

1924.

## NEW ZEALAND

# NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1922.

REPORT AND RECOMMENDATION ON PETITIONS Nos. 252 AND 295 OF 1922, OF JANE BROWN AND ROIMATA WI TAMIHANA AND OTHERS RESPECTIVELY, RELATIVE TO NGATIMUTUNGA RESERVE.

*Presented to Parliament in pursuance of Section 55 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922.*

Native Department, Wellington, 30th July, 1924.

*Petitions Nos. 252 and 295 of 1922, with regard to Ngatimutunga Claims.*

PURSUANT to section 55 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922, I herewith transmit the report of the Native Land Court herein.

Upon examination of the report and the records and material upon which it is founded I find myself unable to wholly concur in the findings.

1. With regard to the finding that the Government definitely promised an award of a fixed area of 3,000 acres to the absentee members of Ngatimutunga Hapu, I prefer to accept the finding of Mr. Commissioner Fox on the 26th April, 1884 (see 1884, A.-5A, p. 7), that "the Government made an award in the proportion of 10 acres to every absentee, a list of whom was made out." This is borne out by a reasonable construction of the Native Minister's memorandum of the 6th July, 1867, and the notification to the Natives in 1867 (*Kahiti*, p. 59), and it is supported by the evidence given before the Bell-Fox Commission and cited in Mr. Commissioner Fox's report. Unable to trace the list he referred to and to ascertain the rightful beneficiaries, the Commissioner thought the best course to pursue was "to have reserves surveyed and allocated to each of the tribes (hapu) entitled, but not to recommend any further action till the Government may be able (if it ever is) to ascertain the proper persons to become grantees." It was further suggested that if any of the grantees turned up, their interests, being of small dimensions, might be purchased. In the meantime, if the necessity ever occurred, the land was there to be dealt with in the manner contemplated at the time the promises were made.

In another place he suggests the reason that no claims had been previously made was on account of the smallness of the interests the claimants were entitled to. It seems obvious that the Commission, in setting aside Block VIII, Waitara Survey District, to meet these claims, did not consider that the 3,000 acres was to be a fixed area for the Ngatimutunga Hapu irrespective of the number of original beneficiaries.

2. The Court, in finding that Mrs. Brown received 500 acres of the Urenui Block in satisfaction of her Mataihuka claim, has, I think, overlooked Mr. Commissioner Fox's report of the 7th June, 1882 (1882, G.-5, p. 31). That report seems to show that the 500 acres was in respect of her Ngatiawa claim, and was to be accepted in satisfaction of all their (Mrs. Brown and her sister's) outstanding claims on the Government, including the contingent one in the Waikanae Block. This latter seems to be distinct from the Mataihuka claim, which apparently was settled by a grant of 150 acres, part of Section 98, Whenuakura.

With regard to the compensation suggested—£3,000—this seems to me to be a reasonable sum, and a pretty fair measure of the damages sustained. The land was specifically cut off in 1884, and the profits (if any) of so much of it as properly belonged to the Natives since that date should be their property. It is manifest that if the Natives are entitled to the whole 3,000 acres the compensation proposed would be on the small side. The Commission of 1905 found that at least seventy-three persons were entitled, and that each of their shares was worth £10, giving a total of £730. A careful review of the evidence and lists, however, indicates that persons were apparently excluded for insufficient reason—*e.g.*, as successor to some one who had got awards in other blocks. On the other hand, some may be found to have been wrongly included. The original estimate of absentees was 188, and it is better for the Government to err on the side of liberality. I suggest a fair number of beneficiaries to take would be 100: these at £10 per share give £1,000; adding forty years' interest at 5 per cent. would bring the total amount to that suggested by the Court.

I therefore respectfully recommend that legislation be passed setting aside the sum of £3,000 for those persons (or their successors) who would have been entitled to benefit under the promise given by the Government in 1867, the names to be ascertained by the Native Land Court. I do not favour the Court being allowed to make any special awards out of the amount so allotted. If the beneficiaries think Mrs. Brown is entitled to something it can be arranged among themselves. If the Government see fit to recognize her efforts on behalf of the Natives, then something might be allowed in a way that would not disturb any award to the Natives entitled.

R. N. JONES, Chief Judge.

The Hon. the Native Minister, Wellington.

*The Native Land Amendment and Native Land Claims Adjustment Act, 1922.*

Taranaki Minute-book 35/45-64.

In the Native Land Court of New Zealand, Aotea District.—In the matter of Petition No. 252 of 1922, by Jane Brown (Heni te Rau), and Petition No. 295 of 1922, by Roimata Wi Tamihana and others, praying for inquiry into claims of the absentee members of the Ngatimutunga Hapu, referred to the Court under the provisions of section 55 of the above-mentioned Act.

At a meeting of the Court held at New Plymouth on the 23rd day of August, 1923, the Court made inquiry into the above matters, and now reports as set out in the attached papers numbered 1 to 10. As witness the hand of the Judge and the seal of the Court.

F. O. V. ACHESON, Judge.

-----

NGATIMUTUNGA RESERVE.—REPORT BY NATIVE LAND COURT.

