaho's house was the first residence we came to. This is the man who I have already noticed as having been the prime mover in the murder of Te Rataua, Ihaka's father. He received us very graciously, and declared that he was anxious to have Europeans settled in his neighbourhood—and in furtherance of that object, he and his people, he said, were prepared to sell some land to the Government. It was arranged that we should cross to the south side of the river, where the principal body of natives reside, and encamp there for the night whilst he went to summon those of his friends who were absent a short distance inland. Crossing the river we were received with shouts of—‘ Welcome! welcome the Queen's pakehas to Nuhaka!’ We found about 50 or 60 people assembled here awaiting our arrival. In an hour or two Te Matenga Tukareaho and his friends arrived, and the business of the day commenced forthwith. Te Matenga expressed himself strongly in favour of selling land. He is the resident chief of this place. He said his young men were desirous of declaring themselves on the side of the Government and were anxious that Europeans should come and settle amongst them, that, therefore, he had decided upon selling some land for that purpose. The Mahia, he said, was gone, and the Wairoa was to follow. there would then be Government land on both sides of them, and, whether they turned to right side or to the left, they would see the power and influence of the Queen. They were not disposed by holding out to place themselves in an isolated and singular position with respect to the tribes around them. The head, he said, being cut off, the body could not live—that is, the Mahia being sold, the rest would soon follow. Several others spoke but the tenor of their speeches was in favour of selling land. The only opponents of an immediate sale were the chiefs of our own party who accompanied us from the Mahia—Ihaka and his party. The people of Nuhaka are a section of Ihaka's people, and he himself is, consequently, the chief of paramount influence. So that, whilst adverse in the main to the sale of land in this locality, he was very naturally somewhat jealous of Te Matenga taking the matter entirely into his own hands and anxious to show his acquiescence was necessary before any purchase could be effected. The feeling was, no doubt, strengthened by the ancient feuds existing between the two parties, which originated in the murder of Te Rataua—Ihaka's father. In addressing the people he, Ihaka, said that there was no necessity for precipitating matters, that, in the meantime, Mr. McLean's destination was the Wairoa, and that if they were anxious to sell, the land would be sold in due time, but that at present he would withhold his assent. Although not directly acceding to their wishes, he appeared

anxious that the matter should be ventilated amongst them. It is not in accordance with the custom of native chiefs to sell land without giving the occupants of the soil an opportunity of discussing the question. He and his friends were desirous of holding this portion of country for the present but at some future period they would be willing to part with it, as the increasing necessity of a European population might require. Mr. McLean, in a speech of some length told them that he was glad to see the strong feeling of loyalty that existed among the young men of the tribe—that it had always been his endeavour during the late troubles to cultivate a good understanding between both races in this province—and he thought there was good reason for congratulation that, whilst other tribes were torn with tumults and wars, the Ngatikahungunus and their pakeha brethren had ever preserved peaceful and friendly relations and he assured them that no exertion on his part would be wanting to preserve this good feeling. With respect to the land, he would be prepared to enter into arrangements for the purchase of those portions to which they had an undisputed claim—and that if the parties were agreed, he would then purchase more extensively. The result of the meeting was that a block of land was offered for sale of no very great extent, and they were unable to reconcile all opposing claims—but they said—the rust would eat into the iron.’ Mr. McLean agreed to purchase the block offered, leaving the price to be decided after a surveyor (whom he promised to send) had gone over the ground, telling them at the same time that if they wanted European settlers amongst them they should be prepared to part with a sufficient quantity of available land for that purpose. On Wednesday the twenty-sixth a messenger arrived from Nuhaka who had been sent after Mr. McLean to inform him that subsequently to his departure they had determined upon selling a large portion of land extending from Nuhaka river northwards many miles—and that the assent of Ihaka and his party only was wanting to remove all difficulties. Ihaka and his friends, who accompanied us to the Wairoa, finding that Matenga and his people resident on the land were bent upon selling, gave in their consent, and it was decided that a large block should be sold in that locality. They wished Mr. McLean to consider that the land was now handed over to the Government. The amount to be given for it, they said, could be determined when he was in possession of further information as to extent etc. They declared that they were fixed in their resolve to become loyal subjects of the Queen and they wanted white men to settle amongst them so that they might enjoy the advantage of English law and Government to be British subjects not only in name but in reality. Mr. McLean informed them that he would take the land and send a surveyor to survey it, and that the terms could be decided after the completion of the survey. The boundaries were then given by the natives and taken down in writing.