*Applications 52 and 53 by Chief Judge for Inquiry and Report upon the Claims in Petition No. 252 of 1922, by Jane Brown, and Petition No. 295 of 1922, by Roimata Wi Tamihana and others, re the Ngatimutunga Reserve.*

*Mr. D. S. Smith* for Mrs. Jane Brown, claiming that the absentee members of the Ngatimutunga Hapu are entitled to the 3,000 acres promised to them by the Government in 1867, or are entitled in the alternative to compensation at the rate of £1 per acre.

*Mr. Moverley* for the Lands Department, under instructions, claiming that the absentee members of Ngatimutunga have already had their claims satisfied out of grants made in the Urenui district.

The Court, after an exhaustive inquiry, has had no difficulty in satisfying itself that the claims of the Ngatimutunga absentees have never been met, and that the promises made to them by the Government of the day have never been carried out. In view of the history of the case, however, and of the difficulty there is in reconciling the findings of the Mackay Commission of 1905 with the facts known to the Court, it was considered advisable to make a minute examination of all the old records. This has required considerable time and labour, but the Court is now in a position to report confidently upon the whole matter.

The four main stages in the history of the case are as follows :—

- (1.) Record of promises made by the Hon. Mr. Richmond, Native Minister, on behalf of the Government, and approved by His Excellency the Governor, Sir George Grey. The full record appears in Appendix C to parliamentary paper G.-2, year 1880, Report of West Coast Commission (Fox-Bell), and the more important parts appear in Schedule A to the Court's report.
- (2.) Record of findings of the Fox-Bell West Coast Commission, as appearing in parliamentary paper G.-2 of year 1880.
- (3.) Record of findings of Mackay Commission, appearing in parliamentary paper G.-7 of year 1905.
- (4.) Inquiry by Native Land Court at New Plymouth in 1923 pursuant to the provisions of section 55 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922.

The Court will proceed to deal with these four stages one by one, as a knowledge of the sequence of events is necessary to a full understanding of the case.

1. Promise made by the Government in 1867 to the absentee members of the Ngatimutunga Hapu.

Schedule A to this report indicates the promises made. Mr. Richmond's minute of the 6th July, 1867, to the Governor refers to the fact that it is a statement of the decision of the Government as to the claims of Maoris which were rejected by the Compensation Court at Taranaki in consequence of the long absence of the claimants from the country. The minute points out that the claims were favourably recommended by the parliamentary Committee. The minute then proceeds as follows :—

The Governor has decided to give to the absentee claimants in the Ngatiawa and Taranaki districts land in the same proportion as was awarded to the absentee claimants in the Ngatiruanui district at a sitting of the Court at Whanganui. The Government has taken pains to ascertain the number of claimants, and the hapu to which they belong. Five principal hapus are concerned, and land will be given the absentees in each of them in accordance with the following scale :—

Tribe.	Amount of Land to be given, Acres.
Ngatitama .. .. .	1,300
Ngatimutunga .. .. .	3,000
Ngatiawa .. .. .	2,700
Puketapu .. .. .	2,100
Taranaki .. .. .	3,100
Total .. .. .	12,200

These lands will hereafter be laid off in such blocks as may be convenient. The division of them will rest with the people to whom they are given. It will not be for the Government to settle the subdivision, but for the persons interested.

On the 8th July, 1867, His Excellency the Governor, Sir George Grey, added a minute as follows:—

The Governor has received the memorandum of his Responsible Advisers on the subject of the claims of Natives to lands at Taranaki, which were rejected by the Compensation Court in consequence of the long absence of the claimants from that place. On this subject the Governor wishes to state that, many years ago, when William King and his followers were returning to Taranaki to take possession of the lands on the Waitara River, the Governor became exceedingly anxious at the large influx of Natives which appeared likely to be poured into that district, and used all the influence in his power to prevent the well-disposed Natives from returning there. Many influential Natives then objected that if they did not return to Taranaki to take possession of their lands they would, in any settlement of the land question which might be made in that district, be very probably regarded as having forfeited their claims. Thereupon the Governor assured them that those who obeyed his orders and did not proceed to Taranaki should, in any future settlement of the land question at that place, have their claims adjusted upon at least as favourable a footing as those who, by proceeding to Taranaki, have greatly increased the embarrassments and difficulties of the Government. The Governor will acquiesce in any arrangement made by his Responsible Advisers for the settlement of this question, if he understands from them that they have considered and made allowance for the promise thus given by the Governor.

The Hon. Mr. Richmond then (on the 9th July, 1867) reported to Cabinet that, for the reasons mentioned by the Governor, the promise made at the meeting on the 6th July, 1867, should be effectuated by Order in Council. A draft Order in Council was accordingly prepared, and it recited, *inter alia*, that—

His Excellency the Governor doth hereby award unto persons of the several hapus or tribes named in the schedule hereto (including Ngatimutunga), being absentees to whom the Compensation Court has refused to award compensation, land within the several districts lately occupied by members of the said hapus or tribes respectively, to the extent set opposite the names of the said hapus or tribes severally, to be held jointly by such persons in each hapu or tribe respectively, subject to such subdivision as they may hereafter agree upon.

This Order in Council does not appear to have ever actually issued.

The promise made by the Government of the day is made even more clear by the following extract from the precis of notes of the meeting of Native absentee claimants, 6th July, 1867 (see Schedule A to this report):—

Mr. Richmond said that, as another Court [*i.e.*, the Wanganui Court] had allowed land to some Ngati-ruanui absentees, the Government would do as much for the Taranaki absentees; and therefore pains had been taken to ascertain the number of claimants, and the hapus to which they belonged. The amount of land to be given to the five principal hapus—Ngatitama, Ngatimutunga, Ngatiawa, Puketapu, and Taranaki—was read, and a promise given that it would be laid off in blocks to suit their convenience. Bush land was to be given to all except the Taranaki, who were to get land partly bush and partly open. The parties interested were to be allowed to subdivide their land as they pleased without Government interference.

The evidence of Mr. Parris, former Civil Commissioner, given before the Fox-Bell Commission on the 6th March, 1880 (see parliamentary paper G.-2, year 1880, p. 27), bears on the same point. At clause 363 Mr. Parris says,—

At the time when Mr. Richmond investigated the claims of absentees for lands which had been excluded by the Court we did our best to ascertain the number of claimants who would probably come forward as absentees. We obtained this information from the elders of the tribes, and were thus enabled to decide the number, and the Government made an award accordingly. But that award has never been given effect to, nor the allocations made.

It is abundantly clear from the records already quoted that the Government in 1867 definitely promised to award to the absentee members of the Ngatimutunga Hapu an area of 3,000 acres, and that this area for the absentees was fixed after the Government had taken pains to ascertain the number of claimants. Mr. Parris says that the necessary information as to the number of probable claimants was obtained from the elders. The only point upon which there may be some conflict of opinion is as to whether the Government in 1867 promised a definite award of 3,000 acres to the Ngatimutunga absentees, or merely promised 16 acres to each absentee who could prove his or her claim. The Mackay Commission in 1905 (the Court will deal more fully with its findings later) assumed that the Government only promised 16 acres to each absentee.

The Court now reporting on this case is emphatically of the opinion that the Government in 1867 promised an award of 3,000 acres of bush land to the group of persons known as the absentee members of the Ngatimutunga Hapu. The Government in 1867 took pains to ascertain the probable number of claimants, and then fixed the area for the Ngatimutunga absentees at 3,000 acres. The Natives are entitled to expect that the Government will not at this late stage say that it made a mistake in 1867 (when it had the facts and the people, as it were, before it) in the number of claimants, and that the area should now be considerably reduced. If the promises had been carried out shortly after 1867, as it is submitted, they should have been, there would have been no question about the matter—the 3,000 acres would have been awarded to the absentees and divided up by them as they saw fit without any interference from the Government.

It is true that in fixing the area at 3,000 acres the Government worked on the basis of an award of 16 acres for each absentee, but the actual award was of 3,000 acres to the group of absentees, and not of 16 acres to each absentee. The Government must, it is submitted, take the responsibility for fixing the award at 3,000 acres for the group of absentees, and should now leave it to the Native Land Court to decide definitely which absentees are entitled to share in the 3,000 acres or in its equivalent in value. The Court will show later how exceedingly undesirable it is that any award to individual absentees should be limited to 16 acres by following on the lines of the unbelievably fantastic scheme adopted by the Compensation Court in the Ngatiruanui case at Wanganui in December, 1866. The comments of the Fox-Bell Commission on this Ngatiruanui case will appear later.

2. The Court will now deal with the report of the Fox-Bell Commission (parliamentary paper G.-2, year 1880), and will submit that the emphatic views of two such eminent men as Sir William Fox and Sir Francis Dillon Bell, in strongly supporting the claims of the Ngatimutunga absentee, must carry the utmost weight.

The proceedings quoted in the Commission's report are far too lengthy to be referred to in full, but extracts giving the more important evidence or findings or comments are set out below.

At page 35 of the second Report of the West Coast Commission (parliamentary paper G.-2, 1880) the Commissioners refer to the awards of the Compensation Court and say,—

We now turn to the question of the compensation awards, and it would be hard, we think, to match the tangle into which what ought to have been a simple matter has been allowed to get. At the first sittings at New Plymouth in June, 1866, the Court laid down three rules: (1.) First, the 14th January, 1840 (the date of proclaiming the Queen's sovereignty), was fixed as the time at which the title of the Natives was to be regarded as settled. (2.) Secondly, "finding it impossible to appraise the value of the chiefs on the loyal side or rebel side," the Court decided that "each man on each side was of the same value, and had an equal estate." (3.) Thirdly, all claimants who since 1840 had not resided on their land were absolutely excluded unless their title had been allowed by the Government.

In this way (says the Commission's report) 908 loyal claimants were shut out for non-possession or insufficient occupation. The Crown Agent argued that "The Government was not bound by the acts or promises of its predecessors," a doctrine which was promptly repressed by the Court.