“ This block of land computing from the native account, may probably be averaged at twenty miles square, and, according to this estimate, contains two hundred and fifty six thousand acres of land. The country generally, consists of undulating hills covered with a vegetation of grass and fern well adapted for sheep runs. The portion of it is held by Mr. Riddell under lease from the natives. The soil is apparently very fertile. In some places there are patches of bush and the flats are all agricultural. The river Nuhaka inside the bar is deep and broad for several miles inland with very little current. Large boats can very easily enter it in fine weather, and there is good anchorage within one hundred yards of the beach in any wind from North-east or North-west. The valley of Nuhaka itself is perfectly level from the coast several miles inland and the soil is of the most fertile description. The inland portions of the block consist of wooded hills, intersected by valleys all fit for cultivation. There is an excellent inland line of road to be had from this valley to Turanga by an old native track, which emerges from the bush at a native settlement called Maractaha, about four miles from the southern side of Poverty Bay. This line is described by those who have travelled it as being exceedingly good, and capable of being made an excellent road at a very trifling expense, comparatively speaking. Such a road would be the means of opening up considerable tracks of country well adapted for an agricultural population. As the natives at Turanga are now becoming more favourably disposed towards selling land, it may shortly be found advisable to open up this line in which case the province of Hawke’s Bay could not fail of being largely benefited.

“ From the valley of Nuhaka the top of a stupendous hill can be seen in the background towering high above the surrounding hills, alone in its solemn ruggedness and grandeur. It is precipitous on all sides save one, where it is approachable only by a narrow and steep footpath. The natives of the country hereabouts once took refuge on its top from the Waikatos during the old wars.”

It will be observed from Grindell’s account that the Nuhaka people subsequently reconsidered their offer to sell an area of no very great extent and they sent a messenger to Wairoa to inform Mr. McLean of their change of mind and that they had now determined to sell a large portion of land *extending from the Nuhaka River northward many miles*. The boundaries were given and recorded, and from the description of the area handed over it could be anything up to 256,000 acres.

The claim of the petitioners that the sale by their elders was confined to the land south of the 39th parallel could only have been raised after and because of the discovery of the separate *Gazette* notices extinguishing the Native title. The 39th parallel as a boundary could have no significance in the mind of the Maori elders, and its adoption appears to be an attempt “ to make the crime fit the punishment.” The allegations are not supported by Grindell’s narrative nor by the boundaries recited in the deed.

The fact that there was no separate survey of the northern area is of no great consequence. The surveys of the adjoining blocks provided this gratis to the Crown and the boundaries of the Crown area do not appear to have been encroached upon. The main points have been followed, and to reach Hiwera (the most northern of the boundary points) the land must have extended, as Grindell says, many miles northward from the Nuhaka River.

The other points raised in the petition are of minor importance and call for little, if any, comment. The Court agrees that it was not an unusual thing to have the names of children on deeds, providing they were of high rank and happened to be present at the time.

The Confiscated Lands Commission in 1928 had no recommendation to make when dealing with similar petitions, one of which alleged that there was no deed of sale in existence.

Taking into consideration all the matters put forward, the Court is of opinion that the allegations of the petitioners are not supported by the recorded facts and that the elders and leading chiefs of that day did intend to convey to the Crown a much larger area than 10,000 acres.

The Court has no recommendation to make in the matter.

For the Court

H. CARR, Judge.

[L.S.]

The Chief Judge, Native Land Court, Auckland.

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