When the Court sat at Whanganui in the following December (1866) this rule of exclusion was reversed; but absentees were only let in on a fantastic scheme. The Court decided (in the Ngatiruanui case) that "the interest of a loyal absentee was to bear the same proportion to the interest of a loyal resident as the number of loyal residents bore to the number of resident rebels." What a loyal Native's right under the statute had to do with the number of rebels is hard to see; the effect, however, of this queer equation was that, as there were only forty loyal residents to 957 rebels, the loyal resident got 400 acres, while the (loyal) absentee got 16. No wonder that the way this operated upon the chiefs failed to elicit their assent! Nothing, for instance, could be more grotesque than a solemn judgment by which the warrior Whanganui chief, Mete Kingi Paetahi, who had fought many a battle by our side, was to have 16 acres in "extinguishment" of his tribal rights; especially as it was carefully provided (lest such munificence should be too much for him) that only 5 acres of it should be open land, and the other 11 acres be somewhere in the bush.

At page 37 of the same report (Fox-Bell) the Commissioners refer to the Government awards and say,—

When the non-resident Natives heard that they were excluded by the (Compensation) Court they threatened to return at once to Taranaki in order to maintain their rights. This promised a new and dangerous complication, and the Government were compelled to take it up.

The report then refers to the meeting of absentees in 1867, and to Mr. Richmond's scheme for admitting them to compensation, and to Sir George Grey's minute. Then the report proceeds as follows:—

The end of it was that, upon a calculation being made of the quantity required to meet 755 absentee claims at 16 acres each, the Government awarded 12,200 acres to five of the tribes. Yet nothing was done to allocate the awards.

In the Third Report of the Fox-Bell Commission, at page 48 of the report (parliamentary paper G.-2 of 1880), the Commissioners mentioned in the schedule of lands which successive Governments had either actually reserved, awarded, or promised to set apart the following lands which had still to be allocated:—

Government awards:—

Probable amount for the Chatham-Islanders	..	..	..	10,000 acres.
To absentees—For Ngatitama	..	..	..	1,300 "
For Ngatimutunga	..	..	..	3,000 "
For Ngatiawa	..	..	..	2,700 "
For Puketapu	..	..	..	2,100 "
For Taranaki	..	..	..	3,100 "

It will be seen from the above that the award of 10,000 acres to the Chatham-Islanders was distinct from the 3,000 acres award to the Ngatimutunga absentees. This aspect of the case will be referred to again later.

At page 46 of the same Third Report of the Fox-Bell Commission the Commissioners draw attention to the promises contained in two Proclamations issued in 1864 and 1865, while the Maori troubles were at their height. The first Proclamation, dated 17th December, 1864, says:—

The land of those Natives who have adhered to the Queen shall be secured to them; and to those who have rebelled but who shall at once submit to the Queen's authority, portions of the land taken will be given back for themselves and their families. To all those who have remained and shall continue in peace and friendship the Governor assures the full benefit and enjoyment of their lands.

The second Proclamation, dated 2nd September, 1865, says:—

The Governor doth hereby further declare that no land of any loyal inhabitant within the said districts will be taken except so much as may be absolutely necessary for the security of the country, compensation being given for all land so taken.

The Commissioners quoted these Proclamations to show that the land of loyal Natives was to be preserved to them. There is no question but that the Ngatimutunga were a loyal hapu—this has all along been admitted by the representatives of the Crown.

It is advisable here to again refer to the award to the Chatham-Islanders, as it has been contended on behalf of the Crown that the Chatham-Islanders included a large proportion of the absentee members of the Ngatimutunga Hapu, and that special awards were made to such Chatham-Islanders in the Urenui district. The report of the Fox-Bell Commission, however, shows clearly that the award of 10,000 acres for the Chatham-Islanders was quite distinct from the award of 3,000 acres for the Ngatimutunga absentees. Page 56 of the Commission's report gives the evidence of Major Parris, showing that the main body of Chatham-Islanders arrived back in December, 1867 (*i.e.*, after Mr. Richmond had made his promises on behalf of the Government to the big gathering of Ngatimutunga absentees at Wellington in July, 1867). Major Parris estimated the total number of Chatham-Islanders at 200, including men, women, and children, and he estimated that, at the rate of 50 acres per soul, the area required for the 200 Chatham-Islanders would be 10,000 acres. The Fox-Bell Commission adopted these figures and recommended an award of 10,000 acres. Why the Chatham-Islanders (men, women, and children) were to get 50 acres each while the Ngatimutunga absentees were only to get at the rate of 16 acres each is not apparent.

One thing is certain: a very large number of Chatham-Islanders did receive extensive grants in the Urenui district, but the Court is satisfied that such grantees were the Chatham-Islanders who arrived in December, 1867, or afterwards, and that few if any of the real Ngatimutunga absentees (of July, 1867) were included in any of the Chatham-Islanders' awards. If, however, it can be shown by the Crown that any Ngatimutunga absentees (of July, 1867) did in fact participate in the award of 10,000 acres for the Chatham-Islanders, then such absentees should be excluded from the 3,000-acre award for the Ngatimutunga absentees. No evidence whatever has been produced to the Court to show that any Ngatimutunga absentees did participate in any of the grants. The grant of 500 acres to Mrs. Jane Brown and her sister in the Urenui district will be referred to later: it is sufficient to say here that this grant had nothing whatever to do with the awards to the Chatham-Islanders or to the Ngatimutunga absentees.

Before passing from the report of the Fox-Bell Commission the Court will refer to a supplementary report presented by (Sir) William Fox to the Hon. Native Minister, 26th April, 1884 (see parliamentary paper, 1884, A.-5A, p. 7, Appendix 4). In this report Sir William Fox points out that it has been found impossible to ascertain the names of the Natives in whose favour Mr. Richmond's promises were made. He considered, however, that many of the absentees in whose favour the promises were made returned to the Taranaki district and were included in tribal reserves. The Court has been quite unable to obtain any evidence of such return and inclusion—no evidence of a satisfying nature was presented either before the Mackay Commission in 1905 or before the Court in 1923—and the Court recommends that, in the absence of evidence of any such awards, the Ngatimutunga absentees be held to be still entitled to the fulfilment of the promises made to them by the Government in July, 1867.

3. The Court will now deal with the report of the Mackay Commission of 1905 (see parliamentary paper G.-2 of 1905).

The First Report of this Commission, dated 7th June, 1905, recommended that an area of 992 acres (equal to sixty-two full shares of 16 acres each) be awarded to the persons named in the schedule to the report. The Commission recommended that the award be restricted to the male and female adult members of the Ngatimutunga Hapu living at the time Mr. Richmond's promises were made in July, 1867. The children then living were not to be included in the award except as successors to adults who were living in July, 1867. This Commission also reported that some Ngatimutunga absentees in the Chatham Islands should be included: a supplementary report (see *infra*) gives a list of Chatham-Islanders recommended for inclusion.

The Commission, after inspecting the land, assessed the unimproved value of the Ngatimutunga 3,000-acre reserve at the time it was disposed of by the Crown (1890 or thereabouts) at 12s. an acre.

The report also refers to the fact that, out of the awards recommended by the Fox-Bell Commission in 1880—*i.e.*, Ngatitama, 1,300 acres; Ngatimutunga, 3,000 acres; Ngatiawa, 2,700 acres; Puketapu, 2,100 acres; Taranaki, 3,100 acres: total, 12,200 acres—the Ngatimutunga award was the only one still not carried out.

In the Second Report of the Mackay Commission, presented 29th June, 1905, the Commission recommends the inclusion of a number of Chatham-Islanders for eleven full shares of 16 acres each, or a total of 176 acres, the names being set out in the schedule to the report.

A perusal of the proceedings leading up to these two reports of the Mackay Commission has convinced the Court that Commissioner Mackay all along acted upon the assumption that any award was to be definitely restricted to 16 acres for each adult absentee. The Court is inclined to think that Mr. Kensington, the Under-Secretary for Lands, was allowed to take an unduly prominent part in the proceedings, and that it is a pity the Natives were not allowed to be represented by at least one solicitor capable of putting the Native side of the question intelligently before the Commission.

The Court is of the opinion that the Commission made a fundamental mistake in assuming that the award was restricted to 16 acres for each adult absentee. The Court is quite clear on the point that the Government in July, 1867, definitely promised an award of a fixed area of 3,000 acres to the absentee members of the Ngatimutunga Hapu. The Government of the day knew how many absentees there were, and in the opinion of the Court the list included all the absentees whether minors or adults. The 10,000-acre award for the Chatham-Islanders was at the rate of 50 acres for each man, woman, or child of the 200 islanders who returned.

The Court is definitely of the opinion that the Government in 1867 merely used the 16-acre basis as a rough-and-ready method of arriving at a fixed area to be awarded to the whole group of Ngatimutunga absentees, and that, by agreeing to leave the division of the 3,000 acres to the absentees themselves, it recognized that on such a division the people could arrange to award more shares to adults or to prominent absentees than to minors.

The Mackay Commission seems also to have taken it for granted that Mr. Kensington was correct in alleging that Mrs. Jane Brown (Heni te Rau) and her sister received a 500-acre award in the Urenui district in full satisfaction of all claims, including claims as Ngatimutunga absentees. The Court has investigated this matter, and finds that the 500-acre award was made as compensation for a valuable piece of land called Mataihuka, near Waikanae, wrongly included in a sale to the Crown. The Court has perused a letter dated 13th June, 1873, from W. N. Scaranek, the Crown Purchase Officer, to one H. T. Kemp, admitting that this Mataihuka land was included in the Crown purchase by mistake, and that it was an area of 300 acres, and was "the cream of the block." It belonged to Mrs. Jane Brown's mother, Peti Nichol. Mrs. Jane Brown was left out of the award recommended by the Mackay Commission. The Court considers this to have been a serious mistake, which has given point to all the subsequent proceedings.

The reports of the Mackay Commission have not been given effect to. The Court recommends that they be not given effect to, except as a guide to the names of a large number of the persons who will be found ultimately to be entitled.

4. The Court will refer briefly to the proceedings before it at New Plymouth in 1923. The Court, on the evidence put before it, was satisfied on the following points:—

- (a.) That the promises made by the Government to the Ngatimutunga absentees in July, 1867, have never been fulfilled, and that no grants have ever been made to the Ngatimutunga absentees as such.
- (b.) That, in the absence of any evidence of grants to any Ngatimutunga absentees, it should be assumed that no grants have been made, and that the Ngatimutunga absentees are still entitled to their 3,000 acres, or its equivalent in value.
- (c.) That the value of the land set aside for the Ngatimutunga absentees was at least 12s. per acre as far back as 1890, and that allowance should be made for the fact that the land has been withheld all these years, and that the Natives have had no benefit from it.
- (d.) That the other hapus who were made promises at the same time (1867) have received their awards either in land or in cash, and that the fulfilment of the promises made to the Ngatimutunga absentees should no longer be delayed.
- (e.) That it is advisable to make a cash award to the Ngatimutunga absentees in lieu of the 3,000-acres award. Having regard to the long delay, and the fact that the land was worth at least 12s. an acre in 1890, the Court considers it would be fair to the Natives to award them the sum of £3,000, or at the rate of £1 an acre. This sum, however, should cover such special awards to Mrs. Jane Brown or others as may be recommended later.
- (f.) The Court found it quite impossible to say what persons are entitled to share in any award as Ngatimutunga absentees. Mrs. Jane Brown's party was the only party adequately represented before the Court, and an attempt was made to show that she and her people were the parties entitled to at least the greater part of the award. The Court is of the opinion, however, that other groups of Ngatimutunga absentees should have an opportunity of pressing their claims. Probably there are absentees in the Waikato, in the Motueka district, and in the Chatham Islands as well as in the Waikanae district. The case has not yet been sufficiently advertised. The Court will make a recommendation.
- (g.) The Court is satisfied that Mrs. Jane Brown has not yet received a grant in satisfaction of her claims as a Ngatimutunga absentee. She has been put to a great deal of trouble and expense in pressing the claims of the Ngatimutunga absentees, and the Court thinks she should be made a special award out of any grant that may be made, to compensate her to some extent for the expense she has been put to. She should also be put into any award as an absentee.
- (h.) The Court recognizes that Mr. Richmond, in 1867, promised that the Ngatimutunga absentees could divide up the 3,000 acres as they pleased, but this is impracticable now. The Court is the proper tribunal for settling the list of participants and their respective shares.
- (i.) The Court sees no prospect of this very troublesome matter being settled unless it be got rid of now by an award that will meet the legitimate claims of the Ngatimutunga absentees under the promises made in 1867.

The Court accordingly begs to recommend as follows:—

- (1.) That the Government see its way to agree to a definite award of £3,000 or thereabouts to such members of the Ngatimutunga Hapu (or their successors) as may be found by the Native Land Court to have been "Ngatimutunga absentees" at the time of the promises made by the Hon. Mr. Richmond in July, 1867.
- (2.) That the Native Land Court be authorized and directed to hold an inquiry (at New Plymouth) and to ascertain the names of the absentees entitled, with full power to fix their relative shares. Ample notice should be given to Natives in the Waikato, Motueka, and Waikanae districts, and in the Chatham Islands, by special notices in the *Kahiti*, so as to ensure that all parties claiming to share in the award will have time to be reasonably represented at the hearing.
- (3.) It is recommended that the Court be authorized to make a special award to Mrs. Jane Brown (or others) if upon fuller inquiry it be found that she has been put to considerable expense on behalf of the general body of Ngatimutunga absentees, and that they have benefited from her efforts.
- (4.) The Court begs specially to recommend that definite action be taken one way or the other. It will be a great pity if this report meets the same fate as the report of the Mackay Commission. Each year it will become more and more difficult to say who are the Ngatimutunga absentees entitled. These absentees are, in the opinion of the Court, entitled to generous treatment. Following the usual rule on an investigation of title or definition of relative interests, the survivors of a hapu or tribe are the proper persons entitled. The Court feels sure that there will be no desire on the part of the Government to take advantage of the fact that since 1867 many of the absentees will have disappeared leaving no issue. In such cases the next-of-kin or the whole hapu will fall heir to the shares originally set aside for such absentees. The Native Land Court, with the various parties represented before it, will be quite capable of dividing up any award that may be made, and then, after the time for appeals shall have expired, this very troublesome matter will be settled for ever.
- (5.) The Court begs respectfully to recommend that, if approved, the necessary legislation be enacted during the coming session of Parliament.

F. O. V. ACHESON, Judge.

## SCHEDULE A.

## WEST COAST COMMISSION.—APPENDIX C.

## PAPERS RESPECTING COMPENSATION TO ABSENTEES: DECISION OF THE GOVERNMENT IN 1867.

## 1. MINUTE of the NATIVE MINISTER for His Excellency Governor Sir G. GREY.

THE substance of the (annexed) statement was made to a meeting of the absentee claimants, in the grounds of the Native Office, this morning. If His Excellency approves, it will be printed in Maori for circulation, and the promise embodied in an Order in Council.

6th July, 1867.

J. C. RICHMOND.

## 2. MINUTE by Hon. J. C. RICHMOND, Native Minister.

THE following is a statement of the decision of the Government as to the claims of Maoris which were rejected by the Compensation Court at Taranaki in consequence of the long absence of the claimants from the country:—

These claimants, or some of them, have petitioned the General Assembly to reconsider their claims, and the law allows the Governor, if he thinks fit, to give compensation when none is awarded by the Court. The members of a Committee of the Parliament recommended that this power should be exercised by the Governor in the case of these petitioners; and the Government have advised His Excellency, without reversing the decision of the Court, to extend his kindness to these men.

The Governor has decided to give to the absentee claimants in the Ngatiawa and Taranaki districts land in the same proportion as was awarded to the absentee claimants in the Ngatiruanui district at a sitting of the Court at Whanganui.

The Government has taken pains to ascertain the number of claimants, and the hapu to which they belong. Five principal hapus are concerned, and land will be given the absentees in each of them in accordance with the following scale:—

Tribe.	District to which Claim refers.	Amount of Land to be given.
		Acres.
Ngatitama .. .. .	Parininihi to Titoki .. .. .	1,300
Ngatimutunga .. .. .	Titoki to Te Rau-o-te-Huia .. .. .	3,000
Ngatiawa .. .. .	Titirangi to Onatiki .. .. .	2,700
Puketapu .. .. .	Onatiki to Waitaha .. .. .	2,100
Taranaki .. .. .	Okurukuru to Omuturangi .. .. .	3,100
	Total .. .. .	12,200

These lands will hereafter be laid off in such blocks as may be convenient. The division of them will rest with the people to whom they are given. It will not be for the Government to settle the subdivision, but for the persons interested.

The land will be bush land, except in the case of the Taranaki Tribe. This tribe will receive partly bush land and partly open land.

Besides the land given as above, the Government will grant, by His Excellency's desire,—

200 acres to Te Puni, on account of the special claim which his loyalty and long and faithful services give him to the consideration of the Government:

100 acres to Wi Tako, on account of the services which he has recently rendered to the Government:

100 acres to Mohi Ngaponga, because, in the opinion of the Judge of the Court, he established a better claim than the rest of those who were rejected:

100 acres to Hemi Parai, because the Government recognize his greater claim to consideration from his having remained in Wellington at the instance of the Government when he might have returned to Taranaki.

J. C. RICHMOND.

## 3. MINUTE of His Excellency Governor Sir GEORGE GREY.

THE Governor has received the memorandum of his Responsible Advisers on the subject of the claims of Natives to lands at Taranaki, which were rejected by the Compensation Court in consequence of the long absence of the claimants from that place.

On this subject the Governor wishes to state that, many years ago, when William King and his followers were returning to Taranaki to take possession of the lands on the Waitara River, the Governor became exceedingly anxious at the large influx of Natives which appeared likely to be poured into that district, and used all the influence in his power to prevent the well-disposed Natives from returning there. Many influential Natives then objected that if they did not return to Taranaki to take possession of their lands they would, in any settlement of the land question which might be made in that district, be very probably regarded as having forfeited their claims. Thereupon the Governor assured them that those who obeyed his orders and did not proceed to Taranaki should, in any future settlement of the land question at that place, have their claims adjusted upon at least as favourable a footing as those who, by proceeding to Taranaki, have greatly increased the embarrassments and difficulties of the Government.

The Governor will acquiesce in any arrangement made by his Responsible Advisers for the settlement of this question, if he understands from them that they have considered and made allowance for the promise thus given by the Governor.

8th July, 1867.

G. GREY.

## 4. MINUTE of Hon. J. C. RICHMOND upon His Excellency's Minute.

THE great bulk of the claimants present in Wellington, and at the meeting of 6th July, appear satisfied with the provision proposed. I see no end to the difficulties that would follow a reopening of the matter, as the shares of loyal residents in some of the districts have been but small, and to reopen the absentee claims would necessitate reopening the others.

9th July, 1867.

J. C. RICHMOND.

## 5. MINUTE for the Cabinet by Hon. J. C. RICHMOND.

I THINK, for the reasons mentioned in His Excellency's memorandum attached, that the promise made at the meeting of 6th July should be effectuated by Order in Council.

9th July, 1867.

J. C. RICHMOND.

## 6. DRAFT ORDER IN COUNCIL under the New Zealand Settlements Amendment Act, 1864.

WHEREAS by the New Zealand Settlements Amendment Act, 1864, it is enacted that in any case in which, under the New Zealand Settlements Act, 1863, the Compensation Court shall have refused to award compensation, or shall have awarded less compensation than may have been claimed, or in any other case if the Governor in Council shall be of opinion that the circumstances of the case would render it expedient that compensation, or increased compensation, should be awarded, it shall be lawful for the Governor in Council to award and direct that compensation, or increased compensation, shall be paid to any person or persons who, in the judgment of the Governor in Council, shall be reasonably entitled thereto :

Now, therefore, His Excellency the Governor, in exercise of the above-recited power, doth hereby, with the advice and consent of the Executive Council of the colony, award unto persons of the several hapus of tribes named in the schedule hereto, being absentees to whom the Compensation Court has refused to award compensation, land within the several districts lately occupied by members of the said hapus or tribes respectively, to the extent set opposite the name of the said hapus or tribes severally, to be held jointly by such persons in each hapu or tribe respectively, subject to such supervision as they may hereafter agree upon : Provided that the land in the case of each hapu or tribe may be in one or in several lots, as the Colonial Secretary may determine : Provided further that the Governor may hereafter make grants of the said land to such person or persons on behalf of the several hapus, or in their own right, as may be agreed upon by the persons entitled under this Order, being not more than ten grantees in one grant.

	SCHEDULE.								Acres.
Ngatimutunga	..	..	..	..	..	..	..	..	..
Ngatirahiri	..	..	..	..	..	..	..	..	..
Ngatitana	..	..	..	..	..	..	..	..	..
Ngatiawa	..	..	..	..	..	..	..	..	..
Puketapu	..	..	..	..	..	..	..	..	..
Taranaki	..	..	..	..	..	..	..	..	..

[NOTE.—The amounts do not appear in the draft Order.]

## 7. MINUTE of the Hon. NATIVE MINISTER.

THE Attorney-General is requested to settle this Order (in Council).  
20th July, 1867.

J. C. RICHMOND.

## 8. MINUTE of the ATTORNEY-GENERAL.

Hon. Minister for Native Affairs.

I DOUBT whether the Governor has authority, by Order in Council, to do anything but award an amount in money, to be paid to an individual person or to persons. I do not think that the Act contemplates claims from tribes and hapus. If the claimants agree to take land before the award is made by the Governor, I am disposed to think that such award might be satisfied in land, if the Colonial Secretary thought fit.

2nd August, 1867.

J. PRENDERGAST.

## 9. MINUTE of the UNDER-SECRETARY.

Hon. Mr. Richmond.

IF this cannot be done in this way, I presume it will be competent to incorporate the proposal in the Bill which will be brought in for the giving of reserves to rebels.

8th August, 1867.

W. ROLLESTON.

## 10. MINUTES by the UNDER-SECRETARY after the passing of the Confiscated Lands Act, 1867.

THE Attorney-General should be requested to revise this Order under the Act of 1867.

W. ROLLESTON.

REFERRED to the Assistant Law Officer. By command.

30th October, 1867.

W. ROLLESTON.

## 11. PRECIS from NOTES of the MEETING of NATIVE ABSENTEE CLAIMANTS, 6th July, 1867.

AT a meeting of the absentee claimants held outside the Native Office, at Wellington, 6th July, 1867,—

Mr. Richmond explained that, although the Compensation Court declined to recognize the claims of those long absent from the country, Parliament was petitioned to recognize those claims. A committee was accordingly appointed to inquire into the case of petitioners. The committee, not wishing to reverse the decision of the Court, asked the Governor to extend his kindness to the people interested, he having discretionary power to give more compensation than was allowed by law, if he saw fit. Mr. Richmond said that, as another Court had allowed land to some Ngatiruanui absentees, the Government would do as much for the Taranaki absentees; and therefore pains had been taken to ascertain the number of claimants, and the hapus to which they belonged. The amount of land to be given to the five principal hapus—Ngatitana, Ngatimutunga, Ngatiawa, Puketapu, and Taranaki—was read, and a promise given that it would be laid off in blocks to suit their convenience. Bush land was to be given to all except the Taranaki, who were to get land partly bush and partly open. The parties interested were to be allowed to subdivide their land as they pleased without Government interference. For special services and other reasons, grants were promised to the following chiefs: Te Puni, Wi Tako, Hoho Ngaponga, and Hemi Parai; and Mr. Richmond concluded by saying that the statement and promises made them by him would be printed and distributed, so that the Natives might remember them.

Hemi Parai said he would not allow the Court to meddle with any land south of Hangatahua, and said they proposed that all foreigners should be turned off.

Mr. Richmond said the Government could not go beyond what he had just said. The land had gone, and the Governor had not the power to give it back. The meeting was not one to upset the decision of the Court, but merely that he might say how far the Governor would extend his kindness.

A discussion then arose as to the cause of the war, the Natives saying it was partly the fault of the Europeans, who would not leave Wi Kingi alone. They also said 100 acres each was not enough.

Mr. Richmond said he had watched the progress of events, and considered it idle to discuss the origin of the war; but pointed out that, as the Queen's officers had a right to go everywhere, Wi Kingi had no right to use force to them when they were sent up to ascertain the facts of a matter in dispute.

Mohi Ngaponga declined the 100 acres "so that the Government might be ashamed of their kindness."

*Approximate Cost of Paper.*—Preparation, not given; printing (475 copies), £9.